DEVELOPMENTAL SERVICES TASK FORCE:
STRENGTHENING THE COMMUNITY SYSTEM

Wednesday, April 13, 2016 – 10:00 a.m. to 3:00 p.m.

California Dept. of Health Care Services Annex Building
1700 K Street – First Floor Conference Room
Sacramento, CA 95814

WELCOME AND INTRODUCTIONS

Diana S. Dooley, Secretary of the California Health and Human Services Agency (CHHS), welcomed everyone to the meeting. She introduced Nancy Bargmann, the new Director of the Department of Developmental Services (Department or DDS), as well as Jenny Yang, Vice Chair for the State Council on Developmental Disabilities who will be filling in for Kecia Weller. Task Force members in the room and on the phone then introduced themselves. Secretary Dooley asked Director Bargmann to share a few words before getting started.

Director Bargmann shared that she is honored to be back at DDS and it feels like coming home. She's looking forward to working collaboratively on the variety of parallel initiatives and priorities necessary to move our system forward, to not only support people today, but also to create a foundation for the future.

Managed Care Tax Reform Update

The first update given was on the Managed Care Organization (MCO) Tax. Secretary Dooley acknowledged the team effort, especially over the last few months, in response to the federal government's announcement almost two years ago that the existing structure we had for maximizing our federal participation was not going to be acceptable beyond this year. The Administration and the federal government came to an agreement by changing the tax structure in a way that wouldn't cause increased premiums or costs to the plans. Approval from the federal government is still pending, but is on the fast track. The Administration has indicated the need for federal approval by the middle of May because the state's budget is built on the adoption of the MCO tax reforms.

Further detail on the Special Session legislative package that includes the MCO tax reform was provided by John Doyle, Chief Deputy Director of DDS. He explained that while Assembly Bill (AB) X21 contains an appropriation of $287 million, the combined resources provided through the federal match and other resources coming through the Department of Health Care Services' (DHCS) budget as well as additional proposals coming through as part of the May Revisions, should result in almost half a billion dollars going into the system. AB X21 includes the following provisions:

- $11 million for reducing disparities; $1 million to provide pay differential for bilingual interpreters at the 21 regional centers and the remaining $10 million for use at the discretion of the different regional centers to fund what will work best in their communities to reduce disparities (e.g., parent education groups, cultural competency training, etc.).
- $169.5 million for direct care staff who provide at least 75% of their time in the provision of direct care services. This requires DDS to send a random survey to providers to get an estimate of direct care costs compared to administrative costs. The survey, developed with assistance from stakeholders and sent out to between 1,800 and 1,900 randomly selected providers on March 18th, was designed to be very simple and not burdensome to complete. The goal is to capture data that would provide a good picture of what service categories have the most significant amount of direct care costs. This data will help inform the rate increase that will be effective July 1st. Anyone participating in the rate increases – who did not participate in the initial survey – will be required to submit the survey to DDS by October 2017.
- $31.1 million increase for Regional Center staff and administrative costs for salary increases, benefit increases or both.
- 5% increases for supported living services (SLS), independent living, respite and transportation services. There's another 5% increase ($12 million) for intermediate care facility homes that is proposed as part of the DHCS budget.
- 11.1% increase that restores the rate for supported employment back to 2006 levels. There is also the intent to ensure the Department of Rehabilitation's support and employment budget is adjusted accordingly, because while those funds are not part of the $287 million appropriation, they are part of the total benefit to the system.
- $20 million proposed for an increase in competitive integrated employment. A portion will be used to provide paid internships, up to $10,400 per year, and the rest is intended for placement fees to be paid, upon placement and on a graduated schedule, to providers who helped place an individual in competitive integrated employment. If an individual remains in that position for a year, the provider will see an increase of $3,750 for the total period.
- The bill also requires DDS to provide a rate study to the legislature by March of 2019. More detail will be provided on this rate study later in the agenda.

Questions, comments and discussion from the Task Force members included:

- Ensure DDS works with a variety of stakeholders (i.e., family and consumer groups, DRC and the DD Council) not just the Regional Centers, to address the disparity issue.
- The Department should consider the socioeconomic factors that are causing these differences in services and expenditures across the state.

- Why will the rate study take three years to complete given the overdue nature of the rate structure?
- Who will be working on the rate study proposal and when will it be ready?

DDS will be working with a variety of stakeholders to address the underserved populations in the Regional Center areas. Also, the rate study is a priority for the Department, but will take three years to complete based on the complexity of our system and information from the National Association of State Directors of Developmental Services and other states' experiences. Two retired annuitants are working to develop a Request for Proposal (RFP).

