AUDIT OF THE
GOLDEN GATE REGIONAL CENTER
FOR FISCAL YEAR 2011-2012

Department of Developmental Services

This report was prepared by the
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EXECUTIVE SUMMARY

The DDS fiscal compliance audit of Golden Gate Regional Center (GGRC) was conducted to ensure GGRC's compliance with the requirements set forth in California Code of Regulations, Title 17 (CCR, title 17), the California Welfare and Institutions (W&I) Code, the Home and Community-Based Services (HCBS) Waiver for the Developmentally Disabled, and the contract with the DDS. The audit indicated that, overall, GGRC maintains accounting records and supporting documentation for transactions in an organized manner. This report identifies some areas where GGRC's administrative and operational controls could be strengthened, but none of the findings were of a nature that would indicate systemic issues or constitute major concerns regarding GGRC's operations.

The following findings need to be addressed.

Finding 1: **<u>Vendors Not Enrolled in Electronic Billing</u>**

During the review of GGRC's electronic billing process, it was found that 14 vendors out of 1,240 have not been enrolled in electronic billing as of July 1, 2012. None of the vendors received an exemption from GGRC, which would have precluded them from enrolling in the electronic billing process. This is not in compliance with W&I Code, section 4641.5(a).

Finding 2: **<u>Deleted</u>**

Per W&I Code, section 4639(b), the Regional Center's annual fiscal audit shall not be conducted by the same accounting firm more than five times in every 10 years.

DDS conducted further analysis of the W&I Code, section 4639(b) and determined it to be ambiguous and could be interpreted as allowing for the continued use of the same accounting firm for five more fiscal years. This finding has been deleted.

BACKGROUND

DDS is responsible, under the Lanterman Developmental Disabilities Services Act (Lanterman Act), for ensuring that persons with developmental disabilities (DD) receive the services and supports they need to lead more independent, productive and normal lives. To ensure that these services and supports are available, DDS contracts with 21 private, nonprofit corporations that provide fixed points of contact in the community for serving eligible individuals with DD and their families in California. These fixed points of contact are referred to as regional centers. The regional centers are responsible under State law to help ensure that such persons receive access to the programs and services that are best suited to them throughout their lifetime.

DDS is also responsible for providing assurance to the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) that services billed under California's HCBS Waiver program are provided and that criteria set forth for receiving funds have been met. As part of DDS' program for providing this assurance, the Audit Branch conducts fiscal compliance audits of each regional center no less than every two years, and completes follow-up reviews in alternate years. DDS also requires regional centers to contract with independent Certified Public Accountants (CPA) to conduct an annual financial statement audit. The DDS audit is designed to wrap around the independent CPA's audit to ensure comprehensive financial accountability.

In addition to the fiscal compliance audit, each regional center is monitored by DDS Federal Programs Operations Section staff to assess overall programmatic compliance with HCBS Waiver requirements. The HCBS Waiver compliance monitoring review has its own criteria and processes. These audits and program reviews are an essential part of an overall DDS monitoring system that provides information on the Regional Center's fiscal, administrative and program operations.

DDS and Golden Gate Regional Center, Inc., entered into a contract, HD099006 (State Contract), effective July 1, 2009, through June 30, 2016. The contract specifies that Golden Gate Regional Center, Inc. will operate an agency known as the Golden Gate Regional Center (GGRC) to provide services to persons with DD and their families in the Marin, San Francisco, and San Mateo Counties. The contract is funded by State and Federal funds that are dependent upon GGRC performing certain tasks, providing services to eligible consumers, and submitting billings to DDS.

This audit was conducted at GGRC from May 13, 2013, through May 30, 2013, and was conducted by DDS' Audit Branch.

AUTHORITY

The audit was conducted under the authority of the W&I Code, section 4780.5, and Article IV, section 3 of the State Contract.

CRITERIA

The following criteria were used for this audit:

- California's W&I Code
- "Approved Application for the HCBS Waiver for the Developmentally Disabled"
- CCR, title 17
- Federal Office of Management Budget (OMB) Circular A-133
- State Contract between DDS and GGRC, effective July 1, 2009

AUDIT PERIOD

The audit period was July 1, 2011, through June 30, 2012, with follow-up as needed into prior and subsequent periods.

OBJECTIVES, SCOPE, AND METHODOLOGY

This audit was conducted as part of the overall DDS monitoring system that provides information on regional centers' fiscal, administrative, and program operations. The objectives of this audit are:

- To determine compliance with the W&I Code,
- To determine compliance with CCR, title 17 regulations,
- To determine compliance with the provisions of the HCBS Waiver Program for the Developmentally Disabled, and
- To determine that costs claimed were in compliance with the provisions of the State Contract.

The audit was conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States. However, the procedures do not constitute an audit of the GGRC's financial statements. DDS limited the scope to planning and performing audit procedures necessary to obtain reasonable assurance that the GGRC was in compliance with the objectives identified above. Accordingly, DDS examined transactions, on a test basis, to determine whether the GGRC was in compliance with the Lanterman Act, CCR, title 17, the HCBS Waiver for the Developmentally Disabled and the State Contract.

DDS' review of the GGRC's internal control structure was conducted to gaining an understanding of the transaction flow and the policies and procedures, as necessary, to develop appropriate auditing procedures.

DDS reviewed the annual audit report that was conducted by an independent accounting firm for fiscal year 2011-12 issued on November 19, 2012. It was noted that no management letter was issued for GGRC. This review was performed to determine the impact, if any, upon the DDS audit and, as necessary, develop appropriate audit procedures.

The audit procedures performed included the following:

I. Purchase of Service

DDS selected a sample of Purchase of Service (POS) claims billed to DDS. The sample included consumer services, vendor rates, and consumer trust accounts. The sample also included consumers who were eligible for the HCBS Waiver Program. For POS claims, the following procedures were performed:

- DDS tested the sample items to determine if the payments made to service providers were properly claimed and could be supported by appropriate documentation.

- DDS selected a sample of invoices for service providers with daily and hourly rates, standard monthly rates, and mileage rates to determine if supporting attendance documentation was maintained by GGRC. The rates charged for the services provided to individual consumers were reviewed to ensure that the rates paid were set in accordance with the provisions of CCR, title 17 and the W&I Code of Regulations.

- DDS selected a sample of individual consumer trust accounts to determine if there were any unusual activities and whether any account balances exceeded $2,000 as prohibited by the Social Security Administration. In addition, DDS determined if any retroactive Social Security benefit payments received exceeded the $2,000 resource limit for longer than nine months. DDS also reviewed these accounts to ensure that the interest earnings were distributed quarterly, personal and incidental funds were paid before the tenth of each month, and that proper documentation for expenditures was maintained.

- The Client Trust Holding Account, an account used to hold unidentified consumer trust funds, was tested to determine whether funds received were properly identified to a consumer or returned to the Social Security Administration in a timely manner. An interview with GGRC staff revealed that GGRC has procedures in place to determine the correct recipient of unidentified consumer trust funds. If the correct recipient cannot be determined, the funds are returned to Social Security Administration (or other source) in a timely manner.

