

**AGENDA**  
**SUBCOMMITTEE No. 1**  
**ON HEALTH AND HUMAN SERVICES**  
**ASSEMBLYMEMBER DAVE JONES, CHAIR**  
**WEDNESDAY, MAY 26, 2010**  
**STATE CAPITOL, ROOM 4202**  
**9:00 A.M.**

**PART 1**

ITEM	DESCRIPTION	PAGE
<b>VOTE ONLY</b>		
<b>4300</b>	<b>DEPARTMENT OF DEVELOPMENTAL SERVICES</b>	
ISSUE 1	SONOMA DEVELOPMENTAL CENTER FIRE ALARM UPGRADE	2
ISSUE 2	QUALITY ASSESSMENT CONTRACT ADJUSTMENT	2
ISSUE 3	FEDERAL STIMULUS FUNDS –PURCHASE OF SERVICES	3
ISSUE 4	SELF DIRECTED SERVICES IMPLEMENTATION DELAY	4
ISSUE 5	LANTERMAN DEVELOPMENTAL CENTER CLOSURE	5
ISSUE 6	FEDERAL MONEY FOLLOWS THE PERSON (MFP)	8
ISSUE 7	ADDITIONAL 1.25% REDUCTION	9
	ATTACHMENT – 1	11
	ATTACHMENT – 2	19
	ATTACHMENT – 3	20
	ATTACHMENT – 4	21
	ATTACHMENT – 5	22
	ATTACHMENT – 6	23

**ISSUE 1: SONOMA DEVELOPMENTAL CENTER FIRE ALARM UPGRADE**

The Governors May Revision requests an increase of \$5.2 million (GF), for the construction phase of Sonoma Developmental Center fire alarm upgrade project. Funds are contingent upon approved working drawings and provisional language to allow expenditure of these funds upon approval by the Director of the Department of Finance and prior notification to the Joint Legislative Budget Committee.

**ISSUE 2: QUALITY ASSESSMENT CONTRACT ADJUSTMENT**

The Governors May Revision requests an increase of \$1.8 million (GF) to reflect a decrease in associated savings. The savings associated with this contract in the Governor's Budget were inadvertently doubled.

**STAFF COMMENT**

This proposal is a technical budget error. The consolidation referred to is a result of the Life Quality Assessments and Movers Study Assessments, which are a part of the current year \$334 million reduction to the DDS. Should funding not be increased, the Department will not have sufficient funding to complete consolidation into one quality assurance survey to measure consumer and family satisfaction, provision of services and personal outcomes.

<b>ISSUE 3: FEDERAL STIMULUS FUNDS –PURCHASE OF SERVICES</b>
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The Governors May Revision requests GF adjustments as they relate to regional center purchase of services (POS). Adjustments are as follows:

	<b>General Funds</b>	<b>Reimbursements</b>
Purchase of Services (POS)	-\$3,056,000	\$3,056,000

<b>STAFF COMMENT</b>
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Adjustments to RC POS reflect the enhanced FMAP, due primarily to the elimination Adult Day Health Care (ADHC) services and changes to the HCBS Waiver.

DDS consumers currently use ADHC as a generic service. The \$1.8 million (GF) savings for POS are dependent on the elimination of ADHC, as the estimate to purchase of services would impact the new FFP funds that could be generated and are expected October 1, 2010.

<b>Projected Savings</b>	<b>HCBS Waiver</b>	<b>Elimination of ADHC</b>
\$3.0 million	\$1.3 million	\$1.8 million

The Subcommittee previously took an action on April 26<sup>th</sup> to reject the Governors proposal to eliminate ADHC.

**ISSUE 4: SELF DIRECTED SERVICES IMPLEMENTATION DELAY**

The Governors May Revision notes a delay in the Self Directed Services program. The new implementation date of April 1, 2011 results in a current year GF decrease of \$1.0 million and a reimbursements decrease of \$1.6 million.

**BACKGROUND**

The Self Directed Services (SDS) program would implement a capped and finite individual budget, by which individuals who are eligible for state developmental disabilities services are empowered to gain control over the selection of services and supports, that meet their own needs.

SD Services programs are implemented nationwide and have garnered international and bi-partisan support. The delay was filed on behalf of DDS, by DHCS, due to discussions with the federal government regarding the role of the regional center as a fiscal intermediary in the SDS program. Rejecting this May revision proposal would leave funds in the DDS budget that the Department does not anticipate using in 2010-11.

**ISSUE 5: APRIL FINANCE LETTER: LANTERMAN DEVELOPMENTAL CENTER CLOSURE**

**Closure Proposal.** The Administration announced the closure of Lanterman Developmental Center (Lanterman) on January 29, 2010 and submitted the Closure plan as an April Finance Letter. The closure has been proposed for three reasons: (1) its consistent declining population; (2) the fixed expenses necessary to operate the facility (LDC has the highest per-resident cost among the developmental); and, (3) the facility's aging infrastructure/repair needs to both water and sewer system cost. The closure plan was submitted pursuant to Section 4474.1 of Welfare and Institutions Code.

**BACKGROUND**

Located in eastern Los Angeles County on the western end of the City of Pomona, Lanterman Developmental Center consists of three separate parcels with a total acreage of 286.6. Lanterman provides three levels-of-care; general acute care hospital needs, intermediate care facility (ICF), and a nursing facility (NF). As of March 3, 2010 it serves 393 consumers and employs 1,280 staff. Lanterman once housed 3,000 individuals, but has been experiencing a steady decline in resident population, ranging from 29 to 47 residents each year since 2006.

**Closure Details.** Overall the goal of the Department is to mirror closure as closely to the Agnews Closure as possible, but consider the differences between the two facilities. The core components for planning are: (1) the Individualized Program Plan (IPP); (2) the Placement Planning Process; (3) the Individualized Health Transition Plan (IHTP); and, (4) Monitoring Resident Transition. The Department notes that this closure will be person-centered and the IPP will inform transitions. Additionally, a Quality Management System will inform remediation and improvement of the transition plan for consumers.

