

**Financial Integrity
And
State Manager's Accountability Act
(FISMA)**

**Department of Developmental Services
(DDS)**

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Introduction

Agency Name: Health and Human Services Agency
Department Name: Department of Developmental Services
Organization Code: 4300

During Fiscal Year 2006-07, the Department of Finance updated the Financial Integrity and State Managers Accountability (FISMA) Act of 1983 for reporting requirements. The new guidance placed a greater responsibility on State agencies to evaluate and report on internal controls. State agencies are now responsible for performing a risk assessment and review of their processes and activities covering mission goals and objectives, efficient use of agency resources, and compliance with applicable laws and regulations, as well as providing accurate and reliable financial information.

In accordance with the FISMA Act of 1983, the Department of Developmental Services (DDS) submits this report on the review of our systems of internal control for the biennial period ending December 31, 2011.

Should you have any questions please contact Michael Masui, Chief of Vendor Audit Section, at (916) 654-2769 or at mike.masui@dds.ca.gov.

Background

The DDS is responsible under the Lanterman Developmental services Act for ensuring that persons with developmental disabilities receive the services and supports they need to lead more independent and productive lives and to make choices and decisions about their lives. Services are delivered directly through four State-operated Developmental Centers and one community facility; and under contract, through a statewide network of 21 private, nonprofit, locally based community agencies known as Regional Centers (RCs). DDS' goals and objectives are to:

- Expand the system capacity to allow for the availability and accessibility of services and support to meet current and future needs of individuals and their families.
- Identify, evaluate, and promote innovative service delivery models that have been demonstrated to be effective in achieving preferred consumer outcomes with systems to ensure quality services and supports.
- Distribute information and deploy assistive and information technology to improve statewide automated systems and tools to support the delivery of services and support of people with developmental disabilities.
- Ensure accountability and compliance with all applicable federal and state laws, regulations and contracts for DDS, Developmental Centers, RCs, and service providers.

Control Environment¹

To accomplish the above goals and objectives, DDS' management established an environment that sets a positive and supportive attitude toward internal control and diligent management.

- **DDS demonstrates integrity and ethical values**
DDS has formal policies established detailing appropriate ethical behavior for its employees, which includes: Conflict of Interest, Drug-Free Workplace, Workplace Violence, and Equal Employment Opportunity. It is a requirement that DDS employees attend mandatory training courses related to the ethical behavior standards and regulations that govern the official conduct of DDS employees. Additionally, if any employee violates DDS' policies and/or

¹ Control environment was evaluated using GAO-01-1008G – Internal Control Management and Evaluation Tool

ethical behavior standards, they are subject to appropriate corrective and/or disciplinary action.

- **Management is committed to competence**

DDS' job descriptions contain the required knowledge and skills needed for succeeding in the job classification. This extends to the hiring process requiring that candidates possess the requisite knowledge, skills, and abilities to perform the job duties. In addition, DDS promotes the continuous training and education of its employees. To accomplish this, the Department's training officer coordinates with management and DDS employees to identify appropriate training programs and classes to meet the employees' job requirements.

- **Management philosophy and operating style**

It is management's philosophy to support effective internal controls, including: Accounting, Information Systems, Program Support, and Personnel. DDS is proactive in identifying and addressing any deficiencies in its overall operations, which includes the oversight of consumer supports and services to its constituents with developmental disabilities.

- **Organizational structure**

DDS has a decentralized organizational structure.

Community Services: The decentralized structure for community services was enacted by the Legislature because the services were of such a special and unique nature that a State agency could not satisfactorily provide the services to individuals and their families. Therefore, 21 nonprofit organizations, known as RCs, were established to provide fixed points of contact within the community for persons with developmental disabilities and their families. These 21 RCs have a governing board composed of members that must meet stringent requirements set forth in Welfare and Institutions Code, Section 4522. These requirements ensure that the board is locally accountable and represents its particular community.

State Operated Facilities: The Developmental Centers and the State-run Community Facility are decentralized, in that they operate as separate entities under the direction of the Developmental Centers Division and support from the Administration and Information Technology Divisions in DDS headquarters. Each facility is responsible for all administrative and program functions associated with operating a 24-hour facility.

- **Assignment of authority and responsibility**

Delegation of authority in DDS is primarily based in the established duty statements of staff. Where specific delegation is required by statute or regulation, the Director has written delegation as needed to meet business needs.