- DDS selected a sample of Uniform Fiscal System (UFS) reconciliations to determine if any accounts were out-of-balance or if there were any outstanding items that were not reconciled.

- DDS analyzed all of GGRC's bank accounts to determine whether DDS had signatory authority as required by the contracts with DDS.

- DDS selected a sample of bank reconciliations for Operations and Consumer Trust bank accounts to determine if the reconciliations were properly completed on a monthly basis.

II. Regional Center Operations

DDS audited GGRC's operations and conducted tests to determine compliance with the State Contract. The tests included various expenditures claimed for administration to ensure that GGRC's accounting staff is properly inputting data, transactions were recorded on a timely basis, and to ensure that expenditures charged to various operating areas are valid and reasonable. These tests included the following:

- A sample of the personnel files, time sheets, payroll ledgers and other support documents was selected to determine if there were any overpayments or errors in the payroll or the payroll deductions.

- A sample of operating expenses, including, but not limited to, purchases of office supplies, consultant contracts, insurance expenses, and lease agreements were tested to determine compliance with CCR, title 17 and the State Contract.

- A sample of equipment was selected and physically inspected to determine compliance with requirements of the State Contract.

- DDS reviewed GGRC's policies and procedures for compliance with the DDS Conflict of Interest regulations and DDS selected a sample of personnel files to determine if the policies and procedures were followed.

III. Targeted Case Management and Regional Center Rate Study

The Targeted Case Management (TCM) Rate Study is the study that determines the DDS rate of reimbursement from the Federal Government. Reviewed applicable TCM records and GGRC's Rate Study. DDS examined the month of June 2012 and traced the reported information to source documents.

The last Case Management Time Study was performed in May 2010, which was reviewed in the prior DDS audit that included fiscal year 2009-10. As a result, there was no Case Management Time Study to review for this audit period.

IV. Service Coordinator Caseload Survey

Under W&I Code, section 4640.6(e), regional centers are required to provide service coordinator caseload data to DDS. The following average service coordinator-to-consumer ratios apply per W&I Code, section 4640.6(C)(3):

A. For all consumers that are three years of age and younger and for consumers enrolled in the Waiver, the required average ratio shall be 1:62.

B. For all consumers who have moved from a developmental center to the community since April 14, 1993, and have lived continuously in the community for at least 12 months, the required average ratio shall be 1:62. The required average ratio shall be 1:45 for consumers who have moved within the first year.

C. For all consumers who have not moved from the developmental centers to the community since April 14, 1993, and who are not covered under A above, the required average ratio shall be 1:66. The 1:66 ratio was suspended in February 2009, upon imposition of the 3 percent operations reduction to regional centers as required per W&I Code, section 4640.6(i) and (j). The ratio continued to be suspended from July 2010 until July 2013 with imposition of the subsequent 4.25 percent and 1.25 percent payment reductions.

DDS also reviewed the Service Coordinator Caseload Survey methodology used in calculating the caseload ratio to determine reasonableness and that supporting documentation is maintained to support the survey and the ratios as required by W&I Code , section 4640.6(e).

V. Early Intervention Program (Part C Funding)

For the Early Intervention Program, there are several sections contained in the Early Start Plan. However, only the Part C section was applicable for this review.

For this program, DDS reviewed the Early Intervention Program, including the Early Start Plan and Federal Part C funding to determine if the funds were properly accounted for in the regional center's accounting records.

VI. Family Cost Participation Program

The Family Cost Participation Program (FCPP) was created for the purpose of assessing consumer costs to parents based on income level and dependents. The family cost participation assessments are only applied to respite, day care, and camping services that are included in the child's Individual Program Plan (IPP). To determine whether GGRC is in compliance with CCR, title 17 and the W&I Code, DDS performed the following procedures during the audit review:

- Reviewed the list of consumers who received respite, day care and camping services, for ages 0 through 17 who live with their parents and are not Medi-Cal eligible, to determine their contribution for the FCPP.

- Reviewed the parents' income documentation to verify their level of participation based on the FCPP Schedule.

- Reviewed copies of the notification letters to verify that the parents were notified of their assessed cost participation within 10 working days of receipt of the parents' complete income documentation.

- Reviewed vendor payments to verify that GGRC is paying for only its assessed share of cost.

VII. Procurement

The Request for Proposal (RFP) process was implemented to ensure regional centers outline the vendor selection process when using the RFP process to address consumer service needs. As of January 1, 2011, DDS requires regional centers to document their contracting practices, as well as how particular vendors are selected to provide consumer services. By implementing a procurement process, regional centers will ensure that the most cost effective service providers, amongst comparable service providers, are selected as required by the Lanterman Act and the State Contract as amended.

To determine whether GGRC implemented the required RFP process by January 1, 2011, DDS performed the following procedures during the audit review:

- Reviewed GGRC's contracting process to ensure the existence of a Board approved procurement policy, and to verify that the RFP process ensures competitive bidding as required by Article II of the State Contract as amended.

- Reviewed the RFP contracting policy to determine whether the protocols in place include applicable dollar thresholds and comply with Article II of the State Contract as amended.

- Reviewed the RFP notification process to verify that it is open to the public, and clearly communicates to all vendors. All submitted proposals are evaluated by a team of individuals to determine whether proposals are properly documented, recorded and authorized by appropriate officials at GGRC. The process was reviewed to ensure that the vendor selection process is transparent, impartial, and avoids the appearance of favoritism. Additionally, DDS verified that supporting documentation is retained for the selection process and, in instances where a vendor with a higher bid is selected, there is written documentation retained as justification for such a selection.

DDS performed the following procedures to determine compliance with Article II of the State Contract for new contracts in place as of January 1, 2011:

- Selected a sample of Operational, Start-Up and negotiated POS contracts subject to competitive bidding to ensure GGRC notified the vendor community and the public of contracting opportunities available.

- Reviewed the contracts to ensure that GGRC has adequate and detailed documentation for the selection and evaluation process of vendor proposals, written justification for final vendor selection decisions, and those contracts were properly signed and executed by both parties to the contract.

In addition, DDS performed the following procedures to determine compliance with the W&I Code, section 4625.5 for new contracts in place as of March 2011:

- Reviewed to ensure GGRC has a written policy requiring the Board to review and approve any of its contracts of two hundred fifty thousand dollars ($250,000) or more, before entering into a contract with the vendor.

- Reviewed GGRC Board approved POS, Start-Up and Operational vendor contracts over $250,000 to ensure the inclusion of a provision for fair and equitable recoupment of funds for vendors that cease to provide services to consumers. Verified that the funds provided were specifically used to establish new or additional services to consumers and that the usage of funds are of direct benefit to consumers, and that contracts are supported with sufficiently detailed and measurable performance expectations and results.

The process above was conducted in order to assess GGRC's current RFP process and Board approval of contracts over $250,000 as well as to determine whether the process in place satisfies the W&I Code and the State Contract requirements as amended.

VIII. <u>Statewide/Regional Center Median Rates</u>

The Statewide and Regional Center Median Rates were implemented on July 1, 2008, and amended on December 15, 2011, to ensure regional centers are not negotiating rates higher than the set median rates for services. Despite the median rate requirement, rate increases could be obtained from DDS under health and safety exemptions where regional centers demonstrate the exemption is necessary for the health and safety of the consumers.