**Budget.** Lanterman has the highest per-resident cost among the Developmental Centers at \$289,000 per resident based on existing expenditures. Currently, the DDS budget includes \$116.5 million to serve 393 residents. The Department believes closure can take place without requesting additional resources if its existing level of funding is maintained. Funding through the RC Operations and Purchase of Services for consumers residing in the community is also provided, along with supplemental funds for Community Placement Program plans to increase capacity. The plan includes high-level fiscal assumptions of DC costs and Community Cost, but does not provide dollar amounts for each.

Future funding may be attained through the federal "Money Follows the Person" grant for staffing and consumer cost in the community during the first year of transition. Additionally, the DDS notes that almost all residents are Medi-Cal eligible and over 75 percent are also eligible for federal Medicare services.

**Timeline.** Closure will only occur when the necessary services and supports are in place for the closure and each resident has transitioned from the facility. No specific date has been set, but the Department notes that this closure will occur over at least two years.

#### **STAFF COMMENT**

Previously heard by the Subcommittee on May 5<sup>th</sup>, with extensive public comment, this closure is a continuation of the national trend and State and Federal policies to deinstitutionalize people with developmental disabilities. The Department's considerations for the consumer's health and safety are shown in the careful proposals outlined in their Closure Plan and the trailer bill proposed.

Trailer Bill/Budget Bill Language to be considered includes (*all language subject to further discussion*):

1. Placeholder Trailer Bill Language provided by the DDS to expand Adult Residential Facilities for Persons with Special Health Care Needs (962 Homes) so this residential model can be provided state-wide. **Attachment 1** eliminates the 2005 language that established these homes as a pilot program for Agnews Developmental Center, gives DDS authority to establish reimbursement rates for these facilities, and requires direct care personnel to have more in-service training as specified and for Administrators to have completed a certification program.
2. Modified Trailer Bill Language to direct the DDS to provide outpatient clinic services throughout the Lanterman Developmental Center Closure process, just as is done in the Agnews Developmental Center Closure (**Attachment 2**).
3. Placeholder trailer bill language, provided by the DDS for Lanterman staff to be contracted out, if they choose, to work in the community, as was done in Agnews. **Attachment 3** will allow staff to utilize their expertise in the community to meet the needs of residents transitioned into the community and to retain their State employee status. Lanterman employees may be contracted out by RC's or other DC's, if they choose, to work in the community and maintain their salaries and benefits, as was done with Agnews employees.

4. Budget Bill Language to require the DDS to provide a comprehensive status report of the Lanterman Plan by January 10 and May 14 of each fiscal year (**Attachment 4**).
5. Trailer Bill Language to have the Secretary of Health and Human Services Agency to verify protocols as noted for the health and safety of individuals transitioning from Lanterman (**Attachment 5**).
6. Modified Trailer Bill Language to provide for cost-based reimbursement for Health Plans serving consumers transitioned from Lanterman to ensure health care coverage, as was done in Agnews (**Attachment 6**).

**ISSUE 6: FEDERAL MONEY FOLLOWS THE PERSON (MFP)**

The Governor's May Revision requests an increase of \$3,537,000 in reimbursements to reflect the anticipated receipt of a Money Follows the Person federal grant (also known as California Community Transitions).

**BACKGROUND**

This new federal grant source can be used for eligible consumers transitioning into the community from Lanterman Developmental Center. Specifically, the grant will help fund increased staffing cost.

**STAFF COMMENT**

This grant helps the State's efforts to move individuals currently residing in institutions back into their communities. For the purpose of Lanterman DC, the funding will support the Departments plan to complete the closure within existing resources.



**ISSUE 7: ADDITIONAL 1.25% REDUCTION**

The Governor's January 2010-11 Proposed Budget included a \$48.2 million (\$25 million GF) reduction to the DDS. To achieve this savings, the Administration is now proposing increasing the 3 percent reduction on both the Purchase of Services and Regional Center Operations by another 1.25 percent, for a total reduction of 4.25 percent.

**BACKGROUND**

The 2010-11 Governor's Budget extended, by one-year, a three percent reduction to Regional Center funding, both for the Purchase of Services and for Operations. The proposal was adopted in the Eight Extraordinary Session by both the Senate and the Assembly.

The adopted reduction accounted for the exemption of SSI and SSP consumers and consumers who regional centers demonstrate that a non-reduced payment is necessary to protect their "health and safety." The new sunset deadline adopted is June 30, 2011.

**Additional Reduction.** The additional 1.25 percent reduction would yield the desired savings of \$48.2 million, of this total, \$25.3 million is GF. Of the \$25 million reduction, \$20.7 million will be made to regional center POS and \$4.6 million would be made to regional center Operations.

Although the reduction is made to RC Operations and POS, in discussion with the Department, a proposal to implement a provider relief program, based after a 1992 model implemented by SB 485 was shared with staff. The Trailer Bill Language for the additional 1.25 percent reduction was made available to the Subcommittee on May 20th.

**Proposed Trailer Bill Language.** The language provided by the DDS adds Section 4791 to the Welfare and Institutions Code to provide reductions in payments to specified providers, and amends Section 3 of Chapter 4 of the Eighth Extraordinary Session to allow the provider relief to take effect July 1, 2010 and sunset along with the previous reduction on June 30, 2011.

The language allows providers to *"temporarily modify personnel requirements, functions, or qualifications or staff training requirements for providers, except for licensed or certified residential providers."* However, the language also specifies that the temporary modification may only be approved when the RC determines that the change will not: (1) *adversely affect the health and safety of a consumer,* (2) *result in a more restrictive environment,* (3) *negatively impact the availability*

*of federal financial participation, or (4) violate state licensing or labor laws or other provisions on Title 17 of the California Code of Regulations.*

To provide relief, the Department may suspend: (a) staffing ratios, (b) day programs and in-home respite annual self assessments of program effectiveness in relation to their program design and written reports or (c) quarterly and semi-annual progress reports required in Title 17, Section 56026. The suspension shall be described in a written contract between the RC purchasing the service and the provider and documentation shall be retained by the provider and the regional centers purchasing the services from the vendor.