Questions about SLS rate increases were addressed. Doyle said the Department provides supportive living services and counties provide IHSS services. So the 5% increase for supportive living does not include the IHHS piece because that's provided through the counties. Providers can use this 5% increase anywhere they need it. The Department heard that increase to salaries is where it was needed, so calculations were based on that, but if there are different priorities for providers, they can spend it to provide services needed in the community.

Rate Study Update

An update on the Rate Study was moved up on the agenda in response to Task Force members' interest and questions on this topic.

DDS is required to provide a rate study to the legislature by March 1, 2019 that must address several specific items including: examination of any proposed rate structures for their effect on the number of service providers; look at the fiscal impacts of alternate rate methodologies and how different rate methodologies can incentivize outcomes for consumers; and consider consolidating the significant number of service codes we have in our system today.

As mentioned earlier, two retired annuitants are developing an RFP that will be completed by early June. Doyle explained that this will not be a quick process given the complexities of our system and after consulting with the national agency, three years seems to be about the right timeframe. DDS plans to review where the rates are now and then reach out to other states that have completed rate studies and see what worked for them and what didn't. DDS understands the urgency, but wants to be thoughtful and deliberate to ensure there is a system that works well by enlisting a consultant that has experience in Home and Community-Based Services (HCBS) regulations.

March 2019 is the deadline to report the study, but if ready sooner, DDS will move as quickly as possible to complete the work. DDS is making an effort to not be so

prescriptive in the RFP that we direct what the consultants can do. It's important to find someone who understands this process and who has possibly worked in another state, so we can learn and use this as a tool as we're collecting information, not just waiting for an end product in March of 2019.

Comments and discussion from the Task Force members included:

- Participants expressed their willingness to help with any need for expertise on what rates look like in the community, or be on a committee to help with the process. California has a rate system that is based on what we've done in the past and what we're doing today, but it needs to address what services will look like in March of 2019 in light of the Home and Community Based Services regulations, which makes it more complex as to what we're action going to come out with overall.
- Members urged that in looking at the rates, we also include all of the other issues, like cultural and socioeconomic disparities, so that they're not separated out.
- The rates workgroup of this Task Force set a good foundation and provided a lot of information, maybe a few months can be taken off of the 3 year timeline for the rate study because this work is already done?
- It was emphasized that in looking at the rate structure, it is important to remember that our system is about people – it's about the people who work for the providers and it's about people who need the services.
- Task Force members recognized that resources are limited and that the people we represent have extreme needs, which could drive additional costs.
- Some participants asked that the state encourage and allow pilot programs where different rate ideas can be tried and evaluated in advance of the 2019 due date. The Secretary shared her experiences working with modular procurement for the child welfare IT system and is hopeful that similar to her experience with that project, parts of the DDS rate system can be designed and built as we go along so that benefits can be realized without waiting for the whole project to be completed.
- It was also suggested that the rate study require some Human Resources expertise to ensure that any future rate structures can address minimum wage and supervision/exempt employee requirements.

Minimum Wage Increase Update

The Governor signed Senate Bill 3 that increases minimum wage to $15 per hour by 2022. For employers with 26 or more employees, on January 1, 2017 the rate will go up $0.50 per hour, as indicated in the handout provided to participants. DDS is looking into the budget impacts both short and long term and is evaluating potential costs. DDS does not expect the first year increase will be significant since the adjustments made through the MCO funding increase will likely put direct care staff over the $10.50 per

hour mark, but realizes that there may be providers with staff that are being paid minimum wage, but won't be covered since they don't spend over 75% of their time providing direct services to consumers. As time goes on and as the rate increases grow, DDS does expect to see cost increases as the state moves closer to the $15 per hour minimum wage. DDS clarified that the Health and Safety exemption process can be used to address local minimum wage increases, and a suggestion was made to develop a workgroup to look at how to make the Health and Safety Exemption process less cumbersome and resource intensive.

The Department understands the wage compaction issue and the twice the minimum wage requirement, but the bill doesn't address this and DDS is not proposing anything at this time to address these concerns. The Department expects implementation to be similar to other minimum wage increases, requiring the DDS to survey providers to get their estimate on the number of staff they have earning minimum wage who will be affected as the rate goes up in each successive year.