To determine whether GGRC was in compliance with the Lanterman Act, DDS performed the following procedures during the audit review:

- Reviewed sample vendor files to determine whether GGRC is using appropriately vendorized service providers, has correct service codes, and that GGRC is paying authorized contract rates and complying with the medium rate requirements of the W&I Code, section 4691.9.

- Reviewed vendor contracts to verify that GGRC is reimbursing vendors using authorized contract median rates and verified that rates paid represented the lower of the statewide or regional center median rate set after June 30, 2008. Additionally, DDS verified that providers vendorized before June 30, 2008, did not receive any unauthorized rate increases, except in situations where health and safety exemptions are granted by DDS.

IX. Other Sources of Funding from DDS

Regional centers may receive other sources of funding from DDS. DDS performed sample tests on identified sources of funds from DDS to ensure GGRC's accounting staff were inputting data properly, and that transactions were properly recorded and claimed. In addition, tests were performed to determine if the expenditures were reasonable and supported by documentation. The sources of funding from DDS identified in this audit are:

- Start-Up Funds, Community and Placement Program.
- First Five.
- Prevention Program.

X. Follow-Up Review on Prior DDS Audit Findings

A follow-up review was not conducted, since DDS did not identify any findings in its prior report.

CONCLUSIONS

Based upon the audit procedures performed, DDS has determined that, except for the items identified in the Findings and Recommendations Section, GGRC was in compliance with applicable sections of CCR, title 17, the HCBS Waiver, and the State Contract with DDS for the audit period, July 1, 2011, through June 30, 2012.

The costs claimed during the audit period were for program purposes and adequately supported.

A follow-up review was not conducted, since DDS did not identify any findings in its prior report.

VIEWS OF RESPONSIBLE OFFICIALS

DDS issued a draft report on September 26, 2013. The findings in the report were discussed at a formal exit conference with GGRC on October 3, 2013. At the exit conference, DDS stated it would incorporate the views of responsible officials in the final report.

RESTRICTED USE

This report is solely for the information and use of the DDS, Department of Health Care Services, Centers for Medicare and Medicaid Services, and GGRC. This restriction does not limit distribution of this report, which is a matter of public record.

FINDINGS AND RECOMMENDATIONS

Findings that need to be addressed.

Finding 1: **Vendors Not Enrolled in Electronic Billing**

During the review of GGRC's electronic billing process, it was found that 14 vendors have not been enrolled in electronic billing as of July 1, 2012, from a list of 1,240 eligible vendors provided by GGRC. Exceptions are granted for vendors paid by vouchers and vendors who demonstrate enrolling in electronic billing will present financial hardships. It was found that none of the 14 vendors were paid by vouchers or demonstrated that submitting billings electronically would have presented a financial hardship. GGRC explained that it has excluded certain service codes based on the limitations of the electronic billing system. In addition, GGRC stated that some of these vendors were only used once a year and felt that it was not necessary to enroll them in electronic billing. However, further analysis of the vendors' payment history indicated that all 14 vendors were used more than once in the fiscal year. (See Attachment.)

W&I Code, section 4641.5(a) states:

> "(a) Effective July 1, 2011, all regional centers shall begin transitioning all vendors of all regional center services to electronic billing for services purchased through a regional center. All vendors and contracted providers shall submit all billings electronically for services provided on or after
> July 1, 2012, with the exception of the following:
>
> (1) A vendor or provider whose services are paid for by vouchers, as that term is defined in subdivision (i) of Section 4512 of the Welfare and Institutions Code.
>
> (2) A vendor or provider who demonstrates that submitting billings electronically for services presents substantial financial hardship for the provider."

Recommendation:

GGRC must continue to work on enrolling these vendors to the electronic billing process to be in compliance with W&I Code, section 4641.5(a).

Finding 2: **Deleted**

Per W&I Code, section 4639(b), the Regional Center's annual fiscal audit shall not be conducted by the same accounting firm more than five times in every 10 years.

This law was implemented by the State's Legislature for appropriations related to the Budget Bill to address the fiscal emergency declared by the Governor. This new law was to take effect immediately for a General Fund savings of $1.2 million that was to be realized in fiscal year 2011-12.

DDS conducted further analysis of the W&I Code, section 4639(b) and determined it to be ambiguous and could be interpreted as allowing for the continued use of the same accounting firm for five more fiscal years. DDS maintains its position that GGRC should not have retained the same accounting firm; however, due to the ambiguity of the law, DDS will not pursue this issue any further. Therefore, this finding has been deleted.

EVALUATION OF RESPONSE

As part of the audit report process, GGRC has been provided with a draft report and was requested to provide a response to each finding. GGRC's response dated October 3, 2013, is provided as Appendix A. This report includes the complete text of the findings in the Findings and Recommendations section, as well as a summary of the findings in the Executive Summary section.

DDS' Audit Branch has evaluated GGRC's response. Except as noted below, GGRC's response addressed the audit findings and provided reasonable assurance that corrective actions would be taken to resolve the issues. During the follow-up review of the next scheduled audit, DDS' Audit Branch will confirm GGRC's corrective actions identified in the response to the draft report.

Finding 1: **<u>Vendors Not Enrolled in Electronic Billing</u>**

In its response, GGRC explained that it made rigorous efforts to transition all of its service providers to electronic billing by July 1, 2012. GGRC stated that during the implementation period it realized that service providers that provided unique services and/or provided services once or twice a year did not enroll in electronic billing. GGRC stated that it did not find enrolling these service providers in electronic billing cost effective for the type of services provided to GGRC consumers. In an effort to comply with W&I Code, section 4641.5(a), GGRC developed a "Vendor's Request For Exemption From E-Billing" form in order to accommodate the 14 service providers who provide unique services and those that provided services once or twice a year.

In addition, GGRC stated in its response that any vendors declaring substantial financial hardship, such as one-time billing, infrequent billings, or showing inconsistencies with a large vendor's billing structure, will be asked to file the newly developed "Vendor's Request For Exemption From E-Billing" form acknowledging financial hardship. GGRC stated that upon receipt of the form, its staff will assess the vendor response and determine if the vendor meets GGRC's exemption criteria. If the vendor meets the exemption criteria, GGRC will forward the form to the vendor for completion and signing as formal acknowledgement of financial hardship.

GGRC did not provide support documentation indicating that the 14 vendors have completed and signed the form acknowledging financial difficulties or have since been enrolled in electronic billing. Therefore, within 30 days of receipt of this report, GGRC should provide DDS with documentation demonstrating that the 14 vendors have either completed and signed the exemption form acknowledging financial hardship or have been enrolled in electronic billing. This will ensure GGRC's compliance with W&I Code, section 4641.5(a).

Finding 2: **Deleted**

Per W&I Code, section 4639(b), the Regional Center's annual fiscal audit shall not be conducted by the same accounting firm more than five times in every 10 years.

This law was implemented by the State's Legislature for appropriations related to the Budget Bill to address the fiscal emergency declared by the Governor. This new law was to take effect immediately for a General Fund savings of $1.2 million that was to be realized in fiscal year 2011-12.

