Analysis of 2014-15 Governor's Proposed Budget by Disability Rights California January 16, 2014[1]

On January 9, 2014 Governor Brown proposed a state budget for the fiscal year starting July 1, 2014.

This proposal is the first in many years to project a surplus rather than a deficit in state funds. Because the governor foresees no gap between revenue and spending "for the foreseeable future", he wants to further reduce the state's debt and, for the first time since 2007, deposit part of the surplus into the Rainy Day Fund.

While the proposed budget repays many debts, including to schools, and commits funds to "shore up infrastructure", it does not pay back the money or services which were taken away from low-income people with disabilities, including seniors, to help balance California's previous budgets. The safety net – an infrastructure of and for humans – is not mended in this budget proposal.

The state is realizing a capital gains tax revenue windfall of several billion dollars, but people whose SSI income was cut several times are receiving no increase other than the federal COLA. The budget does not restore the cut to In-Home Supportive Services (IHSS) or fully restore Medi-Cal services which were eliminated in previous years. The legislature will hold hearings on this proposed budget and in May the Governor will present the May Revise, a version of the FY 14-15 budget reflecting changes in revenues and expenditures since January 2014. The legislature must vote on the final budget by midnight on June 15.

Here are some items from the proposed budget with particular impact on people with disabilities:

[1] Information gathered from the Governor's Budget Summary (http://www.ebudget.ca.gov/2014-15/pdf/BudgetSummary/FullBudgetSummary.pdf), Senate and Assembly summaries (http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/QuickS/QSummaryJan92014.pdf and http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/Highlights%20of%20Governor%27s%20proposed%20budget%202014-15%20%28Katie%20edit%29.pdf), Mental Health America's summary (http://www.mhac.org/index.cfm) and the DDS budget highlights.

K-14 Education

The budget provides a total Proposition 98 funding level of $61.6 billion for the 2014-15 Fiscal year, an increase of $6.3 billion from the 2013-14 level. Proposition 98 funding will receive about 39% of general fund money, an increase over recent years. This percentage is determined by a Proposition 98 funding formula that is typically used when the economy is good and property tax revenues are growing.[2]

Special Education

The proposed budget provides for a 0.86% cost-of-living adjustment for special education.

Local Control Funding Formula (LCFF) Implementation

Last year the state budget created a new process for distributing K-12 funding.[3] The new process intends to give additional funds to school districts to help meet the differing needs of their students, particularly focusing on English learners, low-income students, and foster youth. Because of the passage of Proposition 30 in 2012, the schools will receive, roughly, an additional $20 billion through the 2016-17 school year, with this year's increase to be around $4.5 billion. The LCFF is where much of the additional funding will be used.

The new process starts by giving each school district a base grant based on grade level. There are then several increases to that grant, based on several factors:

- 10.4 percent to lower class sizes in grades K – 3.
- 2.6 percent to operate career technical education programs in high schools.
- 20 percent supplemental grant for English learners, students from low-income families, and foster youth to reflect the increased cost of educating those students.
- An additional grant of up to 22.5 percent to the base grant of local education agencies who have high concentrations of English

[2] http://www.lao.ca.gov/reports/2014/budget/overview/budget-overview-2014.pdf

[3] For a user friendly summary chart see: http://www.lennox.k12.ca.us/docs/LCFFPTA.pdf

learners, students from low-income families, and foster youth exceeding 55 percent of enrollment.

Funding supplements are required to be spent on the students for which they are allotted. Local districts must adopt Local Control and Accountability Plans (LCAPs), describing how they will choose to spend the money and improve outcomes. LCFF also collapses 20 different categorical programs to give schools flexibility on how to spend those funds. Some categorical funding will remain separate, such as special education and school lunch programs.

Community Colleges

Overall, the proposed budget provides $7.2 billion in Proposition 98 General Fund support for the community college system, an increase of $489.4 million, or 7.3 percent, above 2013-14 funding.

There is no new funding for the Disabled Student Program Services (DSPS). In recent years DSPS programs were cut by over 40 percent (equaling approximately $46 million), while at the same time, the number of students being served in DSPS has increased by approximately 5 percent. The reduced funding and increasing demand hampers the ability of California Community Colleges to meet their obligations to students with disabilities under the Americans with Disabilities Act and other state and federal laws.

Department of Health Care Services

Medi-Cal

Affordable Care Act (ACA) Implementation

The proposed budget assumes net Medi-Cal costs of $867.4 million ($404.9 million General Fund) in 2014-15 reflecting anticipated increased enrollment resulting from simplifications and other improvements to the program required by the Affordable Care Act.

It further assumes net costs of $6.7 billion (all federal funds) in 2014-15 to cover the costs of the expansion to Medi-Cal approved through 2013

legislation as a component of the Affordable Care Act, in anticipation of an increase in enrollment of 1.4 million people.