#### **STAFF COMMENT**

**General Impact.** Previously heard in the Subcommittee on May 5<sup>th</sup> and May 20<sup>th</sup>, the \$25 million GF savings is achieved after excluding those in the original 3 percent trailer bill language (SSI, SSP and upholding the "health and safety of a consumer"), Capitol People First settlement agreement, Independent Living Supplement, Supported Employment, Usual and Customary Services, and payments consumers.

Just as in the original 3 percent reduction made in February, the primary concern is how this reduction will impact consumers. The original 3 percent reduction adopted in the 8<sup>th</sup> Extraordinary Session excluded SSI and SSP consumers, as well as those who RC's demonstrate that a non-reduced payment is necessary to protect their "health and safety." The provider relief trailer bill accounts for these exclusions and attempts to addresses relief for residential providers.

Overall, given the multiple Health and Human Services programs proposed for elimination by the Governor, it is important to note that a reduction across the board spreads impact throughout the developmental disabilities system. However, this is also a system that incurred a \$334 million unallocated reduction and a 3 percent reduction to regional centers in the last fiscal year.

# Attachment 1

## Department of Developmental Services Proposed Trailer Bill Legislation

### Amendments to Article 3.5 Adult Residential Facilities for Persons with Special Health Care Needs

#### Amend WIC § 4684.50 as follows:

**4684.50** (a)(1) "Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN)" means any adult residential facility that provides 24-hour health care and intensive support services in a homelike setting that is licensed to serve up to five adults with developmental disabilities as defined in Section 4512.

(2) For purposes of this article, an ARFPSHN may only be established in a facility ~~financed~~ approved pursuant to Section 4688.5 or through an approved regional center community placement plan pursuant to Section 4418.25.

(b) "Consultant" means a person professionally qualified by training and experience to give expert advice, information, training, or to provide health-related assessments and interventions specified in a consumer's individual health care plan.

(c) "Direct care personnel" means all personnel who directly provide program or nursing services to consumers. Administrative and licensed personnel shall be considered direct care personnel when directly providing program or nursing services to clients. Consultants shall not be considered direct care personnel.

(d) "Individual health care plan" means the plan that identifies and documents the health care and intensive support service needs of a consumer.

(e) "Individual health care plan team" means those individuals who develop, monitor, and revise the individual health care plan for consumers residing in an Adult Residential Facility for Persons with Special Health Care Needs. The team shall, at a minimum, be composed of all of the following individuals:

(1) Regional center service coordinator and other regional center representative, as necessary.

(2) Consumer, and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative.

(3) Consumer's primary care physician, or other physician as designated by the regional center.

(4) ARFPSHN administrator.

(5) ARFPSHN registered nurse.

(6) Others deemed necessary for developing a comprehensive and effective plan.

(f) "Intensive support needs" means the consumer requires physical assistance in performing four or more of the following activities of daily living:

(1) Eating.

(2) Dressing.

(3) Bathing.

(4) Transferring.

(5) Toileting.

(6) Continence.

(g) "Special health care needs" means the consumer has health conditions that are predictable and stable, as determined by the individual health care plan team, and for which the individual requires nursing supports for any of the following types of care:

(1) Nutrition support, including total parenteral feeding and gastrostomy feeding, and hydration.

(2) Cardiorespiratory monitoring.

(3) Oxygen support, including continuous positive airway pressure and bilevel positive airway pressure, and use of other inhalation-assistive devices.

(4) Nursing interventions for tracheostomy care and suctioning.

(5) Nursing interventions for colostomy, ileostomy, or other medical or surgical procedures.

(6) Special medication regimes including injection and intravenous medications.

(7) Management of insulin-dependent diabetes.

(8) Manual fecal impaction, removal, enemas, or suppositories.

(9) Indwelling urinary catheter/catheter procedure.

- (10) Treatment for staphylococcus infection.
- (11) Treatment for wounds or pressure ulcers (stages 1 and 2).
- (12) Postoperative care and rehabilitation.
- (13) Pain management and palliative care.
- (14) Renal dialysis.

**Amend WIC § 4684.53 as follows:**

**4684.53** (a) The State Department of Developmental Services and the State Department of Social Services shall jointly implement a ~~pilot project to test the effectiveness of providing~~ licensing program to provide special health care and intensive support services to adults in homelike community settings.

~~(b) The pilot project shall be implemented through the following regional centers only:~~

- ~~(1) The San Andreas Regional Center.~~
- ~~(2) The Regional Center of the East Bay.~~
- ~~(3) The Golden Gate Regional Center.~~

~~(c) The regional centers participating in this pilot project may contract for an aggregate total of services for no more than 120 persons in an ARFPSHN.~~

~~(b)~~ Each ARFPSHN shall possess a community care facility license issued pursuant to Article 9 (commencing with Section 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code, and shall be subject to the requirements of Chapter 1 (commencing with Section 80000) of Division 6 of Title 22 of the California Code of Regulations, except for Article 8 (commencing with Section 80090).

~~(c)~~ For purposes of this article, a health facility licensed pursuant to subdivision (e) or (h) of Section 1250 may place its licensed bed capacity in voluntary suspension for the purpose of using licensing the facility to operate an ARFPSHN if the facility is selected to participate ~~in the pilot project~~ pursuant to Section 4684.58. Consistent with subdivision (a) of Section 4684.50, any facility ~~selected to participate in the program shall be licensed to~~ under this section shall serve up to five adults. A facility's bed capacity shall not be placed in voluntary suspension until all consumers residing in the facility under the license to be suspended have been relocated. No consumer may be relocated unless it is reflected in the consumer's individual program plan developed pursuant to Sections 4646 and 4646.5.

~~(d)~~ Each ARFPSHN shall be subject to the requirements of Subchapters 5 through 9 of Chapter 1 of, and Subchapters 2 and 4 of Chapter 3 of, Division 2 of Title 17 of the California Code of Regulations.

~~(e)~~ Each ARFPSHN shall ensure that an operable automatic fire sprinkler system is installed and maintained.