DDS conducted further analysis of the W&I Code, section 4639(b) and determined it to be ambiguous and could be interpreted as allowing for the continued use of the same accounting firm for five more fiscal years. DDS maintains its position that GGRC should not have retained the same accounting firm; however, due to the ambiguity of the law, DDS will not pursue this issue any further. Therefore, this finding has been deleted.

Golden Gate Regional Center
Vendors Not Enrolled in Electronic Billing
Fiscal Year 2011-12

	Vendor Number	Vendor Name	Service Code
1	P31412	Complete Construction	104
2	PG1085	[redacted]	715
3	PG0901	[redacted]	715
4	PG1008	[redacted]	715
5	PG1472	[redacted]	715
6	PG1460	[redacted]	715
7	PG1231	UCSF Hospital Dentistry	715
8	P19097	University of the Pacific	715
9	H10765	ATG Rehab	725
10	H13558	Western Rehab	725
11	HC0163	Central Valley Diagnostic	735
12	HS0709	Hunter Laboratories, INC.	735
13	PG0592	[redacted]	765
14	PG0326	PMC Pharamcy	765

APPENDIX A

GOLDEN GATE REGIONAL CENTER

RESPONSE
TO AUDIT FINDINGS

Date: October 3, 2013

To: Edward Yan
Manager DDS Audit Branch

From: Chris Rognier
Chief, Administration & Finance

Subject: DDS Audit of GGRC – FY 2011 - 2012

RECEIVED
OCT 3 2013
AUDIT BRANCH

Reference is made to our joint Audit Exit conference call on October 3, 2013 and your letter dated 9/26/13 which transmitted a copy of the DDS Audit Branch draft report regarding the audit of GGRC's Fiscal Year 2011 – 2012.

In summary, the DDS audit resulted in the following two Findings and Recommendations:

- Finding 1: Vendors Not Enrolled in Electronic Billing
- Finding 2: Annual Independent Fiscal Audit

Finding 1

The DDS report asserts the following:

> "During the review of GGRC's electronic billing process, it was found that 14 vendors out of 1,240 have not been enrolled in electronic billing as of July 1, 2012. None of the vendors received an exemption from GGRC, which would have precluded them from enrolling in the electronic billing process. This is not in compliance with W&I Code, section 4641.5(a)."

The GGRC response to this Finding is provided in Attachment A to this document.

Finding 2

The DDS report asserts the following:

> "The review of the Independent Fiscal Audit Report area revealed that GGRC continued to use the same accounting firm to conduct its annual fiscal audit for more than five times within a 10 year period. This is not in compliance with W&I Code, section 4639(b) and the DDS letter dated June 16, 2011, regarding the March 2011 Trailer Bill Language Affecting Regional Centers."

The GGRC response to this Finding is provided in Attachment B to this document.

Thank you for allowing us the opportunity to respond to the concerns raised in your report. If you have any further questions or require additional information, please contact me at your convenience.

CJ Rognier

Chris. J. Rognier
Chief, Administration & Finance

ATTACHMENT A - GGRC RESPONSE

DDS Audit Finding 1 - E-Billing TBL Compliance

Trailer Bill Language

The DDS finding is based upon Section 4641.5 of the Welfare and Institutions Code (WIC) which the State Legislature implemented by Trailer Bill Language (TBL) in June of 2011. The Section reads as follows:

> 4641.5. (a) Effective July 1, 2011, regional centers shall begin transitioning all vendors of all regional center services to electronic billing for services purchased through a regional center. All vendors and contracted providers shall submit all billings electronically for services provided on or after July 1, 2012, with the exception of the following:
>
> (1) A vendor or provider whose services are paid for by vouchers, as that term is defined in subdivision (i) of Section 4512.
>
> (2) A vendor or provider who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider. (b) For purposes of this section, "electronic billing" is defined as the Regional Center e-Billing System Web application provided by the department.
>
> (Amended by Stats. 2012, Ch. 162, Sec. 196. (SB I I7l) Effective January 1, 2013.)

GGRC Policy and Procedure

In response to the new TBL, GGRC staff immediately developed and implemented a plan to notify all Service Providers (SP) of the new requirement. In additional to multiple mailings, GGRC Staff conducted workshops to assist SPs in the conversion process and continues to provide ongoing staff assistance as well as free access to computer equipment at each of GGRC's three county offices during normal business operating hours for those SPs lacking Internet and/or appropriate computer capabilities.

GGRC conducted a very rigorous effort to convert all 3,000+ SPs on or before the mandated TBL date of July 1, 2012. However, over the implementation period, it became quire evident that 100% compliance was simply not possible as the law failed to adequately address certain operational realities facing a small group of very important existing providers who provide vital services to regional center clients.

As discontinuing the use/vendorization of these SPs would impact the health, safety and welfare of community clients, GGRC developed an internal policy authorizing a narrow range of "exemptions" to the TBL requirement based upon the specific DDS Service Code assigned to the service being delivered. A copy of the GGRC policy entitled, *Services Exempt from E-Billing Mandate of AB104* (Exhibit A) is attached for your reference. It is important to note the unique nature of each service category, respectively, and how, in combination with inadequate DDS reimbursement rates for these services, the number of available SPs willing to serve the specialized needs of GGRC clients has been reduced to a mere handful and continues to decrease with each passing year.

DDS Audit – FY 11/12

In response to a request from DDS Audits to allow a single year audit to assist their internal operations, GGRC agreed to have DDS accelerate the regional center financial audit schedule for FY 11/12. The finding that GGRC did not comply with TBL requirements was the result of this audit and based upon the discovery of fourteen (14) SPs who were granted exemptions in accordance with GGRC's policy. Attached as Exhibit B is a chart composed by DDS entitled *DDS GGRC FY 11/12 Audit Finding: E-Billing Non-Compliant Service Providers* which details their findings. GGRC has modified the original chart by adding a column entitled Payment Amount for FY 11/12 Services which provides actual service costs for the fiscal year. As contextual background and to provide a frame of reference to evaluate the degree of purported GGRC "non-compliance", please note the following:

1. Only fourteen (14) of GGRC's 1,678 SPs were found to be "non-compliant" - representing less than 1% (0.83%) of the total SP count. However, it is important to note that each one of those SPs qualified for an exemptions described and allowed within the GGRC internal policy referenced above.

2. The total value of expenditures related to the 14 SPs was $242,090 – representing only 0.14% of GGRC's total POS expenditures in FY 11/12.

Client Health and Safety Issues

Total (100%) compliance with the TBL requirement is unrealistic and counter productive. This appears to have been acknowledged within the TBL itself as it allows an "exception" in cases in which compliance "presents a substantial hardship for the provider" [4641.5 (2)]. GGRC's Exemption Policy was the result of a process of due diligence and paramount concern over preservation of critical health and safety needs of GGRC's client community. GGRC staff contacted SPs who gave notice that they either could not or would not comply with the electronic billing mandate in order to better understand the exact reasons/conditions behind their need to terminate their services in response to this regulation.

