JOINT OVERSIGHT HEARING TESTIMONY
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Oversight of California's Regional Centers: Ensuring Integrity, Transparency, and Best Practices in a Challenging Fiscal Environment

Introduction

The system of services that was created within the state of California with the passing of the Lanterman Act is still unparalleled anywhere in the United States and the basic concepts and systemic ideologies that the Lanterman Act was founded on still hold true today; this is not a disputed fact. However, in the 40 years since the inception of this piece of landmark legislation, our fiscal circumstances, the number of consumers served, and the needs and types of supports and services for the population has changed immensely. At its inception, the Regional Center system provided services to thousands of consumers with a budget in the millions of dollars. Today, this system has grown to hundreds of thousands served with a budget in the billions. As this amazing system has grown, the twenty-one Regional Centers have grown with it. It was once said that strength and growth only come from continuous effort and struggle. We are once again at a crossroads and it would appear the system has turned its focus onto new issues and is ignoring the basic components the Lanterman Act was founded on.

History

It has now been over a year since ResCoalition happened to see that the Committee on Accountability and Administrative Review was having a hearing regarding Regional Centers. At this hearing, concerns arose about issues within Regional Centers. The Department of Developmental Services (DDS) assured the panel that there were no problems and that their data showed everything was copacetic. The Association of Regional Center Agencies (ARCA) also testified at this hearing. They reiterated there were no issues and that they were fully transparent, all anyone had to do was ask for information, and it would readily be provided. We were shocked. In our hands we had letters from 14 different Regional Centers that all said the same thing, "thank you for your request for information but we are private not for profit entities, thus we are not required to provide any information." These letters came after a meeting with the DDS in which we were told they did not collect the specific data we were seeking and suggested we should ask the Regional Centers directly. The transparency of the system was the DDS saying to ask the Regional Centers and the Regional Centers saying they did not have to and would not share any data with us. Yet, here we sat as the ARCA and the DDS sat side by side talking about how transparent and open they truly were. Their statements during this hearing compelled us to act.

Transparency/PRA & AB2220

The BSA audit was specifically mandated to "determine if requests made in the past two fiscal years by service providers for public records were satisfied in a timely manner, within the requirements of the law, and in accordance with the best practices." In 87 pages, the BSA audit only refers to this mandate in one paragraph, page 15, paragraph 3. This paragraph it states " . . . we determined that the only information that the Regional Centers are required to make public is limited to employment contracts and that the Regional Centers are not required to maintain, and do not maintain logs of public information requests or track how such requests are fulfilled." This is intriguing because the ARCA

estimated that it would cost Regional Centers $8million dollars to comply with the Public Records Act bill (AB2220 – Silva) which was supposedly based on their estimates from requests made. Please note that the BSA report does not indicate whether this failure is in accordance with best practices; we contend that it is not. It is clear that the current system of checks and balances is inadequate to oversee the Regional Centers who are performing poorly. Mandating Regional Centers to fulfill requests for public information would add another layer of oversight that would also serve as a compelling component to underscore the acts of nepotism and poor management that the BSA audit highlights. In addition, it would also allow entities to better understand and illustrate some of the systemic trends within the system such as negotiated rate facilities.

Data obtained from DDS Fact Books 98-2008 suggest:

2001		2007	
Beds	Cost	Beds	Cost
26851*	$458,263,000	27133*	$677,171,770

*The Out-of-Home category includes the care, supervision, and training for individuals in community care facilities

This data presents some significant problems, between 2001 and 2007 there was only a net increase of 282 beds. However, this same data suggests there was an increase of almost 47% in funding to community care facilities. Considering today's rates for community care facilities ARE THE SAME as they were in 2001, where is this money that the DDS represents we are receiving? This closed system has led to concerns that preferred providers (such as those with special relationships, former employees, those willing to use Regional Center real estate, etc.) are able to get preferential contracts. If the DDS does not have the ability to generate data that explains simple cost containment issues, Regional Centers must be compelled to share basic demographic data on how they are spending tax payer monies.

This poor data sets the foundation for a second issue, confronting the problem of negotiated rate facilities. Regional Centers are increasingly using negotiated rate residential facilities. These programs are not subject to the same fiscal restraints as regular community care facilities nor are there any uniform reporting requirements to illustrate their use. The funding cap (based on Legislative set ARM rates) on traditional community care facilities is $5159/month, the median rate on negotiated rate homes is double that with some programs receiving up to $20,000/month. Yet, some Regional Centers are ONLY opening negotiated rate programs at this time. Regional Centers have admitted they are doing this because the ARM rates are inadequate. Our efforts to get data on this issue resulted in the DDS admitting they did not even know how many negotiated rate programs there were or what their funding rates are. Additionally, Regional Centers have stated in writing that as private nonprofit entities, they are not required to share this information.

This is effectively creating a hidden second system with a minority of consumers getting adequate funding while the majority suffering from chronic underfunding. It is important to note that ResCoalition is NOT against negotiated rate programs – we are against their use without full disclosure. This creates an invalid perception of increased or adequate funding while creating a two-tiered system that allows the majority of consumers in residential care programs to receive inadequate funding.

<u>BSA Audit</u>

Findings of the BSA audit highlight and support many of ResCoalition's concerns, which include:

ResCoalition submitted a Public Records Act (PRA) request to the DDS in an effort to determine how many negotiated rate Community Care Facilities (CCF) there were across the state and the rates negotiated for them. However, the DDS was unable to provide specific data claiming they only obtain data from the Regional Centers in aggregate and we were directed by the DDS to request the information directly from the Regional Centers. Subsequently, this information was requested from each of the 21 Regional Centers. The requests were denied by the Regional Centers citing their non-profit status and their immunity to the PRA (copies of letters of denial may be obtained from ResCoalition upon request).

Only after several requests, was ResCoalition able to obtain data from the DDS that allowed us to determine that as of last year, over 8% of residential homes were funded higher than the Legislature has approved. These 8% of homes are "off the books" and consume an estimated 38% of residential funds (about $300 million dollars).

The BSA audit highlights that the DDS has limited legal authority and oversight of the Regional Centers citing the 1985 California Supreme Court decision (page12, para 1). Therefore, it is important to recognize that the Regional Centers are regularly getting around standardized residential rates set by the Legislature by opening "negotiated rate" programs despite the DDS and their claims of oversight.

The state auditors also note that these negotiated rate programs are often non-competitively bid, and ResCoalition has evidence there have been cases of preferential treatment occurring. Additionally, there is evidence to suggest that Regional Centers are granting these negotiated rates to residential programs that agree to lease properties from Regional Center affiliated real estate non-profits, which brings in concern of conflict of interest issues, also noted in the audit.

Suggestions

It is vital that mechanisms to ensure transparency of the Regional Center system are put into place. These mechanisms should include public access to information that is not confidential by law, follow up on the BSA recommendations, resolution on the DDS/BSA disagreement of recommendation requiring oversight, and clarification of the ARC vs. DDS legal precedent.

Additional steps should be taken to resolve the residential care negotiated rate issue and accountability concerns within this particular sector of the industry. These include transparency within the Regional Center system to data regarding negotiated rate facilities and provisions to ensure the DDS approval loophole is not a viable option for Regional Centers. Furthermore, ResCoalition has several specific recommendations that would require simple changes to Title 17. These changes would address the regulation of residential services and the necessity of them to be vendored at Legislature set Adjusted Rate Model (ARM) rates and then additional services and supports would be provided to the vendor contract based on the Individual Program Plan (IPP) goals and objectives for each individual residing in the facility.