Discussion from Task Force members included examples of and concerns regarding the effect of compaction, overtime rules, the health and safety exemption process, local minimum wage versus the state minimum wage and the impacts of the MCO tax reform. Also raised during this discussion was a separate issue requesting SLS and IHSS not be considered co-employers and that there are unintended consequences to IHSS being a generic resource for SLS.

The Secretary acknowledged that the Task Force's discussion of minimum wage issues was an important and robust conversation and that it has been useful for her to hear the concerns, which are not unlike the concerns of a wide range of industries that have a large number of lower paid workers. When the bottom is raised, it has an impact above the bottom and these conversations will inform surveys and information gathering to be as fair as possible. Task Force members were urged to focus the conversation to the issues specific to the operation of the Developmental Disabilities program rather than broad-based minimum wage arguments.

Public Comments (Morning)

Secretary Dooley then opened the microphone for public comment:

- Concerns were raised regarding the use of the MCO tax money to offset the minimum wage increases, essentially negating the benefit of the MCO tax by translating it to another purpose.
- DDS and the administration were urged to look at legislation that identifies funding solutions for the six year minimum wage increase plan so that stakeholders don't have to come back in each of those six years asking for more money.

- Several individuals thanked the legislature and administration for the work on the MCO reform and the much needed funding infusion into our system, and cautioned that there is more work to be done in light of the passage of minimum wage increases.
- The compaction issue was highlighted as a very valid issue, as well as the two times minimum wage issue. It was also noted that the federal government has sent a Department of Labor final rule over to the Office of Management and Budget who has 90 days to respond. Implementation could happen as soon as June 12th this year. A comprehensive plan to address these issues sooner, rather than later would be ideal.
- The efforts to retain experienced staff and address their value to the community were discussed. Consideration of an allocation in the budget to address lower wage workers that might not be covered by minimum wage increases was requested.
- High staff turnover rates are being experienced, especially among employees that have been with a provider for two years or more. Individuals with training, experience and relationships with the people they are supporting are walking out the door at an unprecedented rate. The labor market shortage is becoming a rapidly emerging issue.
- Consideration was requested to help level-four homes (with four or less consumers in the home who do not receive specialized service rates) keep up with some of the staff wage increases discussed. Providers are sharing that many of the four bed homes are going to close because current reimbursement rates are not sustainable and asked for relief measure, possibly allowing providers to increase to 6 bed homes and/or relief in the form of reducing required staffing hours or behavior consulting hours.
- Regarding the compaction issue, there's tremendous risk in taking a person who's exempt and changing their classification to nonexempt, exposing providers to significant back-wage issues; employee classification is based on duties. Compaction is having a major impact on providers being able to retain talented, experienced staff. Also noted was the cost statements done many years ago included the costs of exempt positions and that info could be used as a foundation for closer examination of potential cost impacts.
- DDS was urged to participate in the California Person Centered Advocacy Partnership's eight regional forums that are being developed.
- The state was urged to move forward quickly to provide immediate information on the impact of HCBS regulations to the people receiving the support and services, their families, the workers, the providers, the board of directors, the unions, and regional centers on what initial steps should be taking.
- The state was asked to consider the Partnership's proposal to repeal the ban on the start-up of new programs tied to the compliance of the HCBS regulations under the governor's transition funding and consider suspending, on the case-by-

case basis, certain licensing requirements on site-based programs who are seeking to transition.
- As the state moves forward with reforming the rate structure it's important to pay attention to incentives.

The Secretary expressed her appreciation for what is being done in the communities and the willingness of participants to come to these meetings and provide input before breaking for lunch. While reconvening from lunch, information about the advantages of the new California Earned Income Tax Credit was shared with the group.

Home and Community-Based Services (HCBS) Update

Secretary Dooley introduced Jim Knight, Assistant Deputy Director, Office of Federal Programs and Fiscal Support for DDS to provide an update regarding the HCBS regulations.

Effective March of 2014, the federal government – the Centers for Medicare and Medicaid Services (CMS) – finalized regulations and expectations for settings or places where people receive services that are funded through Medicaid. HCBS were initially started by the federal government as alternatives to institutional services for people. For many years, the federal government has been looking at a way to help define what "community" is and these regulations are a result. These new regulations focus more on people's outcomes and their opportunities for community integration, than the physical aspects of a setting. There is a five-year transition period and states have until March of 2019 to make sure these places where people receive services are meeting these new federal requirements.