~~(f)~~ Each ARFPSHN shall have an operable automatic fire sprinkler system that is approved by the State Fire Marshal and that meets the National Fire Protection Association (NFPA) 13D standard for the installation of sprinkler systems in single- and two-family dwellings and manufactured homes. A local jurisdiction shall not require a sprinkler system exceeding this standard by amending the standard or by applying standards other than NFPA 13D. A public water agency shall not interpret this section as changing the status of a facility from a residence entitled to residential water rates, nor shall a new meter or larger connection pipe be required of the facility.

~~(g)~~ Each ARFPSHN shall provide an alternative power source to operate all functions of the facility for a minimum of six hours in the event the primary power source is interrupted. The alternative power source shall comply with ~~Section 517.50 of the California Electric Code~~ the manufacturer's recommendations for installation and operation. The alternative power source shall be maintained in safe operating condition, and shall be tested every 14 days under the full load condition for a minimum of 10 minutes. Written records of inspection, performance, exercising period, and repair of the alternative power source shall be regularly maintained on the premises and available for inspection by the State Department of Developmental Services.

**Amend WIC § 4684.55 as follows:**

**4684.55** (a) No regional center may pay a rate to any ARFPSHN for any consumer that exceeds the ~~average annual cost of serving a consumer at Agnews Developmental Center, as determined by the State Department of Developmental Services~~ rate in the State Department of Developmental Services approved community placement plan for that facility unless the regional center demonstrates that a higher rate is necessary to protect a consumer's health and safety, and the department has granted prior written authorization.

(b) The payment rate for ARFPSHN services shall be negotiated between the regional center and the ARFPSHN, and shall be paid by the regional center under the service code "Specialized Residential Facility (Habilitation)."

(c) The established rate for a full month of service shall be made by the regional center when a consumer is temporarily absent from the ARFPSHN 14 days or less per month. When the consumer's temporary

absence is due to the need for inpatient care in a health facility, as defined in subdivision (a), (b), or (c) of Section 1250 of the Health and Safety Code, the regional center shall continue to pay the established rate as long as no other consumer occupies the vacancy created by the consumer's temporary absence, or until the individual health care plan team has determined that the consumer will not return to the facility. In all other cases, the established rate shall be prorated for a partial month of service by dividing the established rate by 30.44 then by multiplying the quotient by the number of days the consumer resided in the facility.

**Amend WIC § 4684.58 as follows:**

**4684.58** (a) The regional center may recommend for participation, ~~to the State Department of Developmental Services, an applicant for this pilot project to provide services as part of an approved community placement plan~~ when the applicant meets all of the following requirements: ~~and has been selected through a request for proposals process issued by one or more of the three participating regional centers:~~

- (1) The applicant employs or contracts with a program administrator who has a successful record of administering residential services for at least two years, as evidenced by substantial compliance with the applicable state licensing requirements.
- (2) The applicant prepares and submits, to the regional center, a complete facility program plan that includes, but is not limited to, all of the following:
  - (A) The total number of the consumers to be served.
  - (B) A profile of the consumer population to be served, including their health care and intensive support needs.
  - (C) A description of the program components, including a description of the health care and intensive support services to be provided.
  - (D) A week's program schedule, including proposed consumer day and community integration activities.
  - (E) A week's proposed program staffing pattern, including licensed, unlicensed, and support personnel and the number and distribution of hours for such personnel.
  - (F) An organizational chart, including identification of lead and supervisory personnel.
  - (G) The consultants to be utilized, including their professional disciplines and hours to be worked per week or month, as appropriate.
  - (H) The plan for accessing and retaining consultant and health care services, including assessments, in the areas of physical therapy, occupational therapy, respiratory therapy, speech pathology, audiology, pharmacy, dietary/nutrition, dental, and other areas required for meeting the needs identified in consumers' individual health care plans.
  - (I) A description, including the size, layout, location, and condition of the proposed home.
  - (J) A description of the equipment and supplies available, or to be obtained, for programming and care.
  - (K) The type, location, and response time of emergency medical service personnel.
  - (L) The in-service training program plan for at least the next 12 months which shall include the plan for ensuring that the direct care personnel understand their roles and responsibilities related to implementing individual health care plans, prior to, or within the first seven days of providing direct care in the home and for ensuring the administrator understands the unique roles, responsibilities, and expectations for administrators of community-based facilities.
  - (M) The plan for ensuring that outside services are coordinated, integrated, and consistent with those provided by the ARFPSHN.
  - (N) Written certification that an alternative power system required by subdivision ~~(f)~~ (g) of Section 4684.53 meets the manufacturer's recommendations for installation and operation.
- (3) Submits a proposed budget itemizing direct and indirect costs, total costs, and the rate for services.
- (4) The applicant submits written certification ~~Certifies, in writing,~~ that the applicant has the ability to comply with all of the requirements of Section 1520 of the Health and Safety Code.
- ~~(b)~~ The regional center shall provide all documentation specified in subdivisions ~~(b) to (d), (a)(2)-(4),~~ inclusive, of Section 4684.58 and a letter recommending program certification to the State Department of Developmental Services.
- ~~(c)~~ The State Department of Developmental Services shall either approve or deny the recommendation and transmit its written decision to the regional center and to the State Department of Social Services within 30 days of its decision. The decision of the State Department of Developmental Services not to approve an application for program certification shall be the final administrative decision.
- ~~(d)~~ Any change in the ARFPSHN operation that alters the contents of the approved program plan shall be reported to the State Department of Developmental Services and the contracting regional center, and approved by both agencies, prior to implementation.