- **Human resources policies and practices**

DDS has proper policies and procedures for the hiring, training, evaluating, counseling, promoting, and disciplining of its employees.

- **Oversight groups**

Within DDS there are mechanisms in place to monitor and review operations and programs. DDS has significant oversight functions related to regional center operations and services. DDS has direct oversight to ensure accountability through: Financial audits, review of independent audits, onsite program monitoring and reporting, financial status reviews, and review of policies.

The DDS Audit Branch provides information analyses, recommendations, and counsel to management on an on-going basis in areas of Departmental concern. The Audit Branch conducts internal audit functions on an as needed basis and reports to the Department Director.

Although regional centers are nonprofit organizations they are subject to audit and review by a host of other state and federal agencies such as Department of Health Care Services, Bureau of State Audits, Department of Finance, Centers for Medicare and Medicaid Services, federal Office of Special Education Programs, Social Security Administration and federal Department of Justice which all provide an additional level of oversight of RCs.

The Development Centers must meet all licensing requirements by the Department of Public Health as they are licensed as Acute Care, Skill Nursing, and Interim Care Facilities.

Vacant Positions

Legislation requires the State Controller's Office (SCO) to identify and abolish vacant positions that are vacant six consecutive monthly pay periods within one fiscal year or between two consecutive fiscal years. The SCO shall also reestablish any position for which the Director of the Department certifies by August 15th that one or more of the conditions stated in the Government Code (GC) 12439, Section 12, Subdivision (c1-6) existed during part or all of the six consecutive pay periods.

To be in compliance with the GC 12439, DDS identified a total of 25 positions in 2010 and 2011 for possible abolishment. However, per discussions with and upon providing further justification to the Department of Finance (DOF), DDS was allowed to reestablish those positions. SCO was notified of the reestablishment of all 25 positions.

As a result, DDS is in full compliance with GC12439.

Risk Assessment

The organization-wide risk assessment was performed through meetings with DDS executive management. The risk assessment meetings were conducted to identify the areas of greatest risk that may cause financial, political, legal and/or negative media exposure to DDS. During the risk assessment meetings, each Division's potential risks were identified and discussed. These identified risks were then ranked on a scale of 1 to 10 on the likelihood of occurrence and potential impact to DDS. The outcome of the risk assessment meetings resulted in five areas of significant risks being identified.

Evaluation of Risks and Controls

The following is a discussion of areas perceived to have potential material risk that could result in negative exposure to DDS. Material risks are defined as those process outcomes having a high likelihood of occurrence and a significant fiscal, political, legal and/or negative media exposure to DDS. This report does not focus on minor risks perceived to have little significance or likelihood of occurrence. In addition, this report discusses controls in place or to be implemented by DDS to mitigate and/or prevent the identified risks. It is DDS' intention to address the mitigation of the perceived risks.

The following are the potentially material risks identified during the risk assessment process:

Risk #1: Workload Associated with New Statutory and Contractual Requirements

Due to the State's budget problems over the past few years, DDS' budget has been significantly reduced. In order to operate within its budget constraint, DDS reduced program and operational costs. In addition, to the budget reductions, there is a significant increase in statutory requirements to improve the monitoring, oversight and transparency of DDS' programs and activities, primarily in the oversight activities of the 21 RC's. This lead to an increase in statutory and contractual requirements related to DDS and its oversight activities of the RCs. The specific enacted legislation includes Senate Bill No. 74 (SB 74) and Assembly Bill No. 104 (AB 104).

Below are some, but not all, of the new statutory and contractual requirements imposed on DDS:

SB 74, required that DDS:

- Develop and submit proposed best practices to the fiscal and applicable policy committees of the Legislature to achieve \$174 million in savings,
- Improve its Third Party Liability function to ensure RCs are the payors of last resort,
- Ensure RC's submit annual documentation demonstrating that the composition of the board is in compliance with statute,
- Ensure RC contracts of \$250,000 or more are approved by their governing board,
- Develop regulations and stronger reporting conflict of interest requirements for RC board members, directors, and identified employees, including review of completed conflict-of-interest statements,

- Establish a transparency portal to RC websites and post information on the DDS website, including audits, reviews, and reports,
- Ensure RC's adopt, maintain, and post on its Internet Website audits, reviews, reports, contract information, various policies, and board meeting information,
- Establish a transparency portal on its Internet Web site,
- Ensure that not more than 15% of regional center and vendor funds be spent on administrative costs, and
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AB 104 required that DDS:

- Ensure RC's require consumer's parent, guardian or conservator provide copies of any health benefit cards under which the consumer is eligible to receive health benefits,
- Ensure all appropriate vendors of services and supports for a consumer are submitted using the RC e-billing system,
- Transfer of the prevention program from the RC to the Family Resources Network,
- Develop regulations to provide for the use of paraprofessionals in the area of behavioral services,
- Develop parent verification process for behavioral services,
- Establish an annual family program fee for families with an adjusted gross family income at or above 400% of the federal poverty level, including collection procedures.
- Ensure the RC's implement other statutory changes to achieve savings in the areas of transportation, day and work programs, supported living services.

Additional contractual requirements require DDS to monitor and ensure:

- RC's have implemented a board approved regional center Whistleblower Policy addressing the reporting of alleged improper regional center and, or vendor/contractor activities.
- RC's have a process in place to receive, investigate and take appropriate action on complaints under this policy and would require remedial actions to be taken by regional centers.

The additional requirements have increased the workload of staff and in-turn has increased the risk to DDS of not being able to sufficiently meet its statutory and contractual requirements. If that were to occur, DDS may be seen as unable to monitor its overall programs and could come under additional criticism. This could result in further reductions to program funding, poor public perception, negative press, and increased statutory oversight.

Mitigation of Risk:

DDS intends to meet its statutory requirements by implementing a reorganization of its Divisions to ensure there is sufficient staffing to address the increased oversight and monitoring needs required by the new laws.

DDS also intends to strengthen monitoring of regional center activities and assign investigative staff to handle the increase in whistleblower complaints. Additionally, DDS will work on monitoring and enforcing submission of regional center conflict of interest waivers and ensuring RCs are complying with all new statutory requirements.

Risk #2: Community Placement Outcomes Monitoring

DDS provides funding to RCs for various services related to the wellbeing of consumers with developmental disabilities. The RCs reimburse various vendors that provide the direct services to developmentally disabled consumers. One source of funding is to support consumers who are residing in a Developmental Center (DC) transition to a community living arrangement. This funding is known as Community Placement Planning (CPP) funding. This funding also includes resources to ensure RC's deflect consumers from being placed in the DC system. However, there are risks to DDS if these funds are not properly monitored. This may lead to criticisms related to DDS' monitoring of these program funds as well as the accountability of the funds paid to the RC's.

Due to the recent audit findings associated with the CPP program, it was determined additional oversight and accountability by DDS was warranted. In addition, research of program expenditures was very time consuming. Improvements in the monitoring and accountability in this program will ensure future funding to meet this important programmatic need and ensure California continues to be in compliance with the federal Olmstead decision regarding least restrictive environments for consumers.

Mitigation of Risk:

DDS is currently developing monitoring strategies that would improve the tracking of these funds and provide assurances that the funding awarded to the RCs is accounted and used appropriately for the community placement of the consumers. In addition, DDS intends to incorporate enhanced policies, processes and procedures for RCs regarding the use of these funds.

Risk # 3: Risk of Loss of Federal Funds Due to Concerns Raised by OSEP

The Individuals with Disabilities Education Act, Part C, known in California as the Early Start Program, is a federal program administered by states that serves infants and toddlers ages 0-3 with developmental delays or who have diagnosed physical or mental conditions resulting in developmental delays. The federal

grant requires strict adherence to various requirements, and oversight of the local programs. DDS, as the lead agency for the Early Start program, is required to annually compile a report with specific data on indicators prescribed by the federal Office of Special Education (OSEP). This report is known as the Annual Performance Report (APR).

After submission of the APR, certain issues were identified that required increased monitoring and improvements be made by DDS. If DDS fails to assure or complete all of the new requirements in the required timeframe, DDS risks the loss of the Part C grant funds for FFY 2012.

Mitigation of Risk:

DDS resumed monitoring activities in January 2010 to address the issues and have developed the Early Start Quality Assurance Advisory Committee; enlisting Early Start management personnel from the RCs to assist in revising and aligning State monitoring practices with federal mandates.

To ensure that fully adjudicated hearings were signed within the 30-day timeline, DDS met with the Director of the Office of Administrative Hearings (OAH) to discuss the federal requirement. Pursuant to these discussions, OAH issued a letter to all Administrative Law Judges advising the judges of this requirement. DDS also developed a new data base to track the due process hearings.

