

**DEPARTMENT OF DEVELOPMENTAL SERVICES**

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DATE: December 30, 2013

TO: Diana S. Dooley, Secretary  
Health and Human Services Agency

FROM: Mark Hutchinson, Chief Deputy Director  
Department of Developmental Services

SUBJECT: Review of the Systems of Internal Control

In accordance with the Financial Integrity and State Managers Accountability (FISMA) Act of 1983, Government Code Sections 13400 through 13407, I am submitting the enclosed report describing the review of our systems of internal control for the biennial period ended December 31, 2013.

As statutorily required, Department of Developmental Services is in compliance with Government Code Section 12439. The discussion of that compliance is incorporated into the report.

If you have any questions regarding the enclosed report, please call Michael Masui, Chief of Vendor Audits, at (916) 654-2769.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Hutchinson', with a long horizontal flourish extending to the right.

MARK HUTCHINSON  
Chief Deputy Director

Enclosure

cc: See next page

**"Building Partnerships, Supporting Choices"**

Diana S. Dooley  
December 30, 2013  
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cc: Adrian Mata, Governor's Office  
Michael Cohen, Director of Finance  
Deanna Hansen, Joint Legislative Audit Committee  
Margarita Fernandez, Bureau of State Audits  
Gerald Maginnity, State Library  
Mark Hutchinson, DDS  
Jean Johnson, DDS  
Michael Masui, DDS  
Edward Yan, DDS

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

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**Department of Developmental Services  
(DDS)**

**Facilitated By:**  
Michael Masui, Chief of Vendor Audits  
Ermias Tecele, Auditor

**December 2013**

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## Introduction

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**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, 2013.

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](mailto:mike.masui@dds.ca.gov).

## Background

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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 (DCs) and one Community Facility (CF); 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, DCs, RCs, and service providers.

### **Control Environment<sup>1</sup>**

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

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<sup>1</sup> 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, DDS' 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 4622. These requirements ensure that the board is locally accountable and represents its particular community.

State Operated Facilities: The DCs and the State-run CF 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 (HQ). 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 DDS' Director.

The regional centers and DCs are subject to audit and review by a host of other State and Federal agencies, such as the Department of Health Care Services, California Department of Public Health (CDPH), 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. In addition, the DCs must also meet all licensing requirements by CDPH as they are licensed as Acute Care, Skill Nursing, and Interim Care Facilities.



## Vacant Positions

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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 DDS' Executive Director certifies by August 15<sup>th</sup> 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.

DDS has reviewed the records for fiscal years 2011-12 and 2012-13 and determined DDS is in full compliance with GC 12439.

## Risk Assessment

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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

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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: Compliance with Control Agency Requirements**

The establishment of an effective administrative internal process is needed to improve coordination of communication among various Divisions within DDS. DDS' decentralized organizational structure with the HQ, four DCs, and one CF works well in ensuring specific Divisional needs are addressed and met promptly and efficiently. However, since the various Divisions are each performing individual personnel, contracting and procurement functions without an effective Administrative monitoring process to ensure compliance with the various control agencies' requirements, there is a risk of losing delegation authority for those functions.

As an example, the process for obtaining quotes and awarding contracts needs to comply with the Department of General Services (DGS) requirements. However, DDS' HQ may not always be aware of the process for awarding contracts at the DCs, which may lead to non-compliance with DGS's requirements. The loss of delegation authority will have a direct impact on DDS' day-to-day operations. Therefore, it is critical that DDS maintain its delegation authority for the administrative functions by ensuring it maintains compliance with the laws and regulations, precedential decisions, audit findings, and directives of its control agencies.

### **Mitigation of Risk:**

DDS will provide training to staff performing the various administrative functions, which may include training for contracts and procurement, inventory, attendance reporting, payroll and transactions, exams and hiring, classification and pay, and labor relations. In addition, DDS will provide clarification of roles and responsibilities for staff and management in the area of administrative services.

DDS also intends to develop a formal process to provide timely information and directives related to compliance issues that impact administrative services in HQ, DCs, and CF.

Further, DDS will develop a formal internal review process to ensure that HQ, DCs, and CF are maintaining compliance with its control agency requirements. This process may include peer-to-peer reviews, internal control reviews by subject matter experts, compliance reporting, or other effective methods of monitoring.

## **Risk #2: Collection of Annual Family Fee and Parental Fee Program**

### **Annual Family Fee**

Effective July 1, 2011, parents whose adjusted gross family income is at or above 400 percent of the Federal Poverty Level (FPL), and who are receiving qualifying services through RCs for their children ages 0-17, shall be assessed an Annual Family Program Fee (AFPF) as prescribed by Welfare and Institutions Code, Section 4785.

Assessment of the AFPF will take place at the time of development, scheduled review, or modification of the consumer's Individual Program Plan (IPP) or Individualized Family Services Plan (IFSP). Parents have to complete an AFPF registration form with their case worker or other RC personnel at the time of the fee assessment.