People with disabilities will be among the Californians who now have or will be receiving health care coverage through the ACA. The budget also includes $5.8 million General Fund for 2013-14 and $36.3 million General Fund for 2014-15 to cover the cost of forgiving provider rate reductions for services already provided since 2011. The cuts applied to the following provider groups and services: physicians, clinics, specified high-cost drugs for serious conditions, dental, intermediate care facilities for people with developmental disabilities and medical transportation. This does not exclude these providers from the cut in future years.

Coordinated Care Initiative (CCI)

The CCI involves moving dual eligibles – people who have Medicare and Medi-Cal – into managed care for both Medicare and Medi-Cal services, unless they choose to stay in fee-for-service for their Medicare benefits; moving long term services and supports (including IHSS) into managed care for dual eligible and for seniors and people with disabilities who have only Medi-Cal; and the establishment of CalMedi-Connect, which would deliver or coordinate the full range of Medicare and Medi-Cal services for those “duals” who choose to be part of CalMedi-Connect. The CCI has had several delays in starting, and is now starting in some counties on April 1. Originally eight counties were to participate, on approximately the same schedule, but because of quality, financial or technical concerns, the start is partially or wholly delayed in Los Angeles, Alameda, Santa Clara and Orange counties. Originally the CCI was projected to save considerable state funds, but these savings projections have largely evaporated, with the bulk of the currently projected modest savings coming from more tax revenue from managed care companies rather than more efficient delivery of services.

Department of Social Services

IHSS

The IHSS program provides domestic and related services such as housework, transportation, and personal care services to approximately 450,000 eligible low-income people with disabilities and seniors. These services enable the IHSS consumers to remain safely in their homes and

prevent institutionalization. The Budget includes $2 billion General Fund for the IHSS program in 2014-15, a 6.4-percent increase over the 2013 Budget. Average monthly caseload in this program is estimated to be 453,000 recipients in 2014-15, a 1.2-percent increase from the 2013 Budget projection.

In 2013, pursuant to the settlement of several lawsuits, the state cut IHSS hours, per consumer, by 8%. The cut will become 7% on July 1, 2014. The newly proposed budget does not restore those hours.

In September 2013, the United States Department of Labor announced new regulations, effective January 1, 2015, that require overtime pay for domestic workers. In addition, new requirements were added that require compensation for providers traveling between multiple recipients, wait time that is associated with medical accompaniment, and time spent in mandatory provider training.

Combined implementation of the new federal requirements is estimated to cost $208.9 million ($99 million General Fund) in 2014-15 and $327.9 million ($153.1 million General Fund) thereafter.

Overtime Limits

To control costs the budget proposes to prohibit providers from working overtime. Because the state is the third-party employer, the total weekly hours worked by a worker will be limited to 40, even if that total is worked for more than one consumer. There are several thousand workers who work more than 40 hours per week for one consumer; among that group are parents who care for their minor or adult children. Many of them share a household with the consumer and depend on the total IHSS income to maintain the household. This proposal has the potential to destabilize households and undermine consumer choice of providers – one of the cornerstones of the IHSS program.

The proposal assumes that there will be an additional 30-40 thousand more people willing to become IHSS workers and that they will be appropriate and available care providers for the IHSS consumers who lose their preferred worker.

The budget also proposes the establishment of a provider back-up system to assist recipients in an unexpected circumstance to obtain a provider for continued care when their regular provider would exceed the limitations on hours worked by continuing to provide services.

To support the prohibition on overtime, the budget proposes significant administrative costs such as to hire more social workers, process new forms for each worker to sign promising not to work overtime, establishing the back-up systems. Because of the newness of the proposal and the myriad of details not yet known, it is not yet clear how much money the governor proposes to spend to avoid spending money on overtime.

IHSS and Coordinated Care Initiative

The IHSS program is also a key component of the Coordinated Care Initiative (CCI). No earlier than April 2014, certain Medi-Cal beneficiaries residing in a county authorized to participate in the CCI demonstration will begin transitioning from the traditional fee-for-service model to a managed care model for receiving health care services, including IHSS services. Under CCI, the fundamental structure of the IHSS program will remain the same, with eligibility determination, assessment of hours, and program administration conducted by county social workers and administrative staff. For additional information on CCI, refer to the Department of Health Care Services section.

Department of Developmental Services

The Department of Developmental Services (DDS) provides services and supports to an estimated 274,000 individuals with developmental disabilities, in the current year. Approximately 1,330 of these individuals reside in state developmental centers (DCs). The Governor proposes an overall 2014-15 budget for DDS of $5.2 billion ($2.9 billion GF)[4] for the Department in 2014-15; a net increase of $221.8 million above the updated 2013-14 budget and 4.5 percent increase. In addition, this reflects an increase of nearly 8,000 individuals served in the community and a reduction of 223 individuals residing in Developmental Centers.