**Amend WIC § 4684.60 as follows:**

**4684.60** The vendoring regional center shall, before placing any consumer into an ARFPSHN, ensure that the ARFPSHN has a license issued by the State Department of Social Services for not more than five adults and a contract with the regional center that includes, at a minimum, all of the following:

- (a) The names of the regional center and the licensee.
- ~~(b) The purpose of the pilot project.~~
- ~~(b) (e)~~ A requirement that the contractor shall comply with all applicable statutes and regulations, including Section 4681.1.
- ~~(c) (d)~~ The effective date and termination date of the contract.
- ~~(d) (f)~~ The definition of terms.
- ~~(e) A requirement that, under no circumstances, shall the contract extend beyond the stated termination date, which shall not be longer than the pilot legislation end date of January 1, 2010.~~
- ~~(e) (g)~~ A requirement that the execution of any amendment or modification to the contract be in accordance with all applicable federal and state statutes and regulations and be by mutual agreement of both parties.
- ~~(f) (h)~~ A requirement that the licensee and the agents and employees of the licensee, in the performance of the contract, shall act in an independent capacity, and not as officers or employees or agents of the regional center.
- ~~(g) (i)~~ A requirement that the assignment of the contract for consumer services shall not be allowed.
- ~~(h) (j)~~ The rate of payment per consumer.
- ~~(i) (k)~~ Incorporation, by reference, of the ARFPSHN's approved program plan.
- ~~(j) (l)~~ A requirement that the contractor verify, and maintain for the duration of the project, possession of commercial general liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.
- ~~(k) (m)~~ Contractor performance criteria.
- ~~(n) An agreement to provide, to the evaluation contractor engaged pursuant to subdivision (a) of Section 4684.74, all information necessary for evaluating the projects.~~

**Amend WIC§ 4684.63 as follows:**

**4684.63** (a) Each ARFPSHN shall do all of the following:

- (1) Meet the minimum requirements for a Residential Facility Service Level 4-i pursuant to Sections 56004 and 56013 of Title 17 of the California Code of Regulations, and ensure that all of the following conditions are met:
  - (A) That a licensed registered nurse, licensed vocational nurse, or licensed psychiatric technician, is awake and on duty 24-hours per day, seven days per week.
  - (B) That a licensed registered nurse is awake and on duty at least eight hours per person, per week.
  - (C) That at least two staff on the premises are awake and on duty when providing care to four or more consumers.
- (2) Ensure the consumer remains under the care of a physician at all times and is examined by the primary care physician at least once every 60 days, or more often if required by the consumer's individual health care plan.
- (3) Ensure that an administrator is on duty at least 20 hours per week to ensure the effective operation of the ARFPSHN.
- (4) ~~Ensure that the administrator shall have completes the 35 hour administrator certification program pursuant to Health and Safety Code 1562.3, subdivision (c)(1) without exception;~~ has at least one year of administrative and supervisory experience in a licensed residential program for persons with developmental disabilities; and ~~shall meet is~~ one or more of the following qualifications:
  - (A) ~~Be A~~ licensed registered nurse.
  - (B) ~~Be A~~ licensed nursing home administrator.
  - (C) ~~Be A~~ licensed psychiatric technician with at least five years of experience serving individuals with developmental disabilities.
  - (D) ~~Be An~~ individual with a bachelor's degree or more advanced degree in the health or human services field and two years experience working in a licensed residential program for persons with developmental disabilities and special health care needs.
- (b) The regional center ~~shall~~ may require an ARFPSHN to provide additional professional, administrative, or supportive personnel whenever the regional center determines, in consultation with the individual health care plan team, that additional personnel are needed to provide for the health and safety of consumers.
- ~~(c) ARFPSHNs may utilize appropriate staff from Agnews Developmental Center.~~
- ~~(c) An ARFPSHN shall ensure that all direct care personnel shall be subject to complete~~ the training requirements specified in Section 4695.2.

**Amend WIC § 4684.65 as follows:**

**4684.65** (a) A regional center shall not place, or fund the placement for, any consumer in an ARFPSHN until the individual health care plan team has prepared a written individual health care plan that can be fully and immediately implemented upon the consumer's placement.

(b)(1) An ARFPSHN shall only accept, for initial admission, consumers who meet the following requirements:

(A) Reside ~~at Agnews in a~~ Developmental Center at the time of the proposed placement.

(B) Have an individual program plan that specifies placement in an ARFPSHN.

(C) Have special health care and intensive support needs.

(2) Except as provided in paragraph (3), when a vacancy in an ARFPSHN occurs due to the permanent relocation or death of a resident, the vacancy may only be filled by a consumer who meets the requirements of paragraph (1).

(3) If there is no resident residing ~~at Agnews in a~~ Developmental Center who meets the requirements of subparagraphs (B) and (C) of paragraph (1), a vacancy may be filled by a consumer who is ~~residing at another~~ ~~at risk of placement into a~~ developmental center, as determined by the regional center, and who meets the requirements of subparagraphs (B) and (C) of paragraph (1).

(c) The ARFPSHN shall not admit a consumer if the individual health care plan team determines that the consumer is likely to exhibit behaviors posing a threat of substantial harm to others, or has a serious health condition that is unpredictable or unstable. A determination that the individual is a threat to others may only be based on objective evidence or recent behavior and a determination that the threat cannot be mitigated by reasonable interventions.

**§ 4684.68. Individual health care plan requirements; additional requirements relating to medications**

(a) The individual health care plan shall include, at a minimum, all of the following:

(1) An evaluation of the consumer's current health.

(2) A description of the consumer's ability to perform the activities of daily living.

(3) A list of all current prescription and nonprescription medications the consumer is using.

(4) A list of all health care and intensive support services the consumer is currently receiving or may need upon placement in the ARFPSHN.

(5) A written statement from the consumer's primary care physician familiar with the health care needs of the consumer, or other physician as designated by the regional center, that the consumer's medical condition is predictable and stable, and that the consumer's level of care is appropriate for the ARFPSHN.

(6) Provision for the consumer to be examined by his or her primary care physician at least once every 60 days, or more frequently if indicated.

(7) A list of the appropriate professionals assigned to provide the health care as described in the plan.

(8) A description of, and plan for providing, any training required for all direct care personnel to meet individuals' needs.

(9) The name of the individual health care plan team member, and an alternate designee, who is responsible for day-to-day monitoring of the consumer's health care plan and ensuring its implementation as written.

(10) Identification of the legally authorized representative to make health care decisions on the consumer's behalf, if the consumer lacks the capacity to give informed consent.

(11) The name and telephone number of the person or persons to notify in case of an emergency.

(12) The next meeting date of the individual health care plan team, which shall be at least every six months, to evaluate and update the individual health care plan.

(b) In addition to Section 80075 of Title 22 of the California Code of Regulations, the ARFPSHN shall comply with all of the following requirements:

(1) Medications shall be given only on the order of a person lawfully authorized to prescribe.

