

March 1, 2017

# Highlights of LAO Analysis of the Developmental Services Budget

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LEGISLATIVE ANALYST'S OFFICE

Presented to:  
Assembly Budget Subcommittee No. 1  
On Health and Human Services  
Hon. Joaquin Arambula, Chair





## Recent Policies Promote Consumer Choice, Create Funding Pressures

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### ***Policy Area—Federal Home- and Community-Based***

***Services (HCBS) Waivers.*** The Department of Developmental Services (DDS) receives about \$2 billion in federal funding (about 30 percent of the total DDS budget) for about 130,000 Medicaid-eligible consumers through HCBS waivers.

- ***Policy Change—New Federal HCBS Person-Centered Rules.*** New federal HCBS rules (referred to as the HCBS final rule) focus on consumer outcomes, consumer choice, and program quality, potentially requiring significant changes to the current delivery of developmental services. The state and the state's tens of thousands of service providers must be in compliance by March 2019.
- ***Funding Pressures.*** There is the potential loss of significant federal funding (up to \$2 billion) if the state misses the compliance deadline. The budget reflects ongoing funding appropriated beginning in 2016-17 to: (1) assist service providers in adapting programs to conform to new rules (\$15 million) and (2) reduce service-coordinator-to-consumer ratios as required by federal and state laws (\$17 million to hire 200 service coordinators; it is still unknown how much this improved ratios).



***Policy Area—Developmental Centers (DCs).*** The state runs three DCs and a small community facility, currently serving a total of about 850 residents at a proposed total cost of \$450 million (\$330 million General Fund) in 2017-18.

- ***Policy Change—DC Closures.*** In 2015, the Governor and Legislature signaled their intention to close the three remaining DCs (keeping open the secure treatment program at Porterville DC and the Canyon Springs community facility). The plan is for Sonoma DC to close by the end of 2018 and Fairview DC and the general treatment area of Porterville DC to close by the end of 2021. Residents leaving the DCs are being integrated into community settings.



## Recent Policies Promote Consumer Choice, Create Funding Pressures (Continued)

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- **Funding Pressures.** There has been increased reliance on the General Fund (now more than 70 percent) to fund the DCs during the closure phase (due to the declining number of federally reimbursable services provided and because Sonoma DC lost a significant portion of federal funding due to noncompliance with health and safety regulations). There is also the cost to develop community resources for former DC residents transitioning into the community (\$68 million of base-level funding annually through the Community Placement Plan) and to develop crisis services and safety net resources in the community (which are currently provided by DCs).



### **Policy Area—Competitive Integrated Employment (CIE).**

CIE is defined as full- or part-time work in integrated settings compensated at the going wage or minimum wage, whichever is higher. Most working-age consumers do not have CIE (including many who would like to work).

- **Policy Change—State “Employment First” Policy and Federal Workforce Innovation and Opportunities Act (WIOA).** A 2013 state law (employment first) prioritizes CIE for working-age consumers, regardless of the severity of their developmental disability. A 2014 federal law (WIOA) also promotes CIE for people with developmental disabilities and generally prohibits subminimum wage pay for this population.
- **Funding Pressures.** These policy changes increase costs to educate and train consumers and to provide supported employment and job coaching services to consumers.



## Recent Policies Promote Consumer Choice, Create Funding Pressures *(Continued)*

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***Policy Area—Self Determination.*** The concept of “self determination” in the developmental services context is to allow consumers to control the coordination and selection of their services and supports and allow them to manage their own budget (while working with a financial management service).

- ***Policy Change—Self Determination Program (SDP) Will Be Offered to All Interested Consumers.*** A 2013 state law created a plan to phase in SDP over a three-year period with 2,500 consumers (once federal funding has been secured). After phase-in, SDP will be offered to any interested consumer.
- ***Funding Pressure.*** SDP may ultimately save the state money, but the roll-out may increase DDS costs as Regional Centers (RCs) learn how to implement the program.



## Other Funding Pressures on Developmental Services System at Large

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**Labor Laws.** Changes in labor laws exert pressure on the state to fund any resulting increases in staffing costs for service providers in the developmental services system.

- **State Minimum Wages.** There is precedent for the Legislature to appropriate funding to cover service providers' increased staffing costs due to increases in the state's minimum wage, which has increased five times since 2006-07 and is scheduled to increase in annual steps to \$15 by 2022. The Governor's budget proposes \$77 million (all funds) to account for the January 2017 and January 2018 scheduled state minimum wage increases.
- **Local Minimum Wages.** Currently, 20 cities have minimum wages that exceed the state minimum wage. Although the Legislature has not appropriated funding to explicitly account for resulting service provider staffing costs, providers can submit requests for increases on a consumer-by-consumer basis if the consumer's health or safety is deemed at risk. These individual requests are sometimes approved by DDS, creating additional cost pressures on the state.
- **Other Labor Laws.** Other changes in labor laws can result in increased costs for the state. For example, in 2015, certain service providers received a 5.82 percent rate increase (\$18.4 million total cost) to help them comply with new federal overtime regulations requiring overtime pay for home care workers.



**Demographic Changes.** The population served by DDS is changing in ways that increase costs for the state.

- **Rapidly Rising Overall Caseloads.** The state currently serves more than 300,000 people with developmental disabilities. Over the past decade, average annual growth in the DDS population (3.7 percent) has outpaced average annual growth in the state's overall population (0.8 percent).