The expectation is to spell out to CMS where we are in relation to the new requirements and what we're going to do if we're not in compliance or don't meet those requirements. This will involve the development of a statewide transition plan. DDS has been working with departments in California who receive HCBS funding, including DHCS and the Department of Aging to develop a statewide transition plan. California submitted a transition plan last year and much like every other state that submitted a plan, received questions back from CMS regarding the assessment of settings and response to addressing issues found. The state is currently having regular calls with CMS to address those questions and will modify the transition plan accordingly. Once the transition plan has been modified, it will be sent out for public comment then resubmitted to CMS. CMS has just approved the first state transition plan (Tennessee's) which is helpful because it creates a model for other states to follow.

An advisory work group was established to address the changes to services funded through the Regional Centers. The next work group meeting is scheduled for April 29th in Sacramento. The focus of the meeting will be to develop a timeline and a strategy to

ensure everyone who will be involved or impacted by these changes is able to participate and provide input on what needs to be done moving forward.

Additionally, the proposed budget includes some items related to the new HCBS regulations. $15 million is proposed for providers to make changes or modifications to the way they provide services, if needed, to meet the new federal requirements, as well as placeholder language that would express the legislature's intent for the Department to make changes and become compliant in advance of the formal state regulations.

These are the initial steps but there is more work to be done. Efforts with the advisory work group and others will continue and DDS will be looking for additional assistance and a variety of input – those that receive services, families, providers, etc. – because this is a big change that needs to be done correctly.

Comments from Task Force members suggested that the DC Closure Plans could be a good template for the community to use in terms of transition planning to prepare for the new HCBS rules and moving people from one type of service to another. People are clamoring for good information; there is a lot of fear and misinformation. It was also suggested that the ban on startups may want to be repealed to create more opportunities for innovation and new ideas to move the system forward.

Self-Determination Update

As background, the Self-Determination program was signed into law in 2013 and provides – at a high level – a different option for the way people can take more responsibility and control over what services they receive and the way they are delivered. Law requires approval of federal funding before Self-Determination can be implemented. Initially, in the first three years, a limit of 2,500 people can participate in the program, though there is now the ability to request an increase. After three years, the program will be open to everyone who receives Regional Center services.

As with the HCBS regulations, an Advisory Work Group was developed to inform implementation strategies and efforts. This work group has identified and helped define the type of services to be available under Self-Determination, drafted a process to choose the first 2,500 participants and created a video and informational materials about Self-Determination. Coming soon will be training and materials which are required by law for Regional Centers about the mechanics of the Self-Determination program.

The Department is working with CMS to answer questions received from the application for federal funding, also known as a waiver application, and the main obstacle is the new HCBS regulations just discussed. The new regulations won't allow a transition period – technically states have five years to make sure everyone is compliant with their

services offered – for any new programs, so DDS will have to demonstrate that initially, the places that provide services under Self-Determination, meet the HCBS requirements. The plan approved in Tennessee offers a roadmap to what the federal government likes, but other states have had problems demonstrating that services provided meet the new settings requirements. To get the Self-Determination operational, the Self-Determination Advisory Group has proposed to initially limit some of the places where services are provided to those that meet the requirements now, and then go back and add different settings later.

The "assessment process" outlined by the Advisory Group will allow consumers to choose where they want to receive services and determine on a case-by-case basis if that place or setting meets the federal requirements. If not, then unfortunately, that place or setting would not be an option for Self-Determination at this time. It doesn't mean consumers wouldn't be able to receive services, just not at that particular setting during this initial three-year period. Once the process concepts are agreed upon (hopefully within a matter of days), a timeline will be developed to resubmit the waiver application to CMS for approval.

Comments from Task Force members included their willingness to participate in processes to help determine services and settings; a request for consistent messaging and information on the program statewide; clarification that individuals moving from the DCs can participate in Self-Determination; a recommendation to not wait until the waiver has been approved to start identifying settings that would meet the federal requirements; an offer of SCDD's services as an independent entity that could assess settings; a reminder that the Self-Determination Advisory Work Group agreed that funding and resources for Self-Determination cannot endanger or take resources away from the conventional system; the need for good person-centered plan, on top of the IPP process, is needed; and a request was made for guidelines and simple assessments or checklists for services that are very obviously integrated and community-based, as opposed to a "heightened scrutiny" or more in-depth assessment process for services that look more like our traditional system.

Developmental Centers Closure Update

The Secretary then invited Dwayne LaFon, Interim Deputy Director of the Developmental Centers Division at DDS to provide an update regarding the DC Closures.