(2) Medications shall be administered as prescribed and shall be recorded in the consumer record. The name and title of the person administering the medication or treatment, and the date, time, and dosage of the medication administered shall be recorded. Initials may be used provided the signature of the person administering the medication or treatment is recorded on the medication or treatment record.

(3) Preparation of dosages for more than one scheduled administration time shall not be permitted.

(4) Persons administering medications shall confirm each consumer's identity prior to the administration.

(5) Medications shall be administered within two hours after dosages are prepared and shall be administered by the same person who prepared the dosages. Dosages shall be administered within one hour of the prescribed time unless otherwise indicated by the prescriber.

(6) All medications shall be administered only by those persons specifically authorized to do so by their respective scope of practice.

(7) No medication shall be administered to or used by any consumer other than the consumer for whom the medication was prescribed.

(8) Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug or another practitioner responsible for the medical care of the consumer.

Minor adverse reactions which are identified in the literature accompanying the product as a usual or common side effect, need not be reported to the practitioner immediately, but in all cases shall be recorded in the consumer's record. Medication errors include, but are not limited to, the failure to administer a drug ordered by a prescriber within one hour of the time prescribed, administration of any drugs other than prescribed or the administration of a dose not prescribed.

**Amend WIC § 4684.70 as follows:**

**4684.70** (a) The State Department of Social Services, in administering the licensing program, shall not have any responsibility for evaluating consumers' level of care or health care provided by ARFPSHN. Any suspected deficiencies in a consumer's level of care or health care identified by the State Department of Social Services' personnel shall be reported immediately to the appropriate regional center and the State Department of Developmental Services for investigation.

(b) The regional center shall have responsibility for monitoring and evaluating the implementation of the consumer's individual plan objectives, including, but not limited to, the health care and intensive support service needs identified in the consumer's individual health care plan and the consumer's integration and participation in community life.

(c) For each consumer placed in an ARFPSHN, the regional center shall assign a service coordinator pursuant to subdivision (b) of Section 4647.

(d) A regional center licensed registered nurse shall visit, with or without prior notice, the consumer, in person, at least monthly in the ARFPSHN, or more frequently if specified in the consumer's individual health care plan. At least four of these visits, annually, shall be unannounced.

(e) The State Department of Developmental Services shall monitor and ensure the regional centers' compliance with the requirements of this article. The monitoring shall include onsite visits to all the ARFPSHNs at least every six months ~~for the duration of the pilot project.~~

**§ 4684.73. Contract termination; rescission of program certification; transfer of property and services**

(a) In addition to any other contract termination provisions, a regional center may terminate its contract with an ARFPSHN when the regional center determines that the ARFPSHN is unable to maintain substantial compliance with state laws, regulations, or its contract with the regional center, or the ARFPSHN demonstrates an inability to ensure the health and safety of the consumers.

(b) The ARFPSHN may appeal a regional center's decision to terminate its contract by sending, to the executive director of the contracting regional center, a detailed statement containing the reasons and facts demonstrating why the termination is inappropriate. The appeal must be received by the regional center within 10 working days from the date of the letter terminating the contract. The executive director shall respond with his or her decision within 10 working days of the date of receipt of the appeal from the ARFPSHN. The executive director shall submit his or her decision to the State Department of Developmental Services on the same date that it is signed. The decision of the executive director shall be the final administrative decision.

(c) The Director of Developmental Services may rescind an ARFPSHN's program certification when, in his or her sole discretion, an ARFPSHN does not maintain substantial compliance with an applicable statute, regulation, or ordinance, or cannot ensure the health and safety of the consumers. The decision of the Director of Developmental Services shall be the final administrative decision. The Director of Developmental Services shall transmit his or her decision rescinding an ARFPSHN's program certification to the State Department of Social Services and the regional center with his or her recommendation as to whether to revoke the ARFPSHN's license.

(d) In addition to complying with Section 1524.1 of the Health and Safety Code, any ARFPSHN licensee that is unable to continue to provide services to consumers in the facility shall, upon the date on which a new ARFPSHN license is issued pursuant to Sections 1520 and 1525 of the Health and Safety Code, arrange with the regional center or department the transfer of all information, property, and documents related to the operation of the facility and the provision of services to the consumers. The department or the regional center shall take all steps permitted by this article to ensure that at all times the consumers who are residing in the facility receive services set forth in their individual health care plans.



**Delete WIC 4684.74**

~~4684.74. (a) By July 1, 2006, the State Department of Developmental Services shall contract with an independent agency or organization to evaluate the pilot project and prepare a written report of its findings. The scope of services for the contractor shall be jointly prepared by the State Department of Developmental Services, the State Department of Social Services, the State Department of Public Health, and the State Department of Health Care Services and, at a minimum, shall address all of the following:~~

- ~~—(1) The number, business status, and location of all the ARFPSHNs.~~
- ~~—(2) The number and characteristics of the consumers served.~~
- ~~—(3) The effectiveness of the pilot project in addressing consumers' health care and intensive support needs.~~
- ~~—(4) The extent of consumers' community integration and satisfaction.~~
- ~~—(5) The consumers' access to, and quality of, community-based health care and dental services.~~
- ~~—(6) The types, amounts, qualifications, and sufficiency of staffing.~~
- ~~—(7) The overall impressions, problems encountered, and satisfaction with the ARFPSHN service model by ARFPSHN employees, regional center participants, state licensing and monitoring personnel, and consumers and families.~~
- ~~—(8) The costs of all direct, indirect, and ancillary services.~~
- ~~—(9) An analysis and summary findings of all ARFPSHN consumer special incident reports and unusual occurrences reported during the evaluation period.~~
- ~~—(10) The recommendations for improving the ARFPSHN service model.~~
- ~~—(11) The cost-effectiveness of the ARFPSHN model of care compared with other existing public and private models of care serving similar consumers.~~

~~—(b) The contractor's written report shall be submitted to the State Department of Developmental Services, the State Department of Social Services, the State Department of Public Health, and the State Department of Health Care Services. The State Department of Developmental Services shall submit the report to the appropriate fiscal and policy committees of the Legislature by January 1, 2010.~~

**Amend WIC § 4684.75 as follows:**

**4684.75** (a) The State Department of Developmental Services may adopt emergency regulations to implement this article. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Developmental Services is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this section.