However, inconsistent application of program criteria by RCs may result in a failure to assess eligible families or produce an incorrect assessment amount on the family. In the absence of a consistent and standardized methodology for identification of eligible families and assessment amount, there is a risk of over and under application of the fee assessments. This could ultimately result in the program not being correctly and uniformly administered. Enhanced program identification and tracking procedures between DDS and RCs are critical to providing a consistent and accurate assessment of the family fee.

In addition, the lack of consistent identification and documentation of assessed fees has made it more difficult for effective collection of delinquent accounts as required by the State Administrative Manual (SAM) Section 8776.5.

### **Mitigation of Risk:**

DDS staff is currently participating in a joint DDS and RC workgroup intended to enhance information exchange of vital program elements between RCs and DDS' program staff. This effort will provide DDS management with more detailed

and accurate reporting information regarding the assessed population, parent identification for collection, and program revenue estimates. DDS staff is also in the process of seeking a "third party" source of parent taxpayer data to better facilitate the referral of delinquent parents to the Franchise Tax Board for offset and collection of delinquent fees. In addition, DDS staff is currently developing a process whereby families will be able to pay the fee by credit card. This enhanced payment option will provide greater convenience for the families needing to pay the assessed fee.

DDS' staff will continue to poll and monitor RCs regarding their assessment process to continually refine the overall assessment program and documentation of parent information for timely collection of the fees. Further, DDS will provide additional technical assistance to RCs regarding program requirements and responsibilities and best practices.

#### Parental Fee Program

The Parental Fee Program (PFP) assesses a fee to parents of children under the age of 18 who receive 24-hour out-of-home services purchased with State funds through a RC. Parents are required to pay a parental fee based on their ability to pay. The fee is determined using a Parental Fee Schedule established by DDS under the provisions of Title 17, Subchapter 2, of the California Code of Regulations. The statutory authority for financial responsibility is in the Welfare and Institutions Code, Sections 4677, 4782 and 4784.

Program collection efforts must comply with SAM Section 8776.5 requiring specific collection activity on delinquent accounts. Collection measures must be evenly applied to all delinquent accounts to comply with State rules and to affect the highest potential for revenue while ensuring consistent treatment to all program parents.

#### Mitigation of Risk:

DDS' Client Financial Services (CFS) staff will work closely with DDS' Office of Legal Affairs including litigation where appropriate to ensure consistent collection efforts in compliance with SAM 8776.5. Enhanced vetting of delinquent accounts will also increase compliance and fee revenue. CFS staff is currently reviewing and evaluating several data sources to ensure the most accurate and timely source of data is being reported for use of identifying program eligible consumers. CFS staff will also provide comprehensive technical assistance and support to RCs to ensure prompt notification to DDS of eligible parents to appropriately assess the fee at the time the child is placed into 24-hour care. In addition, CFS staff is currently developing a process for acceptance of credit cards from parents as payment of assessed fees. This enhanced payment option will provide parents with a greater convenience in paying assessed fees.

### **Risk # 3: Community Placement Oversight and Monitoring**

The use of Community Placement Plan (CPP) funds is one of DDS' strategies to develop permanent affordable and accessible homes consistent with the RCs authority to conduct resource development. In collaboration with the RCs, DDS uses CPP funds to support consumers, who reside in institutional settings and are transitioning into a community living arrangement, or have challenging service needs. In addition, a RC may submit a housing proposal to DDS requesting approval of CPP funds for the acquisition and development of affordable and accessible homes for the benefit of consumers. However, there are risks to DDS if these funds are not properly monitored. This may lead to criticisms related to DDS' oversight of these program funds as well as the accountability of the funds paid to the RCs.

DDS has increased its oversight over the course of the past two years; however additional oversight and accountability is needed. Failure to implement additional monitoring and safeguards could result in budgetary consequences to DDS and the individuals served by RCs.

#### **Mitigation of Risk:**

DDS has incorporated processes and procedures for providing guidance to the RCs regarding the use of these funds. In addition, DDS has developed a web based tracking system to monitor the CPP start-up projects. The new system is being implemented beginning with the fiscal years 2013-14 and 2014-15 CPP projects. In previous years, the RCs used a spreadsheet for tracking the progress of the CPP projects. The web based tracking system, called Community Placement Plan Management Tool (CPPMT), is a secure online system for developing, submitting, reviewing, and obtaining approval for RCs CPPs. The CPPMT captures cost information for five cost categories tied to the CPP projects.

In November 2013, DDS piloted the CPPMT system using fiscal year 2013-14 CPP data. The CPPMT system facilitated timely review and approval of the RCs CPP projects. It also provided for a better exchange between the RC and DDS regarding questions and revisions to the projects (review-and-adjust cycle). The CPPMT also ensured the tracking of five cost categories which are integral to all approved CPP projects.