A joint closure plan for Fairview and Portville Developmental Center General Treatment Area was submitted to the legislature on April 1st. Now all plans, including the Sonoma closure plan submitted in October, are available on the DDS website. The plans are pending approval as part of the 2016-17 budget process and can be modified or changed by the legislature. Budget sub-committee hearings are expected in April or

May, where public comment will be taken, and final action on the plans is expected by with the passage of the budget.

Informational meetings are being held regarding the closure process for each DC, with the Sonoma Coalition on April 12th and 14th, families in Porterville on April 24th and with the Fairview Family and Friends group on May 15th.

Comments from Task Force members were positive surrounding the development and submittal of the closure plans. The plan was detailed and everyone appreciated the time the Department took with the families and those impacted by the DC closures to inform the plan. Recognition was also given to the Regional Centers for their willingness to hold special meetings with families to further solidify those relationships.

Brian Winfield, Acting Deputy Director of the Community Services Division with the Department was tasked with providing a specific update regarding Sonoma development. Winfield said the Department received $43 million this year to develop resources associated with the closure of SDC and there is an additional $68 million for Community Placement Plan (CPP) funding for the six Regional Centers near Sonoma – Alta California Regional Center, Far Northern Regional Center, Golden Gate Regional Center, North Bay Regional Center, East Bay Regional Center and San Andreas Regional Center.

At the end of February, for those six Regional Centers, their population at Sonoma was 350 individuals. For those 350 individuals, there are 443 resources – or total bed capacity – that's being developed by the Regional Centers which are a combination of Specialized Residential Facilities (SRFs), Adult Residential Facilities for Persons with Special Healthcare Needs (ARFPSHN) and Enhanced Behavioral Support Homes (EBSH). As a result of this Task Force, two new models of care were developed – the EBSH and the Community Crisis Homes (CCH). Regulations were issued back in February for the EBSH and the Department is working on regulations for the CCH.

Capacity for each setting includes 244 for SRFs, 143 for ARFPSHNs and 56 for EBSHs. Having capacity (443) over the number of individuals who need to transition our of SDC (350) allows options for consumer choice, transfers between regional centers, or for finding placements to keep peer groups together. The six regional centers are also developing CCHs, SLS options, clinical and health related support services, crisis services and support, transportation and day employment services.

The governor's budget contains an additional $24.5 million for the Sonoma closure on top of the existing CPP funding.

Questions and comments from Task Force members included: verification that Regional Center RFP processes take into consideration compliance with the new settings rules, clarification that half of the homes being developed are owned by non-profit organizations (NPO) and the other half are not NPO-owned, confirmation that 26 new homes are projected to be operational by the end of summer 2016, acknowledgement that the development of CCHs should relieve pressure on the acute crisis homes at Sonoma and Fairview and that mobile crisis teams are operational already in most Regional Centers, a recommendation to review the inter regional center transfer policies was made and RCs were urged to respond to transfer requests in writing, and overall concerns about ensuring there are enough beds, specialized medical care and resources and services available for individuals transferring out of the DCs were shared.

Public Comments (Afternoon)

Members of the public provided comments that included: concerns that misinterpretations of the HCBS rules will further limit affordable housing options for the people we serve; the importance of middle manager level exempt employees and a caution to not negate the quality and consistency built in our system by these employees by not fully funding minimum wage adjustments; additional thanks to the Department and the Administration for all the successful efforts to date and additional clarification on the perceived "ban" on start-ups for community reintegration from the DCs and relating to Self-Determination.

Next Steps

Kris Kent, Assistant Secretary, CHHS indicated that the next workgroup meetings would start in May or June and will address the remaining two priority issues identified: "Community Supports and Safety Net Services" and "Housing and Employment." As was done before, the workgroups will meet every other month alternating between the two subjects so there will be a meeting each month.

Task Force members want to start as soon as possible and asked if there are any preparatory documents to review from other states or counties. As with previous work groups, part of the process will be to gather those types of documents and lay a foundation. Ideas of what information may help further the discussion are welcome. Work groups are open all members of the Task Force and the discussions in both work groups will be led by Kris Kent.

Director Bargmann closed the meeting by noting how the Task Force has evolved from the first meeting to today. The large number of meetings and time invested in all of the different task forces, workgroups and advisory groups is critical and has brought us to where we are today. As a result, and in response to the feedback and the dialog that started with the DC Task Force, a number of new models of service were designed and are being developed and have started to provide services for individuals. While there is

more work to be done, it is important to recognize everyone’s efforts have already resulted in positive changes within our system that we can all be proud of.