~~(b) This article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute extends or deletes that date.~~

~~(b) This article shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.~~

~~(c)~~

**Amend Health & Safety Code § 1567.50 as follows:**

**1567.50** (a) Notwithstanding that a community care facility means a place that provides nonmedical care under subdivision (a) of Section 1502, pursuant to Article 3.5 (commencing with Section 4684.50) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code, the department shall jointly implement with the State Department of Developmental Services a pilot project to test the effectiveness of providing licensing

program to provide special health care and intensive support services to adults in homelike community settings.

(b) The State Department of Social Services may license, subject to the following conditions, an Adult Residential Facility for Persons with Special Health Care Needs to provide 24-hour services to up to five adults with developmental disabilities who have special health care and intensive support needs, as defined in subdivisions (f) and (g) of Section 4684.50 of the Welfare and Institutions Code.

(1) The State Department of Developmental Services shall be responsible for granting the certificate of program approval for an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN). The State Department of Social Services shall not issue a license unless the applicant has obtained a certification of program approval from the State Department of Developmental Services.

(2) The State Department of Social Services shall ensure that the ARFPSHN meets the administration requirements under Article 2 (commencing with Section 1520) including, but not limited to, requirements relating to fingerprinting and criminal records under Section 1522.

(3) The State Department of Social Services shall administer employee actions under Article 5.5 (commencing with Section 1558).

(4) The regional center shall monitor and enforce compliance of the program and health and safety requirements, including monitoring and evaluating the quality of care and intensive support services. The State Department of Developmental Services shall ensure that the regional center performs these functions.

(5) The State Department of Developmental Services may decertify any ARFPSHN that does not comply with program requirements. When the State Department of Developmental Services determines that urgent action is necessary to protect clients of the ARFPSHN from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, the State Department of Developmental Services may request the regional center or centers to remove the clients from the ARFPSHN or direct the regional center or centers to obtain alternative services for the consumers within 24 hours.

(6) The State Department of Social Services may initiate proceedings for temporary suspension of the license pursuant to Section 1550.5.

(7) The State Department of Developmental Services, upon its decertification, shall inform the State Department of Social Services of the licensee's decertification, with its recommendation concerning revocation of the license, for which the State Department of Social Services may initiate proceedings pursuant to Section 1550.

(8) The State Department of Developmental Services and the regional centers shall provide the State Department of Social Services all available documentation and evidentiary support necessary for any enforcement proceedings to suspend the license pursuant to Section 1550.5, to revoke or deny a license pursuant to Section 1551, or to exclude an individual pursuant to Section 1558.

(9) The State Department of Social Services Community Care Licensing Division shall enter into a memorandum of understanding with the State Department of Developmental Services to outline a formal protocol to address shared responsibilities, including monitoring responsibilities, complaint investigations, administrative actions, and closures.

(10) The licensee shall provide documentation that, in addition to the administrator requirements set forth under paragraph (4) of subdivision (a) of Section 4684.63 of the Welfare and Institutions Code, the administrator, prior to employment, has completed a minimum of 35 hours of initial training in the general laws, regulations and policies and procedural standards applicable to facilities licensed by the State Department of Social Services under Article 2 (commencing with Section 1520). Thereafter, the licensee shall provide documentation every two years that the administrator has completed 40 hours of continuing education in the general laws, regulations and policies and procedural standards applicable to adult residential facilities. The training specified in this section shall be provided by a vendor approved by the State Department of Social Services and the cost of the training shall be borne by the administrator or licensee.

~~(e) The article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute extends or deletes that date.~~

(c) This article shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.

~~(d)~~

## Attachment 2

### Lanterman Outpatient Clinic

#### Modify Section 4474. 8 to the Welfare and Institutions Code as follows:

(Underlined section is the proposed modification).

4474.8 Notwithstanding any provision of law to the contrary, the department shall continue the operation of the Agnews Outpatient Clinic, and the Lanterman Outpatient Clinic until such time as the Department of Developmental Services is no longer responsible for the property- at the respective developmental center as applicable.

## Attachment 3

SECTION 1. Section 854.1 of the Government Code is amended to read:

854.1. (a) It is the intent of the Legislature to ensure continuity of care for clients of Agnews Developmental Center and Lanterman Developmental Center.

(b) In the effort to achieve these goals, it is the intent of the Legislature to seek and implement recommendations that include all of the following services to retain Agnews and Lanterman staff as employees:

(1) Crisis management teams that provide behavioral, medical, and dental treatment, training, and technical assistance.

(2) Specialized services, including adaptive equipment design and fabrication, and medical, dental, psychological, and assessment services.

(3) Staff support in community homes to assist individuals with behavioral or psychiatric needs.

(c) As used in this chapter, the terms "mental institution" or "medical facility" also include a developmental services facility. For the purposes of this chapter "developmental services facility" means any facility or place where a public employee provides developmental services relating to the closure of Agnews Developmental Center or Lanterman Developmental Center.

SECTION 2. Section 4474.2 of the Welfare and Institutions Code is amended to read:

4474.2. (a) Notwithstanding any provision of law to the contrary, the department may operate any facility, provide its employees to assist in the operation of any facility, or provide other necessary services and supports if in the discretion of the department it determines that the activity will assist in meeting the goal of ~~an~~the orderly closures of Agnews Developmental Center and Lanterman Developmental Center. The department may contract with any entity for the use of the department's employees to provide services in furtherance of ~~an~~the orderly closures of Agnews Developmental Center and Lanterman Developmental Center.

(b) The department shall prepare a report on the use of the department's employees in providing services in the community to assist in the orderly closure of Agnews Developmental Center and Lanterman Developmental Center. The report shall include data on the number and classification of state employees working in the community program. The report shall be submitted with the Governor's proposed budget for fiscal year 2012-2013 and annually thereafter to the fiscal committees of both houses of the Legislature.