The results of GGRC's survey revealed very clear/distinctive findings:

1. Some SPs were providers of very unique services which were purchased maybe one to two times per year. The best example of this are suppliers/installers of vehicle modifications (ramps, lifts, etc.) that allow clients to have access to van transportation by family members. Owners of such businesses simply find establishing/maintaining a separate billing process for selling a product once a year (or once every two years) not to be a cost effective use of their time and labor. To them the process "is not worth it" in relation to the inherent demands of running a small business.

Another example are small local drug stores who obviously do not have the resources to devote to this type of activity. This has become a critical need in the last few years as clients transitioning from institutional residential facilities are seldom provided with an adequate, if any, supply of the drugs they need to maintain their health and well-being.

2. Another significant group of SPs were those suppliers of medical, dental professional services and health care related products. It must be noted that in past years it has been virtually impossible to locate any providers of such services in GGRC's catchment area due to inadequate (below market) reimbursement rates and burdensome bureaucratic paperwork practices which do not conform to insurance company, governmental agency and/or office/billing administration best practices in the health care industry.

ATTACHMENT A - GGRC RESPONSE

Over the last 3 to 4 years GGRC devoted significant resources to developing very unique services critical to meeting client health needs. Using the funding provided each year by the Agnews Continuation program, GGRC hired a Dental Coordinator to work with Community Resource staff to locate/recruit dental SPs willing to serve clients residing in any/all three counties. While the success rate was minimal for the reasons noted above, GGRC was able to convince a few private dentists and clinics to provide services on a very limited basis. However, agreement was predicated upon GGRC developing vendorization and billing processes that were customized to conform with their existing practices which already had to comply with other federal and state and insurance industry regulatory requirements.

3. A third unique set of SPs, and perhaps most significant of all, were the direct result of GGRC's success with developing access to very critical specialized dental services (sedation, oral surgery, reconstruction, in-home virtual care, etc.) with nationally prominent academic dental institutions – the University of the Pacific and University of California at San Francisco. Again, access to these very critical services was predicated on conformance with existing institutional administrative systems; that is, neither could afford nor were authorized to establish a non-conforming essentially "offline" billing system to supply services to a minimal number of clients especially in light of the overwhelming demand for their services from other non-regional center patients.

Based upon these findings it was obvious that GGRC could not afford to jeopardize termination of any of these services without significantly impacting the health, safety and welfare of individual clients requiring such services. Thus it was decided to draft a formal GGRC "exemption" policy that allowed this very small but very critical set of SPs to continue billing upon existing GGRC practices. In order to simplify identification/processing of such exemptions, GGRC chose to designate a small set of Service Codes specific to the vendorization of these services.

GGRC Response to DDS Audit Finding

It appears that DDS takes issue with GGRC's policy/procedure as it addresses the "exemption" provision on a generic Service Code basis and does not specifically require each individual SP to "prove" that compliance "presents a substantial financial hardship for the provider". First, we note that the TBL does not provide any precise definition of "substantial financial hardship" nor any assessment criteria by which a SP request should be evaluated and deemed acceptable. Therefore, we contend that without adequate information and guidelines, GGRC did in fact exercise good judgment in assessing the impact of the TBL upon SPs and clients and developed a policy and procedure that minimized the number of allowable exemptions without loss of critical and scarce client services which could seriously jeopardize clients' health, safety and access to community living options – thereby preserving and supporting the prime directive of the Lanterman Act which requires regional centers to meet each client's needs on an individualized basis to promote health, safety and options for independent community living.

However, based upon legal review and GGRC's long-standing commitment to compliance with both the mission and underlying statutes of the Lanterman Act, GGRC has decided to revise its existing exemption policy and procedure as follows:

1. In consultation with legal counsel, GGRC has developed a formal written form entitled *Vendor's Request For Exemption From E-Billing* which has been incorporated as part of

GGRC's revised Exemption Policy; a copy of which is attached as Exhibit C) for your reference.

2. Upon receiving a SP request for an exemption to the E-Billing process, GGRC staff will exercise the same assessment parameters as outlined above to determine if the request meets GGRC's exemption criteria.

3. If the request meets the criteria, then GGRC staff will request that the SP complete/execute the new form which will serve as formal acknowledgement by both parties that E-Billing poses a "substantial financial hardship for the provider".

4. The original copy of the fully executed form will be filed in the SP Vendor file and GGRC will process future SP billings accordingly to existing non-E-Billing internal procedures.

We believe that the revised policy and procedure is now in full compliance with any interpretation of the TBL and, moreover, does not restrict GGRC's ability to sustain and promote vital services required to need the health, safety and welfare needs of all community clients.

Exhibit A
Golden Gate Regional Center

Serving people with developmental disabilities since 1966

Services Exempt from E-Billing Mandate of AB104

Section 4641.5 of the California Welfare and Institutions Code states:

(a) Effective July 1, 2011, regional centers shall begin transitioning all vendors of all regional center services to electronic billing for services purchased through a regional center. All vendors and contracted providers shall submit al billings electronically for services provided on or after July 1, 2012, with the exception of the following:

(1) A vendor or provider whose services are paid for by vouchers, as that term is defined in subdivision (i) of Section 4512 of the Welfare and Institutions Code.
(2) A vendor or provider who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider.

(b) For purposes of this section, "electronic billing" is defined as the Regional Center e-Billing System Web application provided by the department.

Besides the above exception, GGRC is also excluding certain service codes from e-billing application due to billing complications:

1. **009 Medicare Part D –**
   Most of these vendors are consumers themselves and GGRC does not have many vendors in this category. Mandating consumers to use E-billing for billing purposes will be difficult.

2. **021 Vehicle Modification –**
   GGRC releases payment during the time the vehicle is picked-up. Family member provides a written acknowledgment and vendor completes invoice. These transactions occur infrequently and if e-billing is required, it will delay payment to vendor and deter vendors from doing business with the RCs.

3. **024 Purchase Reimbursement (one time only) -**
   Vendor is required to submit receipts to request for purchase reimbursement. To enroll in e-billing after the POS is approved will delay the payment to vendor and causes additional workload for all parties for one time use purposes.

4. **100 Professional Copying, Reporting, and Technical Services -**
   Same practice as service code 024 Purchase Reimbursement (one time only).

5. **104 Environmental Accessibility -**
   Same practice as service code 021 Vehicle Modification.

6. **715 Dentistry -**

   Verification of the Denti-Cal rate on each procedure and reduction of the 4.25% from the total billing is done manually before payment is processed. Currently, the E-Billing system does not have the billing calendar type for procedure code entry.

7. **725 Durable Medical Equipment (except Diapers) -**

   Same practice as service code – 021 Vehicle Modification.

8. **735 Lab/Radiological -**

   Upon receipt of billing, Autho unit will ask social worker to verify and approve procedures done. Accounting will verify SMA rate on each procedure and reduce 4.25% from the total billing. All these steps are done manually before payment is processed. Currently, the E-billing system does not have the billing calendar type for procedure code entry and social worker do not have access to E-billing for review.

9. **765 Pharmaceutical -**

   Same as service code – 735 Lab/Radiological. Accounting needs to verify if the billed prescription is listed on the VSN Traker. If not, Accounting needs to inform social worker and social worker needs to review and submit ID team for approval in order for Vendorization Unit to list the newly approved prescription on VSN Traker. Again, all these steps are done before payment is processed.