Developmental Centers

[4] General fund means state funding

Developmental Center Task Force

The 2012 Budget Act placed a moratorium on new admissions except for individuals involved in the criminal justice system and consumers in an acute crisis needing short-term stabilization. In addition, funding is provided to regional centers to expand and improve services to meet the needs of DC residents transitioning to the community.

Trailer bill language adopted last year required the Secretary of the California Health and Human Services Agency (Secretary) to submit to the Legislature a master plan for the future of DCs by November 15, 2013 and to submit to the Legislature, by January 10, 2014, the Administration's resulting plans to meet the needs of all current residents in DCs. The master plan, developed with a task force established by the Secretary, was issued by the California Health and Human Services Agency on behalf of the developmental center task force on January 13, 2014.[5] Disability Rights California was part of the Developmental Center Task Force.

The final report included the following recommendations:[6]

1) More community style homes/facilities should be developed to serve individuals with enduring and complex medical needs using existing models of care.

2) For individuals with challenging behaviors and support needs, the State should operate at least two acute crisis facilities (like the program at Fairview DC), and small transitional facilities. The State should develop a new "Senate Bill (SB) 962 like" model that would provide a higher level of behavioral services. Funding should be made available so that regional centers can expand mobile crisis response teams, crisis hotlines, day programs, short-term crisis homes, new-model behavioral homes, and supported living services for those individuals transitioning to their own homes.

3) For individuals who have been involved in the criminal justice system, the State should continue to operate the Porterville DC-STP and the

[5] http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/QuickS/QuickSummaryReportJan92014.pdf
[6] http://www.chhs.ca.gov/DCTFDocs/PlanfortheFutureofDevelopmentalCenters.pdf

transitional program at Canyon Springs Community Facility. Alternatives to the Porterville DC-STP should also be explored.

4) The development of a workable health resource center model should be explored, to address the complex health needs of DC residents who transition to community homes.

5) The State should enter into public/private partnerships to provide integrated community services on existing State lands, where appropriate. Also, consideration should be given to repurposing existing buildings on DC property for developing service models identified in Recommendations 1 through 4.

6) Another task force should be convened to address how to make the community system stronger.

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Certification Issues at the Developmental Centers

The Budget includes $7.2 million ($3.9 million General Fund) in 2013-2014 and $9.2 million ($5.1 million General Fund) in 2014-15 to implement the Sonoma Developmental Center (SDC) Performance Improvement Plan. The Performance Improvement Plan (PIP) was entered into on March 13, 2013 with the California Department of Public Health and the Centers for Medicare and Medicaid Services (CMS) to bring the facility into compliance with federal requirements.

The PIP addresses quality of care deficiencies at SDC that resulted in the loss of federal certification and funding for four Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) units. The budget assumes the restoration of federal reimbursements at SDC in the budget year.

Remaining Three Developmental Centers

On January 3, 2014, the state Department of Public Health announced that it had begun the process for decertifying ICF-IID units at the remaining three DCs -- Fairview, Porterville and Lanterman. Subsequently, the Department of Developmental Services (DDS) entered into an Program Improvement Plan (PIP) with the California Department of Public Health (CDPH) beginning January 16, 2014, to address deficiencies in the

Intermediate Care Facilities (ICF) at Porterville and Fairview Developmental Centers. An Agreement was reached between DPH and DDS for the monitoring and oversight of Lanterman Developmental Center to ensure services are being fully met during its closure activities. These Agreements constitute a "stay" of termination from the Medicaid/Medi-Cal Program for all of the Centers' ICF units and continues the federal funding.[7]

Lanterman Closure

The budget proposes a net decrease of $22.7 million ($12 million GF) related to closure activities at Lanterman Developmental Center.

Deferred Maintenance

The budget includes $10 million GF to address infrastructure deferred maintenance needs.

Developmental Center Population Adjustments

The budget assumes a decrease of $12.8 million ($2.8 million GF) to reflect a reduction in the number of residents at state developmental centers, excluding Lanterman.

Community Services Program

Labor Regulations and Minimum Wage

In September 2013, the United States Department of Labor announced new regulations that require overtime pay for domestic workers, effective January 1, 2015**.** These changes will require overtime pay for workers that provide such services as respite, supported living services and independent living services for regional center consumers. The Budget includes $7.5 million total funds ($4 million General Fund) to adjust for these new rules.

Chapter 351, Statutes of 2013 (AB 10) also incrementally increases California’s minimum wage to $10 per hour, effective January 1, 2016. To

[7] http://www.dds.ca.gov/PublicNotice/DCPublicNotices.cfm

accommodate the increase to $9 per hour, effective July 1, 2014, the Budget includes $110.1 million total funds ($69.5 million General Fund).

