



State Council on Developmental Disabilities



STATE OF CALIFORNIA

Edmund G. Brown Jr.  
Governor

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February 14, 2014

Ms. Sarah Newell, Project Officer  
Ms. Rita Stevens, Project Officer  
Administration on Intellectual and Developmental Disabilities  
Administration on Community Living  
Washington, DC 20201

**Subject: California State Council  
Response to 2013 MTARS Findings**

Dear Ms. Newell and Stevens:

In November of 2013 the California State Council on Developmental Disabilities received the Monitoring and Technical Assistance Review System (MTARS) report that documented the findings from the review team's site visit of January 2013. The report documented historical and current compliance findings of Council operations relative to the requirements of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) and other concerns. The letter informed us that as a result, and because of the historical nature of those findings, that the Council was being placed on high-risk status with additional requirements to be instituted. The additional requirements included grant fund distribution on a cost-reimbursement basis, the formulation of a Corrective Action Plan (CAP) and regularly scheduled progress monitoring by the Administration on Intellectual and Developmental Disabilities (AIDD). We take seriously our responsibility to promptly and thoroughly correct the identified areas of noncompliance. We are confident this resoluteness is demonstrated in the attached Corrective Action Plan (Attachment A, with other referenced attachments) and specifically the Proposed Legislative Concepts (Attachment B) for changes to state statute. These attachments demonstrate the concrete steps we have taken and will continue to take to ensure that the California Council is not only in compliance with the federal DD Act but remains a leader in the nation for advocacy, capacity building, and systems change for people with developmental disabilities.

To respond to the report's findings, the Council formed an "MTARS Committee" comprised of Council leadership including our federal partners as well as representatives from the Governor's Office, from our Designated State Agency and staffed by the Interim Executive Director, Deputy Director and Staff Counsel. This

*"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."*

committee has met frequently, worked hard and will continue to meet regularly to address the MTARS report findings. The MTARS Committee makes recommendations to the Executive Committee and the full Council for implementation of actions and will continue to oversee the Council's response and implementation of the CAP to the AIDD report.

The Corrective Action Plan (Attachment A) constitutes our current and detailed full reply to the 2013 MTARS report's findings and the recommendations for improvement of Council functions and is organized by the specific compliance findings of "Appendix A" of the AIDD report. The attached "Proposed Legislative Concepts" (Attachment B) presents our current recommendations for bringing California statute into compliance with the DD Act. We look forward to working with you to ensure that the High Risk Status can be removed as soon as possible so that the Council can devote its full energy to implementing the Corrective Action Plan, pursue the proposed legislative changes and continue to implement its State Plan.

### **State Legislation Initiated by the California State Council**

Much of the MTARS review findings were associated with identified conflicts between California's Lanterman Act with the DD Act, specifically relating to the independence of the Council in regards to hiring, budgetary controls, and Area Board functions. To address these issues, the Council has initiated proposed legislation, AB1595, which was introduced on February 3, 2014 by Assemblymember Wesley Chesbro. Our intention is to change state law to resolve conflicts in state statute with the requirements of the federal DD Act. We believe we can make needed changes in statute that at the same time strengthen the ability of the Council to drive systems change at the state and local level, and respond to the needs of California's diverse local communities.

Legislation will address issues that are separately discussed under the "California State Council Actions to Address Four Historic Area of Compliance" and sub-headers following this section. We have also consolidated the legislative proposals in one place for your review in Attachment B. Because this legislation is central to our response, we discuss the timing of its creation and implementation here.

As is common with the introduction of legislation in California, the bill currently contains intent language. We anticipate that the Council will approve more detailed legislative concepts at its March meeting with on-going stakeholder involvement and that the language will be added to the bill shortly after that time so that it can be heard by the Assembly Policy Committee in April. The Council intends to continue to engage, communicate and listen to feedback from communities across the state as well as educate our constituency on the need for reform and vision for the future of Council operations. Through this public process, we can assure people that the Council and the Council's regional offices will grow stronger from these changes, and that we will be better able to pursue our mission to support people to achieve

self-determination, independence, productivity and inclusion in all aspects of community life.