DDS focused on correcting the findings of the OSEP 2010 visit and has since cleared all findings at local program.

DDS developed a web-based Early Start Report (ESR) in June 2011. This statewide data system allows DDS to universally report on all children served by the regional center system and report timely and accurately on APR indicators.

To ensure future grant funding, DDS is working to assure or complete all of the new Part C grant application requirements by April 16, 2012. DDS is working to develop a statewide System of Payments by updating and completing all necessary documents to ensure interagency coordination with other State departments and RCs. DDS, in conjunction with CDE, is also producing Transition Guidelines to ensure transition coordination between Part C and Part B (administered by CDE).

Risk #4: Trust Office Procedures within Client Financial Services and the Developmental Centers

The DDS's Client Financial Services (CFS) section is responsible for reviewing Developmental Centers (DCs) trust office operations to ensure compliance with state and federal statutes. DCs are partially funded through Medi-Cal and Medicare and CFS ensures that billings for Medi-Cal and Medicare are compliant

with federal laws, rules, and regulations. Part of CFS's review of the DC trust offices includes verifying residents' property and assets are safeguarded and to ensure the timely filing of benefits. In addition, CFS serves as the estate manager for a small number of consumers who live in the community.

Issues that have arisen identified weakness in the internal monitoring process regarding how the consumers' money is spent and tracked. This issue presents a potential risk of inappropriate use of funds as well as the perception DDS is not fulfilling its fiduciary responsibilities.

Mitigation of Risk:

DDS will strengthen its trust office procedures by developing and implementing stronger monitoring strategies, updating the trust manual, conducting monthly calls with the various DC trust offices to discuss current issues, and performing internal audits of its trust functions. The implementation of these additional procedures and actions should ensure DDS' trust responsibilities are accountable and in compliance with all laws and regulations.

Risk #5: Strengthen Administrative Internal Processes

The strengthening of Administrative internal processes is needed to increase coordination of communication between various Divisions within DDS. DDS' decentralized structure works well in ensuring specific Divisional needs are addressed and met promptly and efficiently. However, a lack of coordinated communication between various Divisions may lead to situations where one Division is not aware of important communications, advisories and policy decisions made by other Divisions.

For example, DDS has a Headquarters' personnel office and a number of DC personnel offices which operate independently of each other. The DDS personnel office may not always be aware of policy decisions being made by the DC's personnel offices. This may lead to discrepancies in the accounting and monitoring of payroll receivables, salary/travel advances, and usage of blankets. Because of this lack of coordination, there is a risk that receivables will go uncollected, travel/salary advances remain outstanding and usage of blankets are not properly classified and tracked. This may ultimately result in additional criticisms of DDS and its ability to monitor its activities.

Mitigation of Risk:

DDS will focus on improving internal communications within its Divisions. DDS will identify existing processes and procedures that need to be revised. In addition, DDS will develop a plan for a coordinated review in the areas of payroll receivables, salary/ travel advances and use of blankets. DDS will also implement procedures to incorporate peer reviews of the payroll processes

between the DCs and Headquarters with the goal of ensuring proper coordination of the critical operations.

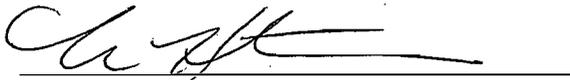
Conclusion

DDS executive management is responsible under the FISMA Act for conducting an internal review and preparing a report on the adequacy of its organization system of internal controls on a biennial basis. The purpose of the FISMA review is to strengthen internal control of the organization, to help restore confidence in government, and to improve its operations.

In performing the FISMA review, DDS executive management has identified several significant areas of risks. This provides DDS executive management with the necessary information to avoid or reduce the risks to acceptable levels. Based on the review, DDS executive management concludes its systems of internal control provide adequate assurances to prevent fraud, waste and abuse but could be improved through mitigation of the self-identified risk areas.

Certification Statement:

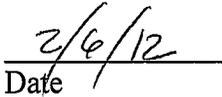
In accordance with the Fiscal Integrity and State Manager's Accountability Act of 1983, Government Code Sections 13400 through 13407, I certify that DDS has established adequate internal controls addressing the risks we have identified. DDS's management team is committed to the highest standard of compliance with our statutory obligations.



Name



Title



Date