Impacts from Other Departments

The Governor's budget proposes a decrease of $3.1 million GF in the DDS budget to reflect the restoration of Enteral Nutrition and partial restoration of Adult Dental Services as a Medi-Cal Optional Benefit.

Caseload and Utilization

The Governor's budget provides a $2.4 million increase ($8.4 million GF decrease) to reflect caseload and utilization growth in the current year. For 2014-15, the budget proposes an increase of $138.6 million ($82.9 million GF).

Regional Center Operations

The Governor's budget provides a $2.1 million GF increase in regional center operations, in both the current and budget years. The increase is for case load changes and restored positions. Effective June 27, 2013, service coordinators can have a case load of no more than 62 clients.[8] If a service coordinator's caseload is higher, then each service coordinator is not supposed to have a caseload over 79 consumers for more than 60 days.[9] Additionally, because of budget changes last year, regional centers are again required to have, or contract for, expertise in the following areas: Criminal Justice, Special Education, Family Support, Housing, Community Integration, and Quality Assurance.[10]

Department of State Hospitals

The budget proposes $1.5 million General Fund to design and plan for specialized short-term enhanced treatment programs at most state hospitals, totaling approximately 44 new beds. This program is intended to provide enhanced treatment for the most violent patients and protect the safety of other patients and staff. Disability Rights California is working with

[8] Welfare 7 Institutions Code Sec. 4640.6(c)(1)
[9] Welfare & Institutions Code Sec. 4640.6(c)(1)
[10] Welfare & Institutions Code Sec. 4640.6(g)

stakeholders to ensure patients' rights are protected, if these programs are created.

It proposes $8 million General Fund to complete installation of Personal Duress Alarm System at Atascadero and Coalinga State Hospitals. The system has already been installed at Napa, Metropolitan and Patton State Hospitals.

It proposes $26.3 million General Fund to keep 137 beds at Salinas Valley and Vacaville Psychiatric Programs to serve *Coleman* patients (inmates with mental health disabilities who are part of the *Coleman* decision) during the opening of the California Health Care Facility in Stockton.

There is $27.8 million General Fund to increase bed capacity by 105 beds at Coalinga State Hospital to address waitlists for "Incompetent to Stand Trial (IST)" patients.

The budget includes $1.1 million General Fund to establish a Patient Management Unit to centralize admissions and transfers of IST patients throughout the state hospital system. Currently courts assign an individual to a specific state hospital whether a bed exists or not. This unit would be responsible for assigning patients to a hospital based on bed space and courts would no longer make the assignment. Disability Rights California is part of a stakeholder group looking at ways to address waitlists for IST patients.

There is $10 million proposed for deferred infrastructure maintenance at state hospitals.

Community Mental Health

In an effort to provide services more efficiently and effectively, 2011 Realignment shifted responsibility and dedicated funding for public safety services to local governments. In addition, community mental health programs previously funded in 1991 State-Local Realignment are now funded by revenue dedicated for 2011 Realignment.

2011 Realignment is funded through two sources: a state special fund sales tax of 1.0625 cents totaling $6.3 billion and $497.1 million in Vehicle License Fees. Pursuant to Chapter 40, Statutes of 2012 (SB 1020), these

funds are deposited into the Local Revenue Fund 2011 for allocation to the counties and are constitutionally guaranteed for the purposes of 2011 Realignment.

The Administration continues to develop an allocation for the 2011 Realignment Behavioral Health Services Growth Special Account, in consultation with county partners and stakeholders. From 2012-13 revenues, the Account has $27.9 million. The first priority for growth funds is federal entitlement programs: Medi-Cal Specialty Mental Health, including the Early Periodic Screening, Diagnosis, and Treatment benefit, and Drug Medi-Cal.

Alcohol & Drug Treatment

Changes made in mental health and alcohol and drug funding through legislation enacted in 2013 created obligations for health plans to cover "mild and moderate" mental health conditions that do not meet Medi-Cal "specialty mental health"[11] medical necessity criteria for county mental health programs and to eliminate the gaps on coverage for alcohol and drug disorders.

For 2014-15 the proposal is to make the alcohol and drug programs work as a managed care county contract program and will require a federal waiver.

Mentally Ill Parolees

The Administration proposes an increase in the Integrated Services to Mentally Ill Parolees program from 600 slots to 900.

[11] Specialty mental health services are Medi-Cal entitlement services for adults and children that meet medical necessity criteria, which consist of having a specific covered diagnosis, functional impairment, and meeting intervention criteria. Examples of specialty mental health services include, Adult Crisis Residential Services, Adult Residential Treatment, Crisis Intervention, Crisis Stabilization, Day Rehabilitation, Day Treatment Intensive, Medication Support, Psychiatric Inpatient Hospital Services, Therapeutic Behavioral Services, Therapy and Other Service Activities, and Targeted Case Management.