10. **775 Physicians/Surgeons -**

    Same practice as service code – 735 Lab/Radiological.

Exhibit B
DDS GGRC FY 11/12 Audit Finding
E-Billing Non-Compliant Service Providers

No.	VENDOR	NAME	Service Code	Payment Amount for FY 11/12 services	On EB	Type of Service	Comment	Comment per Barbara
1	H10765	ATG REHAB	725	$14,711.60	No	Durable Medical Equipment Dealer	GGRC requires a written certification acknowledgment from family member before payment is issued to ensure the right item is received. Currently, the e-billing system does not allow families to submit supporting documentation through the e-billing system. Hence, GGRC Accounting needs to do an off-line manual check for the written certification acknowledgement before payment. Therefore, due to the e-billing system limitation, GGRC has exempt these service codes from E-billing requirements until E-billing system is enhanced.	This form is an RC requirement not a DDS requirement. It seems that an RC requirement should not supersede a DDS requirement. Anyway - the family could mail in the forms to the RC or the provider could upload the forms to the website. I'm not sure how this is different from the form required for behavioral services.
2	H13558	WESTERN REHAB	725	$1,552.50	No	Durable Medical Equipment Dealer	GGRC requires a written certification acknowledgment from family member before payment is issued to ensure the right item is received. Currently, the e-billing system does not allow families to submit supporting documentation through the e-billing system. Hence, GGRC Accounting needs to do an off-line manual check for the written certification acknowledgement before payment. Therefore, due to the e-billing system limitation, GGRC has exempt these service codes from E-billing requirements until E-billing system is enhanced.	This form is an RC requirement not a DDS requirement. It seems that an RC requirement should not supersede a DDS requirement. Anyway - the family could mail in the forms to the RC or the provider could upload the forms to the website. I'm not sure how this is different from the form required for behavioral services.
3	HC0163	CENTRAL VALLEY DIAGNOSTIC	735	$2,493.85	No	Laboratory/Radiological Services	Payment requires to check the SMA rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
4	HS0709	HUNTER LABORATORIES, INC.	735	$307.68	No	Laboratory/Radiological Services	Payment requires to check the SMA rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
5	P31412	COMPLETE CONSTRUCTION	104	$24,000.00	No	Environmental Accessibility;	GGRC requires a written certification acknowledgment from family member before payment is issued to ensure the right item is received. Currently, the e-billing system does not allow families to submit supporting documentation through the e-billing system. Hence, GGRC Accounting needs to do an off-line manual check for the written certification acknowledgement before payment. Therefore, due to the e-billing system limitation, GGRC has exempt these service codes from E-billing requirements until E-billing system is enhanced.	This form is an RC requirement not a DDS requirement. It seems that an RC requirement should not supersede a DDS requirement. Anyway - the family could mail in the forms to the RC or the provider could upload the forms to the website. I'm not sure how this is different from the form required for behavioral services.
6	PG0326	PMC PHARMACY	765	$3,570.05	No	Pharmaceutical Services	Payment requires to check the SMA rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
7	PG0592	[redacted]	765	$5,795.98	No	Pharmaceutical Services	Payment requires to check the SMA rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.

Exhibit B
DDS GGRC FY 11/12 Audit Finding
E-Billing Non-Compliant Service Providers

No.	VENDOR	NAME	Service Code	Payment Amount for FY 11/12 services	On EB	Type of Service	Comment	Comment per Barbara
8	PG0901	[redacted]	715	$6,934.19	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
9	PG1008	[redacted]	715	$27,777.97	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
10	PG1085	[redacted]	715	$80,621.93	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
11	PG1231	UCSF HOSPITAL DENTISTRY	715	$5,512.51	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
12	PG1460	[redacted]	715	$0.00	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
13	PG1472	[redacted]	715	$58.40	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
14	P19097	UNIVERSITY OF THE PACIFIC	715	$68,753.54	No	Dentistry	Payment requires to check the Denti-Cal rate and Ebilling program has no billing calendar for this category.	The RC can use the Purchase calendar type and authorize with a zero rate for a maximum payment amount. The provider should upload the itemized billing and the RC can do their check based on that.
				$242,090.20	Total			

$167,598,595.00	GGRC FY 11/12 POS Budget	
$1,590,960.00	GGRC FY 11/12 CPP Budget*	
$169,189,555.00	Total	* Placement & Deflection
0.143%	%	

EXHIBIT C

Services Exempt from E-Billing Mandate of AB104

Section 4641.5 of the California Welfare and Institutions Code states:

(a) Effective July 1, 2011, regional centers shall begin transitioning all vendors of all regional center services to electronic billing for services purchased through a regional center. All vendors and contracted providers shall submit al billings electronically for services provided on or after July 1, 2012, with the exception of the following:

(1) A vendor or provider whose services are paid for by vouchers, as that term is defined in subdivision (i) of Section 4512 of the Welfare and Institutions Code.

(2) A vendor or provider who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider.

(b) For purposes of this section, "electronic billing" is defined as the Regional Center e-Billing System Web application provided by the department.

Upon receiving a Service Provider (SP) request for an exemption to the E-billing process, GGRC staff will exercise the same assessment parameters as outlined above to determine if the request meets GGRC's exemption criteria.

If the request meets the criteria (a) (2), then GGRC staff will request that the SP complete/execute the "Vendor's Request for Exemption from E-billing" form (copy attached) which will serve as formal acknowledgement by both parties that E-Billing poses a "substantial financial hardship for the provider".

The original copy of the fully executed form will be filed in the SP Vendor file and GGRC will process future SP billings accordingly to existing non-E-Billing internal procedures.

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4000 Civic Center Drive, Suite 310
San Rafael, CA 94903
(415) 446-3000

GOLDEN GATE REGIONAL CENTER

VENDOR'S REQUEST FOR EXEMPTION FROM E-BILLING

1. Introduction: Calif. Welfare & Institutions Code section 4641.5 generally requires all vendors and contracted providers to submit all of their billings to a Regional Center in electronic billing format, via DDS's e-Billing System Web Application, for services provided to consumers after July 1, 2012. The statute further provides that vendors and contracted providers can be exempted from the e-billing requirement if they can demonstrate that submitting billings electronically presents a substantial financial hardship.

2. Declaration of Substantial Financial Hardship. The undersigned vendor or contracted provider requests an exemption from GGRC's e-Billing requirement for the following reason(s) (*check all that apply*):

□ One-Time Bill. This is a one-time bill. It is therefore not cost effective, and would result in substantial financial hardship, to set up electronic billing for a single bill.

□ Infrequent Billing. The undersigned expects that the total number of bills it submits annually to GGRC will be fewer than ___. It is therefore not cost effective, and would result in substantial financial hardship, to set up electronic billing for such a small number of billings.

□ Inconsistent With Large Vendor's Billing Structure. The undersigned is a sizable institutional vendor with an annual budget in excess of $__________. The undersigned's billing system does not accommodate e-Billing. Further, the undersigned will not provide its services to the consumer if GGRC requires e-Billing. It would not be cost effective, and would result in substantial financial hardship, for the undersigned to make an exception for GGRC's consumers, who represent only about ___% of the undersigned's annual customers.