The Council has already started an initial round of community forums and listening sessions planned for February and March. The Council will take further testimony at the March 20, 2014 Council meeting and plans to take action on the legislative concepts identified in Attachment B. Council action on March 20<sup>th</sup> will allow detailed legislative language to be introduced in time for state legislature Policy Committee hearings in April. This process is intended to result in eventual signature of the proposed legislation by the Governor by September 30, 2014. The Council will share the detailed bill language with AIDD when that becomes available.

### **California State Council Actions to Address Four Historic Areas of Compliance**

AIDD provided additional clarity to the Council by summarizing concerns in an address to the Council at the Council meeting held in January. We wish to thank you for this input and provide the following summary of our on-going actions to those concerns as a way to demonstrate we are listening and are committed to respond appropriately.

#### **Budget**

As discussed under "State Legislation Initiated by the California State Council", proposed legislation will give the Council the necessary authority to budget and control its funds, including allocations to the State Council's regional offices (now called Area Boards).

The Council has taken significant action to implement changes in response to the non-compliance findings in fiscal and administrative monitoring and controls. The Administrative Committee has met twelve times since the January 2013 MTARS visit and the issuance of the report. Through the work of this committee the Council has implemented processes and methods to provide oversight, guidance and direct input into budgetary and fiscal matters of the Council, including grants. In our January 6<sup>th</sup> letter, we detailed the implementation of accounting and expenditure controls. We are implementing the contracting and procurement practice recommendations from both an audit by the state Department of Finance, as well as an additional audit the Council requested from the Department of Health Care Services Financial Audits Branch. The recommendations led to the development and implementation of a work plan that the Council has been overseeing through its Administrative Committee.

#### **Hiring Authority**

The DD Act stipulates that the Council hires the Executive Director of the Council, and the Executive Director hires the staff. As discussed in the AIDD report, some provisions of California law conflict with that authority. State law gives the Governor

appointment authority for senior staff positions that report to the Executive Director. In response to the current review, the Brown Administration has agreed to relinquish the Governor's appointment authority for all Council staff positions. We anticipate that AB 1595 will remove the authority of the Governor to appoint any Council staff positions.

State law also conflicts with federal law by limiting the hiring authority of the Executive Director in regards to the Directors of SCDD regional offices. We anticipate that AB 1595 will remove these provisions and specify that the Executive Director of the Council shall have the authority to hire all Council staff.

## **Membership**

As noted in the AIDD MTARS report, long-term vacancies on the Council result from multiple factors. Our Corrective Action Plan will simplify the appointment process, amend state statute to comply with the DD Act, resolve issues around when a Council member's term begins, and improve communications between the Governor's Office and the Council. The Corrective Action Plan (Attachment A) and the summary of legislative concepts (Attachment B) provide more detail, but the most significant proposed legislative recommendations are discussed below.

The Council is establishing a Membership Committee in bylaws that will coordinate with the Governor's Office and make recommendations on appointments to Council and notify the Governor six months in advance of a pending vacancy.

Under current state law the Governor does not have the authority to directly and independently appoint all Council members; rather, for the 13 Area Board members on the Council, he must select an individual from recommendations made by the Boards of the Area Boards. If the Governor does not agree with the recommendations made by those Boards, he does not have the authority to appoint someone else. This can and has led to long-term vacancies. AB 1595 is intended to streamline the appointments process by providing that the Governor shall have the sole authority to appoint all 20 "non-agency" Council members while ensuring that those members reflect the geographic, ethnic and language diversity of the state.

We understand that the authority of Council members from the Area Board regions to vote to approve the Council budget may be perceived as a conflict of interest due to the fact that those members are also members of the Boards of those regions. The statutory changes to the Council appointment process described above will also help ensure that the Council is free from potential conflicts of interest. This will be accomplished by changing the current membership requirement of 13 Governor appointed Area Boards members and seven "at large" members to 20 "non-agency" members who will reflect the geographical diversity of the state. For a state as large and diverse as California the State Council is unwavering in its commitment to address the geographic, racial and ethnic diversity of the state. To this end it is

proposed that of these 20 non-agency members, at least one must be from each of the geographic areas of the Council's regional offices.

