April 5, 2019

RE: COMMENTS ON DEVELOPMENTAL SERVICES PROVIDER RATE STUDY DRAFT RATE MODELS

The Arc California

"The Legislature has enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (hereinafter the Lanterman Act or the Act) (Welf. & Inst.Code, §§ 4500–4846) 2 to provide a "pattern of facilities and services . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (§ 4501.) Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (§§ 4642–4643); and, on an individual basis, selecting and providing services to meet such needs (§§ 4646–4647). The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685), and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community (§§ 4501, 4750–4751)."

"To implement this scheme of statutory rights of developmentally disabled persons and the corresponding obligations of the state toward them, the Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, "has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons" (§ 4416), while "regional centers," operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with "access to the facilities and services best suited to them throughout their lifetime" (§ 4620)."

"The rights of developmentally disabled persons and the corresponding obligations of the state toward them under the Lanterman Act are implemented in the Individual Program Plan (IPP) procedure. Under the Act, the regional centers are required to develop an IPP for each client. (§ 4647.) The IPP must be prepared and reviewed and, if necessary, modified at least annually, and must include the following: an assessment of the client's capabilities and problems; a statement of time- limited objectives for improving his situation; a schedule of the type and amount of services necessary to achieve these objectives; and a schedule of periodic review to insure that the services have been provided and the objectives have been reached. (§ 4646.)"

ARC v. Department of Developmental Services, Supreme Court of California, 1985

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Since 1950, The Arc of California has promoted and protected the human rights of people with intellectual and developmental disabilities and actively supported their full inclusion and participation in the community throughout their lifetimes. Additionally, we have fought to uphold the landmark Lanterman Act, which entitles Californians with intellectual and developmental disabilities (IDD) *individualized* services and supports so that they may lead independent and productive lives in the community, as implemented in the contractual IPP.

California is only able to fulfill its obligation under the Lanterman Act insofar as adequate funding is available to do so. Due to policy decisions enacted by the Legislature over the last 20 years, such as rate freezes, rate cuts, and elimination of services, combined with the increased cost of providing services and supports, California has failed to meet this obligation. As a result, individuals with IDD throughout California are living without adequate supports or no supports at all, families feel abandoned, and programs and services are closing or have already closed.

We have seen how lives of Californians with IDD can be transformed when California meets its obligation and appropriate services and supports are provided, and there is a moral and legal argument to make for California to do so. This is why **we are glad to see that the provider rate study concluded that a $1.8 billion ($1.1 billion General Fund) investment is needed to ensure an adequate supply of services. This shortfall confirms a frightening reality that the Legislature and Governor must address: Californians with IDD have been left behind and neglected due to gross underfunding by the State of California.** Significant investment must be made immediately this year, with a full investment of $1.8 billion committed soon after. Doing anything less would equate to looking at yourself in the mirror, and after going away, immediately forgetting what you look like.

In addition to the recommended $1.8 billion investment, the provider rate study proposes significant and expansive changes to the methodologies of provider rate reimbursements. It is in response to these methodologies that The Arc of California respectfully submits the following comments:

GUIDING PRINCIPLES

To avoid unintended negative consequences, the following guiding principles should be followed as we implement the needed investments:

1. ***Critically needed investment should not be held hostage until all policy concerns are addressed.*** Regardless of concerns in the methodologies raised by advocates, including our own concerns raised below, investment shouldn't wait. Investment is needed now and must be included in the Governor's May Revise and approved by the Legislature this year. Any investment made this year will directly support a system of services and supports that is failing and will

create a less fragile system upon which to address the policy concerns and enact changes in methodologies. A minimum of $290 million GF should be invested this year, as proposed by Assemblymembers Jim Frazier and Chris Holden, and Senator Henry Stern.

2. ***Do no harm.*** New methodologies should do no harm to service providers in the immediate implementation. If the provider rate study draft models were enacted as currently proposed, many programs would shut down nearly overnight due to the large reductions in reimbursements. These programs include but are not limited to infant development, transportation, supported employment, art studios, and would impact varying regions throughout the state. If immediately enacted, it could potentially create a chaotic and even dangerous reality of clients losing services without the ability to bring new capacity online quickly enough.

3. ***Time must be given for transformation.*** Over the last couple decades service providers have been forced to contort their service delivery models to fit within a maze of codes and legislative changes that have restricted their ability to provide adequate services. The department and Legislature must recognize the incredible lengths the service providers have gone to within this reality and must also recognize the time it will take to unwind and restructure to provide services under yet another change.

4. ***Any implementation should include an automatic rate adjustment factor. The need for a rate study arose because cost statements were suspended and rates were frozen for decades.*** The draft models have been proposed with transparency and detail, and the factors contributing to the rates can be easily updated every one or two years for an adjustment in rates. The Legislature should require the department to periodically recalculate the rates using the adopted rate models, and the Legislature should codify a rate adjustment and time review period accordingly.

5. ***Individualized person planning MUST be preserved and flexibility in delivering individualized services MUST be included.*** The draft rate study models propose significant consolidation and uniformity of codes and reimbursement rates. While this is not a concern in of itself – and is actually something many advocates have asked for – regional centers must retain flexibility to meet the needs of their clients. The Lanterman Act has never been a "one-size fits all" law, and any attempt to move in that direction must be rejected. Any new policy changes must include the ability for regional centers to contract with types of services and supports that aren't included in the consolidated codes and/or pay an amount different than the proposed rates if needed to meet the needs set forth in the individual's IPP.

"It is through the IPP procedure that the right the Act grants to each developmentally disabled person and the obligation it imposes on the state are implemented; through it, the developmentally disabled person on an individual basis receives, as an entitlement, services that enable him to live a more independent and productive life in the community." ARC v. Department of Developmental Services, Supreme Court of California, 1985

6. ***Flexibility must be allowed to permit for regional centers to augment rates due to regional or other unique differences.*** For example:

    a. Attendance rates impacted by heavy snow season;
    b. Higher transportation costs in rural areas;
    c. Higher worker's comp due to providing services for more complex clients requiring lifting, etc.
    d. Local laws causing increases to overhead costs, such as rent, housing, transportation, or wages;

7. ***We must be careful not to create a disincentive for providing services to more complex and/or more rural clients.*** If all costs are "baked" into the reimbursement rate then it is possible to create an incentive for providers to serve clients that would cost them less, and disincentivize providers to serve those who would require for instance more transportation for medical appointments, live in rural areas, or those who require a higher skill of direct support staff.

8. ***Does changing to hourly billing units improve outcomes for clients?*** If the answer is No then consideration must be given as to whether it is the best path forward. It may be the simplest form of billing, and it most certainly is most appropriate for certain types of services, but making all services convert to hourly may not be needed or appropriate.

Sincerely,

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