□ Other. [*Provide alternate explanation for exemption request*]:__________________

____

3. Vendor's Acknowledgment of GGRC's Right to Revoke its Consent. The undersigned understands that if GGRC approves the exemption, GGRC may at any time revoke such approval if GGRC no longer believes, in its reasonable discretion, that the undersigned will incur substantial financial hardship by submitting its bills electronically.

____________________________ Date:____________________

Signature of Vendor

____________________________ Vendor No.:_______________

Print Name of Vendor

(*For GGRC's use only*):

□ Exemption Granted □ Exemption Denied

Chief, Administration & Finance ____________________ Date: ______________

ATTACHMENT B - GGRC RESPONSE

DDS Audit Finding 2 - Independent Audit TBL Compliance

Trailer Bill Language

The DDS finding is based upon Section 4639 of the Welfare and Institutions Code (WIC) which the State Legislature implemented by Trailer Bill Language (TBL) in June of 2011. The Section reads as follows:

4639. (a) The governing board of a regional center shall annually contract with an independent accounting firm for an audited financial statement. The audit report and accompanying management letter shall be reviewed and approved by the regional center board and submitted to the department within 60 days of completion and before April 1 of each year. Upon submission to the department, the audit report and accompanying management letter shall be made available to the public by the regional center. It is the intent of the Legislature that no additional funds be appropriated for this purpose.

(b) For the 2011-12 fiscal year and subsequent years, the audit specified in subdivision (a) shall not be completed by the same accounting firm more than five times in every 10 years.

(Amended by Stats. 2011, Ch. 9, Sec. 9. (SB 74) Effective March 24, 2011.)

DDS Finding

The DDS Finding reads as follows:

"The review of the Independent Fiscal Audit Report area revealed that the same accounting firm was retained to conduct the annual fiscal audit for fiscal year the annual fiscal audit for more than five times within the previous 10 year period. In addition, for appropriations related to the Budget Bill to address the fiscal emergency declared by the Governor, this new law was to take effect immediately for a General Fund savings of $1.2 Million. However, GGRC stated that based on its own legal counsel 's interpretation of the new law, the 10 year period was to commence effective fiscal year 2011-12, and that GGRC can continue to use the same accounting firm for the next five fiscal years.

W&I Code, section 4639(b) states:

"(b) For the 2011-12 fiscal year and subsequent years, the audit specified in subdivision (a) shall not be completed by the same accounting firm more than five times in every 10 years."

Also, Page 7 of DDS' letter dated June 16, 2011, regarding the March 2011 Trailer Bill Language Affecting Regional Centers states in part:

"TBL Section 9: Section 4639 was amended to specify that, beginning in Fiscal Year (FY) 2011-12, the independent fiscal audit conducted pursuant to this section of law cannot be completed by the same accounting firm more than five times in every 10 years.

Implementation: For the FY 2011-12 audit, the regional center may not use an independent accounting firm that has been used five or more times in the previous ten years."

Recommendation:
GGRC must comply with W&I Code, section 4639(b), and the DDS letter dated June 16, 2011, requiring the annual independent fiscal audit not be conducted by the same accounting firm more than five times in every 10 years."

GGRC Response to DDS Audit Finding

GGRC rejects the DDS audit finding as it is based solely upon an "interpretation" of the "intent" of the TBL as opposed to the actual TBL language referenced above, and therefore has no legal standing. GGRC's position on this matter is substantiated by a legal opinion we requested from our legal counsel, Mr. Alan J. Zuckerman (Musick, Peeler & Garrett, LLP). A copy of his opinion letter dated September 26, 2013, is attached as Exhibit A for your reference.

We believe that the letter is self-explanatory and concur with all items presented therein. Therefore, we believe that the DDS finding is in error and, as such, will not be taking any further action until the current five (5) year term expires at the end of Fiscal Year 2015/2016.

MUSICK, PEELER & GARRETT LLP
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EXHIBIT A

ALAN J. ZUCKERMAN
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LOS ANGELES
ORANGE COUNTY
SAN DIEGO
SAN FRANCISCO
SANTA BARBARA
WESTLAKE VILLAGE

FILE NO.: 33015.006

September 26, 2013

Mr. Chris Rognier
Chief, Administration and Finance
Golden Gate Regional Center
1355 Market St, Suite 200
San Francisco, CA 94103

VIA E-MAIL AND U.S. MAIL

Re: DDS's Draft Audit Report of GGRC (FY 2011-2012);
Critique of Audit Exception Regarding GGRC's Use of Independent Accounting Firm

Dear Chris:

The Department of Developmental Services ("DDS") has completed its draft Audit Report of GGRC for FY 2011-12 (the "Draft Audit Report"). Finding No. 2 of the Draft Audit Report notes that GGRC is out of compliance with applicable law by failing to engage a new independent auditor to replace its existing independent accounting firm (the "Audit Exception"). This letter explains why GGRC is in compliance with applicable law. DDS should therefore remove the Audit Exception when DDS issues its final Audit Report.

1. Background Facts. Welfare and Institutions Code Section 4639 (the "Statute") requires each regional center's governing board to annually obtain an audited financial statement of its financial condition from an independent accounting firm. On March 24, 2011, the Legislature amended the Statute to require regional centers to periodically change their accounting firms. That amendment added the following language to the Statute:

> For the 2011-12 fiscal year and subsequent years, the audit specified in subdivision (a) shall not be completed by the same accounting firm more than five times in every 10 years.

On June 16, 2011, DDS delivered a letter to all regional centers entitled, "March 2011 Trailer Bill Language Affecting Regional Centers." In that letter, DDS interpreted the Statute as follows, "For the FY 2011-12 audit, the regional center may not use an independent accounting firm that has been used five or more times in the previous ten years" (emphasis added).

Each year, DDS signs a Master Contract with each regional center (the "Master Contract"). Article III, Section 9 of each Master Contract requires each regional center to submit to DDS audited financial statements prepared by an independent accounting firm. Commencing in FY 2011-12, and continuing to the present, DDS added the following language to the Master Contract: "For the 2011-12 fiscal year and subsequent years, this audit shall not be completed by the same accounting firm more than five times in every 10 years". Thus, the language in DDS's Master Contract for the past three fiscal years is consistent with the language in the Statute.

For more than 30 years, GGRC has engaged the CPA firm of Lautze & Lautze ("Lautze") to prepare GGRC's annual audited financial statements. GGRC used Lautze to prepare GGRC's 2011-12 financial statements as well. GGRC prefers to retain Lautze's services because of their intimate knowledge of the Lanterman Act and the Bay Area Housing Plan in particular.

To GGRC's knowledge, DDS has no objection to Lautze's competence or the accuracy of its audits. Rather, DDS's sole objection to Lautze is that it's the same independent accounting firm GGRC has been previously using; DDS's Audit Exception is based on that fact alone.

2. Analysis of the Statute. The Statute clearly and unambiguously states that the new rule concerning a regional center's use of the same accounting firm applies in fiscal year 2011-12 and subsequent years. The Statute makes no mention or reference to a regional center's use of an independent accounting firm in past years. Thus, although no published court decision has yet interpreted the Statute, it's very unlikely a court would conclude that the Statute means the opposite of its express language.