### **State Council Leadership and Activities**

California is not only racially and ethnically diverse and geographically wide ranging but is also the most populous state in the union. We are pleased that AIDD specifically acknowledged that having a local presence is critical to the work of our Council. For example, the Council can more wisely prioritize and promote systems change at the state level by being in touch with what is happening throughout the state. A regional presence for the Council is also critical for implementation of state level systems change; for example, with regional offices we can help local communities understand the implications of the new Employment First Policy, legislation the Council championed and passed in 2013. Finally, a regional presence is needed to promote systems change and coordination at the local level. In these ways, our regional offices are essential to the implementation of the State Plan.

The proposed legislation seeks to ensure, as required by federal law, that there is one State Council and State Plan, whose work is carried out through its headquarters and regional offices (now called Area Boards) operated by the Council. AB 1595 will ensure that the Council shall have the authority over the organizational structure and full authority on how it uses its funds in establishing, maintaining and operating the regional offices to carry out the work of its State Plan.

The proposed legislation is intended to specify that In order to ensure that the State Plan is responsive to the needs of California's diverse geographic, racial, ethnic and language communities, the Council and its regional offices, as appropriate, shall obtain input from consumers, families and other stakeholders throughout the various regions of California. We propose transforming the appointed Area (advisory) Boards to become State Council Regional Advisory Committees that reflect the geographic, disability, and racial, ethnic and language diversity of the local region. These committees will advise the Council's regional offices on local issues, providing input to the Council for the formulation of the State Plan, and reporting on State Plan implementation.

The Council is determined to address and resolve long-standing issues that were documented in the MTARS report. We seek through these changes not only to come into compliance with federal law, but to enhance coordination of Council operations across the state. We benefited greatly from the advice your team gave during the site visit on how the Council and its regional operations need to operate more as a cohesive coordinated entity. We look forward to working with you in a spirit of collaboration through continued monthly reports and quarterly calls until we can resolve the outstanding issues. Please let us know if you have any questions or if we can be of any assistance to you in the review of this request.

Sincerely,



Jorge Aguilar  
Chairperson



Roberta Newton  
Interim Executive Director

cc: Mona Pasqual, Governor's Appointments Secretary  
Mike Wilkening, Undersecretary of Health and Human Services Agency  
State Council Members  
State Council Staff

## ATTACHMENTS

Attachment A: Corrective Action Plan  
Attachment B: Legislative Concepts  
Attachment C: AB 1595 (Chesbro), As Introduced  
Attachment D: Council's February 2014 Draft Updated Bylaws  
Attachment E: MTARS Committee Roster and Agendas  
Attachment F: Council Roster Effective February 6, 2014  
Attachment G: Documentation of State Plan Development Process  
Attachment H: CRA/VAS Interagency Agreement  
Attachment I: CRA/VAS Roster  
Attachment J: 2013 CRA and VAS Annual Reports  
Attachment K: CDSS Interagency Agreement and Supplemental CDSS Information  
Attachment L: Cycle 35 (FY 2013) and Cycle 36 (FY 2014) Grants  
Attachment M: Council Self-Advocacy Activities  
Attachment N: Council's 2013 Employment First Report  
Attachment O: Activity Reports Form and Samples  
Attachment P: 2013 PPR  
Attachment Q: Administrative Committee Roster  
Attachment R: Administrative Committee Packets  
Attachment S: November Calstars Report  
Attachment T: FISMA Report  
Attachment U: 2014 Administrative Work Plan  
Attachment V: Department of Health Care Services Audit Report  
Attachment W: 2013 and 2014 SCDD Work Plans  
Attachment X: SCDD Draft Contract Manual  
Attachment Y: Five (5) Duty Statements