Lastly, DDS' Community Services Division is currently working on reorganizing the CPP operations into a Northern and Southern California section/division and will designate key staff as liaisons to each RC to monitor CPP project activities.



DDS will hire staff with a strong background in housing development to improve the monitoring of start-up housing funding.

These monitoring strategies, as well as the reorganization, will improve tracking of funds and will provide better assurances that the funding awarded to the RCs is accounted for and being used appropriately for the community placement of consumers. However, DDS realizes that the CPP is a very complex program and that a continuous improvement in monitoring CPPs is crucial to fully ensure transparency and accountability of CPP funds.

#### **Risk # 4: Strengthen and Maintain Security of Confidential Information**

DDS is continuously committed to establishing and maintaining policies and procedures to comply with the standards, implementation specifications and other requirements of the Health Insurance Portability and Accountability Act (HIPAA) Security Rule, State Administrative Manual (SAM) and the Statewide Information Management Manual (SIMM). In particular, DDS recognizes the legal principle that privacy is a personal and fundamental right and that all individuals have a right of privacy and confidentiality regarding information pertaining to them.

Due to the decentralized organizational structure of DDS with HQ, DCs, CF, and the 21 RCs under contract with DDS, it was determined that standardized security awareness training for all employees of all levels and RCs was warranted.

#### **Mitigation of Risk:**

DDS is currently implementing a new, Federal approved, mandatory online security awareness training tool. DDS is also reaching out to the training officers at the DCs to introduce and implement the training. In addition, DDS hired a technical staff for the Information, Security, and Privacy Group, which includes an Information Security Officer (ISO) and Privacy Officer (PO), to support the security support and awareness program. Further, DDS' ISO will meet with the RCs to provide onsite security awareness training.

DDS continually monitors and evaluates corrective action plan implementations following any DDS or RC breaches, to ensure non reoccurrence of similar breaches. DDS is also performing periodic Security Risk Assessments of the networks at HQ and the DCs to identify any vulnerability.

DDS' Security and Privacy policy is currently being updated and, once approved, will be circulated to the DCs and RCs.

As part of the risk awareness training, the Director of the Office of Information Security (OIS) has held two webinar trainings for all RCs.

#### **Risk #5: Monitoring of Service Providers**

As of fiscal year 2004-05, DDS was charged with auditing service providers with annual purchase of service payments in excess of \$100,000 and/or who provided consumer services to multiple regional centers. In fiscal year 2010-11, DDS formalized its Whistleblower complaint process. This process has allowed vendor employees, consumer parents, and the general public to report improper RC or vendor/contractor activity to DDS. The number of complaints received due to the implementation of the Whistleblower compliant process has identified that DDS' overall risk prevention and vendor monitoring could be improved. The Vendor Audit Section's workload has increased substantially due to the complexity of the services provided by each vendor and the sensitive nature of the overall audits. The Vendor Audit Section has identified numerous issues that include the misuse of public funds, fraud, violations of contract provisions, gross misconduct, inefficiencies and the lack of sufficient controls. DDS has identified approximately \$16 million in audit recoveries and has referred several service providers to law enforcement for successful criminal investigation and prosecution. Given the significant level of funds budgeted (nearly \$3.8 billion), for consumer services in fiscal year 2013-14, the tens of thousands of vendors in the State of California, and DDS' fiduciary responsibility in ensuring all purchase of service funds are safeguarded and properly accounted for, there are clear risks to the consumers, DDS, and the State of California if fraud, waste and abuse is not identified and rectified in a prompt and timely manner.

#### **Mitigation of Risk:**

DDS is exploring options for enhancing audit resources with the intent to reduce the back log of Whistleblower and RC vendor audit referrals. An enhanced audit function will allow additional audits to be conducted of service providers and increase fiduciary oversight of DDS, as well as ensure a strong deterrent effect is conveyed to the vendor community.

In addition to exploring options for enhancing audit resources, DDS is exploring additional strategies so that it can achieve increased audit coverage and mitigate this risk.

The following are the strategies to be implemented:

- Conduct an analysis of the audit process to streamline the work flow and increase audit efficiency.



- Enhance the management of the Whistleblower process by prioritizing the audits and conducting limited scope audits of specific vendors.
- Analyze various programs to determine if desk audits are practicable. Once the programs are identified, conduct desk audits to increase the number of vendors reviewed during any one fiscal year.
- Consider conducting annual or other regular training of RC fiscal monitors and DDS auditors to ensure the audit processes and procedures are consistent throughout the state and to communicate best practices to increase efficiencies and overall audit coverage.

## Conclusion

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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' management team is committed to the highest standard of compliance with our statutory obligations.



Name

*Chief Deputy Director (Acting Director)*

Title

*12/27/13*

Date