SECTION 3. Section 4474.3 of the Welfare and Institutions Code is amended to read:

4474.3. The provisions of Section 10411 of the Public Contract Code shall not apply to any person who, in connection with the closures of Agnews Developmental Center or Lanterman Developmental Center, provides developmental services.

## Attachment 4

### Budget Bill Language for Lanterman Plan Updates Item 4300-001-0001

Provision x.

“The state Department of Developmental Services shall provide the fiscal and policy committees of the Legislature with a comprehensive status update on the Lanterman Plan, by no later than January 10, and May 14, of *each* fiscal year which will include *at a minimum* all of the following:

- (a) A description and progress report on all pertinent aspects of the community-based resources development, including the status of the Lanterman transition placement plan.
- (b) An aggregate update on the consumers living at Lanterman and consumers who have been transitioned to other living arrangement, including a description of the living arrangements (Developmental Center or community-based and model being used) and the range of services the consumers receive.
- (c) An update to the Major Implementation Steps and Timelines.
- (d) A comprehensive update to the fiscal analyses.
- (e) An update to the plan regarding Lanterman’s employees, including employees who are providing medical services to consumers on an outpatient basis, as well as employees who are providing services to consumers in residential settings.
- (f) Specific measures the State, including the Department of Developmental Services, the Department of Health Care Services, and Department of Mental Health, is taking in meeting the health, mental health, medical, dental, and over all well-being of consumers living in the community and those residing at Lanterman until appropriately transitioned in accordance with the Lanterman Act.
- (g) Any other pertinent information that facilitates the understanding of issues, concerns, or potential policy changes that are applicable to the transition of Lanterman Developmental Center.

## Attachment 5

### Assurance from Secretary of Health and Human Services

#### Proposed Trailer Bill Language Modify Section 4474.4 to the Welfare and Institutions Code as follows:

(Underlined section is the proposed modification):

Notwithstanding any other provision of law to the contrary, the Secretary of the Health and Human Services Agency shall verify that the Department of Developmental Services and the Department of Health Services have established protocols in place between the departments, as well as with the Regional Centers and health care plans participating in the Medi-Cal Program who will be providing services, including health, dental and vision care, to people with developmental disabilities transitioning from Agnews Developmental Center, and Lanterman Developmental Center.

The Secretary of the Health and Human Services Agency shall provide written verification of the establishment of these protocols to the Joint Legislative Budget Committee, as well as to the fiscal and policy committees of the Legislature which oversee health and human services programs.

The purpose of the protocols is to ensure that a mutual goal of providing appropriate, high quality care and services to children and adults who have developmental disabilities in order to optimize the health and welfare of each individual. Further, it is to ensure that all involved parties, including consumers and families, the state, Regional Centers and providers are clear as to their roles and responsibilities, and are appropriately accountable for optimizing the health and welfare of each individual.

The protocols, at a minimum, shall address enrollment for services, all referral practices including those to specialty care, authorization practices for services of all involved parties, coordination of case management services, education and training services to be provided, the management of medical records and provider reimbursement methods. These protocols shall be provided to the consumers and their families, and available to the public upon request.

## Attachment 6

### Reimbursement of Health Plans for Lanterman Consumers

#### Modify Welfare and Institutions Code within the Lanterman Act as follows.

(a) In order to meet the unique medical health needs of consumers transitioning from Agnews Developmental Center into Alameda, San Mateo, and Santa Clara counties pursuant to the Plan for the Closure of Agnews Developmental Center, and consumers transitioning from Lanterman Developmental Center into various health plans whose Individual Program Plan documents the need for coordinated medical and specialty care that cannot be met using the traditional Medi-Cal Fee-For-Service system, services provided under the contract shall be provided by Medi-Cal managed care health plans who are currently operational in these counties as a county organized health system or a local initiative if consumers, where applicable, choose to enroll. Reimbursement shall be by the Department of Health Care Services for all Medi-Cal services provided under the contract that are not reimbursed by the Medicare program.

(b) Medi-Cal managed care health plans enrolling members referred to in subdivision (a) shall be further reimbursed for the reasonable cost of administrative services. Administrative services pursuant to this subdivision include, but are not limited to, coordination of care and case management not provided by a regional center; provider credentialing and contracting; quality oversight; assuring member access to covered services; consultation with Agnews Developmental Center staff, Lanterman Developmental Center staff, regional center staff, Department of Developmental Services staff, contractors and family members; and financial management of the program, including claims processing. Reasonable cost is defined as the actual cost incurred by the Medi-Cal managed care health plan, including both direct and indirect costs incurred by the Medi-Cal managed care health plan, in the performance of administrative services, but shall not include any incurred costs found by the Department of Health Care Services to be unnecessary for the efficient delivery of necessary health services. Payment for administrative services shall continue on a reasonable cost basis until sufficient cost experience exists to allow such costs to be part of an all-inclusive capitation rate covering both administrative services and direct patient care services.

(c) Until the Department of Health Care Services is able to determine by actuarial methods, prospective per capita rates of payment for services for those members who enroll in the Medi-Cal managed care health plans specified in subdivision (a), the Department of Health Care Services shall reimburse the Medi-Cal managed care health plans for the net reasonable cost of direct patient care services and supplies set forth in the scope of services in the contract between the Medi-Cal managed care health plans and the Department of Health Care Services and that are not reimbursed by the Medicare program. Net reasonable cost is defined as the actual cost incurred by the Medi-Cal managed care health plans, as measured by the Medi-Cal managed care health plan's payments to providers of services and supplies, less payments made to the plans by third parties other than Medicare, and shall not include any incurred cost found to be unnecessary by the Department of Health Care Services in the efficient delivery of necessary health services. Reimbursement shall be accomplished by the Department of Health Care Services making 21 estimated payments at reasonable intervals, with these estimates being reconciled to actual net reasonable cost at least semi-annually.

(d) The Department of Health Care Services shall seek any approval necessary for implementation of this section from the federal government, for purposes of federal financial participation under Title XIX of the Social Security Act (42 U.S.C. Sec. 1396 et seq.). Notwithstanding any other provision of law, this section shall be implemented only to the extent that federal financial participation is available pursuant to necessary federal approvals.