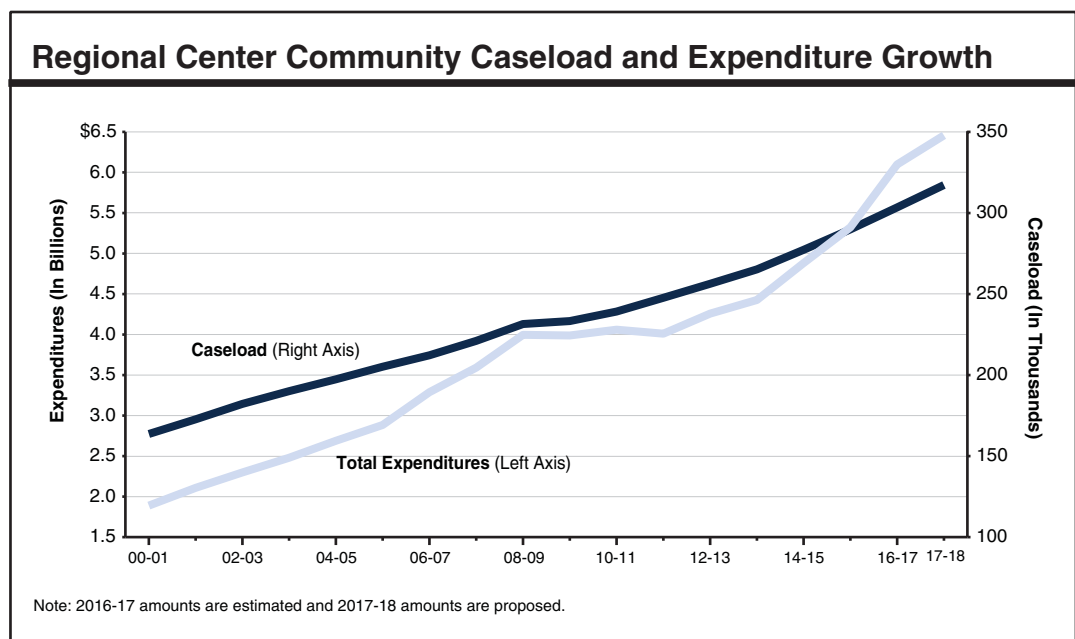


# Other Funding Pressures on Developmental Services System at Large (Continued)

- **Rising Share of Consumers With Autism.** Currently, about 35 percent of consumers are diagnosed with autism, about three-and-a-half times the share in 2000. Autism is the most expensive developmental disability to treat on average.
- **Significant Number of Non-English Speakers.** For about one-quarter of consumers, English is not their primary spoken language. This requires accommodation by RC and service provider staff.
- **Increasing Life Expectancy.** Consumers are living longer and will consequently need care longer and more intensive health care as they age. Parental caregivers may be unable to care for their aging children as they themselves age or pass away.



**RC Community Caseload and Expenditure Growth Trends.** The figure below shows the rapid rise in RC caseload since 2000-01 along with corresponding DDS expenditures (all funds).





## Issues for Legislative Consideration

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### ***Service Providers Could Miss HCBS Compliance Deadline.***

The Department of Health Care Services (California's Medicaid single state agency) and DDS continue to await federal approval of the Statewide Transition Plan, which describes how the state will come into compliance with the HCBS final rule by 2019. In the meantime, DDS has issued relatively little guidance to service providers about what compliance means and how they must alter programs to reach compliance by March 2019.

- ***LAO Recommendation.*** We recommend the Legislature require DDS to provide information at budget hearings about the nature of the requests for funding that were made by service providers last fall to access the \$15 million appropriated by the Legislature. Findings should provide insight on the nature of the requests, the severity and extent of noncompliance, and what additional resources DDS anticipates service providers will need to reach compliance.



### ***Clarity Needed on "Rate Maintenance Process" in Rate Study.***

Last year, the Legislature provided DDS \$3 million for a contractor to conduct a study of the system's complex and inflexible rate-setting structure and provide recommendations for reform. The request for proposal (RFP) that DDS recently released does not explicitly require a consideration of how the rate-setting process should account for, and adapt to, changing economic conditions and policy changes that are outside of DDS's control.

- ***LAO Recommendation.*** We recommend the Legislature inform DDS of its preference for the winning bidder to include consideration of how economic factors, such as economic downturns and regional market conditions, and policy changes might be handled in the RFP's required "rate maintenance" activity, which we assume refers to the process of making rate adjustments over time. While DDS has already posted the RFP, this issue could be addressed with prospective bidders before proposals are due in April.



***Using the Fiscal and Program Research Unit to Inform Decision-Making.***

Last year, the Legislature approved \$1.2 million and seven positions for DDS to create a fiscal and program research unit. As service delivery continues to move toward consumer choice and independence, this unit could play a critical role in helping DDS and the Legislature make data-driven policy decisions.

- ***LAO Recommendation.*** Without being overly prescriptive, the Legislature could set more specific goals for the unit to ensure it does not become overly focused on responding to routine requests for information and instead leverages its resources to inform departmental and legislative decision-making. Such goals could include: assessing gaps in service and provider capacity, identifying causes of disparities in purchase-of-service funding, and identifying alternatives to the RC core staffing formula.



***Implementation Challenges of the 2016 Rate Increases.***

Last year, the Legislature targeted \$169.5 million in increased funding to service provider staff who spend at least 75 percent of their time providing direct care to consumers. Implementation, reporting, and enforcement of the targeted rate increase has involved significant administrative work on the part of DDS, RCs, and service providers. Providers risk forfeiting funding provided to them if certain administrative requirements are not met.

- ***LAO Recommendation.*** We recommend the Legislature conduct statutory clean-up to ease reporting and enforcement requirements. Options include: relaxing the rule that requires providers to forfeit the increase if they miss the reporting deadline, extending the reporting deadline, or removing the reporting requirement altogether.