A court will ascertain the Legislature's intent by first looking to the words of the statute, and will give them their usual and ordinary meaning.[1] If the words of a statute are clear and unambiguous, the plain or literal meaning of the statute governs.[2] In such cases, there is no need for judicial construction.[3] That is the case here; the Statute says that a regional center must begin to limit its use of its independent accounting firm in the 2011-12 fiscal year and subsequent years. This language is not ambiguous.

Further, when the Legislature declares its intent in the statute, the courts must accept such declaration, and may not impute a different meaning into the statute when nothing in

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[1] Palmer v. GTE California, Inc. (2003) 30 Cal. 4th 1265; Goebel v. City of Santa Barbara (2001) 92 Cal. App. 4th 549.

[2] Estate of Griswald (2001) 25 Cal. 4th 904.

[3] People v. Howard (2002) 100 Cal. App. 4th 94.

the language of the statute supports such intention.[4] Rather, a court is required to give effect to statutes according to the usual, ordinary import of the language used in framing them, and therefore a court may not give the words an effect different from the plain and direct meaning of the terms used.[5] Under these rules of statutory construction, we expect a court would be unable to adopt DDS's requested interpretation.

The legislature is considered to be well acquainted with the basic rule against retrospective effect. Therefore when it intends a statute to operate retroactively, it customarily will use clear language to accomplish such purpose.[6] If the Legislature had intended the interpretation adopted by DDS, it could have stated so.

To illustrate this point, if the Legislature intended the Statute to apply to those years prior to its enactment, it could have stated: "The audit specified in subdivision (a) shall not be completed by the same accounting firm more than five times in every 10 years, **inclusive of those years the accounting firm provided services to the regional center prior to the enactment of this provision**". In that circumstance, DDS's interpretation would have been correct. Yet no such language appears in the Statute. To the contrary, the amendment provides that the new restriction applies to "the 2011-12 fiscal year **and subsequent** years" (*emphasis added*). Thus, the plain language of the Statute directly conflicts with its interpretation by DDS.

The legal encyclopedia, California Jurisprudence 3d, is also instructive. It notes:

> Generally statutes have prospective effect, and there is a presumption against the retroactive application of statutes; the presumption is rooted in constitutional principles, such as the due process clause and prohibitions against ex post facto laws, and consistent with a general rule of construction applicable to codes and other statutes alike that, unless the intention to make it retrospective clearly appears from the act itself, a statute will not be construed to have that effect. The presumption is also based on the rationale that retroactive laws are characterized by a want of notice and a lack of knowledge of past conditions, and they disturb feelings of security in past transactions, that notice of a rule should be given in advance of the actions to be judged. The presumption of prospectivity assures that reasonable reliance on current legal principles will not be defeated in the absence

---

[4] Tyrone v. Kelley (1973) 9 Cal. 3d 1; Struckman v. Board of Trustees (1940) 38 Cal. App. 2d 373.

[5] Phelps v. Stostad (1997) 16 Cal. 4th 23; City of Pasadena v. AT&T Com'n of Calif. (2002) 103 Cal. App. 4th 981.

[6] Di Genova v. State Bd. of Ed. (1962) 57 Cal. 2d 167; Balen v. Peralta Junior College Dist. (1974) 11 Cal. 3d 821.

of a clear indication of a legislative intent to override such reliance. 58 Cal. Jur. 3d. Statutes §32 (citations omitted).

In sum, DDS's interpretation would only be valid if the Statute expressly stated that it applied retroactively. Yet, as noted above, the Statute expressly states the opposite. As such, DDS's interpretation is incorrect.

3. Analysis of the Master Contract. In addition, DDS's own actions since June 2011 are inconsistent with its interpretation of the Statute. In the past few years, DDS has drafted three new annual Master Contracts for the regional centers. These Master Contracts each state: "[The regional centers] shall obtain and submit to the State the audited financial statements prepared by an independent accounting firm for the prior fiscal year...**For the 2011-12 fiscal year and subsequent years, this audit shall not be completed by the same accounting firm more than five times in every 10 years**" *(emphasis added).*

The terms of the Master Contract do not place any restrictions on a regional center's use of an independent auditor prior to FY 2011-12. They also do not require a regional center to take into consideration the number of times it has engaged an independent auditor prior to FY 2011-12 in determining whether it can continue to engage such auditor to prepare its financial statements. This new language was drafted by DDS, not the regional centers.

DDS's execution of the Master Contract, containing language drafted by DDS that expressly contradicts DDS's original interpretation of the Statute, constitutes DDS's waiver of its right to assert the Statute applies retroactively. The fact that DDS signed such an agreement with GGRC not only once, but three times over a number of years, reinforces the strength of the waiver.

4. Legislative Intent. Ultimately, a court will interpret a statute to enforce its legislative intent. Legislative intent is paramount in statutory interpretation. The best evidence of legislative intent is the language in the statute.[7] Yet even when the language in the Statute itself is not dispositive of its meaning, the California Supreme Court has noted that evidence of legislative intent outside of the language in the statute must provide "a clear and unavoidable implication that the Legislature intended retroactive application." [8]

Evidence of legislative intent *outside* of the language in the statute itself can be found in the legislative history of a statute. I therefore reviewed the legislative history to

[7] Palmer v. GTE California, Inc. (2003) 30 Cal. 4th 1265

[8] (Myers v. Philip Morris Companies, Inc. (2002) 28 Cal. 4th 828, 844).

determine if I could find any evidence of legislative intent that would contradict the plain meaning of the Statute. I found no such evidence.

An administrative interpretation of a statute can be a significant factor considered by a court in ascertaining the statute's meaning.[9] However, an administrative agency cannot alter or enlarge legislation, and the court is not bound by the administrative agency's opinion.[10] Therefore, for DDS to prevail, it would need to convince a court that the meaning of the Statute directly contradicts its plain terms.

5. Conclusion. Courts will look to the language of a statute to discern legislative intent. If the language is not ambiguous, the plain language in the statute typically applies. If the statute expressly states (as it does here) that it only applies prospectively, courts will routinely accept such language as reflective of legislative intent.

DDS does not have the authority, via its June 16, 2011 letter or otherwise, to require regional centers to adopt a practice that directly contradicts the Statute. In addition, nothing in the Statute's legislative history is supportive of DDS's position. Finally, the language in the Master Contracts signed by DDS constitutes a waiver of DDS's rights.

In sum, DDS's Audit Exception is without legal merit and should be deleted from DDS's final Audit Report.

This opinion is based on the Statute as currently written and the facts our firm has been provided. A future amendment to the Statute, or a judicial opinion interpreting the Statute, may change our opinion. This opinion is provided for the benefit of GGRC and may be relied upon only by GGRC. However, GGRC may provide a copy of this opinion to DDS.

Very truly yours,

Alan J. Zuckerman
for MUSICK, PEELER & GARRETT LLP

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[9] Giles v. Horn (2002) 100 Cal. App. 4th 206.

[10] People v. Flores (2003) 30 Cal. 4th 1059; People v. Sinohui (2002) 28 Cal. 4th 205.