DEPARTMENT OF DEVELOPMENTAL SERVICES
1600 NINTH STREET, Room 240, MS 2-13
SACRAMENTO, CA 95814
TDD 654-2054 (For the Hearing Impaired)
(916) 654-1897

March 22, 2012

Terry DeBell, Co-President
Dorothy Juarez Fulco, Co-President
Parents Coordinating Council and Friends
P. O. Box 4408
Diamond Bar, CA 91765

Dear Terry and Dorothy:

This letter is in response to your correspondence of February 15, 2012, regarding concerns of the Parents Coordinating Council (PCC) and family members of Lanterman Developmental Center (LDC) residents about the LDC closure. First, I want to thank you for taking the time to express your concerns and allowing the Department of Developmental Services (Department or DDS) to respond. For ease of reference, I have included your requests in bold prior to our response.

PCC requests that DDS clearly explain the Waiver policy [for the 4.25% payment reduction] as it applies to Lanterman movers, and how that policy differs from what was afforded to Agnews' movers.

The Department's priority for LDC residents is meeting their needs as they transition into the community. To ensure coordination in the LDC closure process, the Department meets monthly with the Southern California regional center directors. The Department is committed to working collaboratively with the regional centers, as they work with providers, families and consumers, to ensure the safest transition for individuals living at LDC.

However, the Department must work within the statutory authority provided for approving exemptions to the 4.25% payment reduction. This language requires regional centers to reduce all payments for services and supports "…unless the regional center demonstrates that a nonreduced payment is necessary to protect the health and safety of the individual for whom the services and supports are proposed to be purchased, and the State Department of Developmental Services has granted prior written approval."

We can understand how the health and safety exemption (exemption) request may appear different for LDC and Agnews Developmental Center (ADC) closures. The timing of exemption requests for the ADC closure is critical in understanding the Department's adherence to the statue for both closures. The exemption requests from San Andreas Regional Center, Golden Gate Regional Center and the Regional Center of the East Bay were submitted at the end of ADC closure (February/March 2009). Two critical points: 1) The payment reduction of 3% (and subsequently another 1.25%), occurred after the consumers moved from ADC; and 2) All service provider rates for the ADC closure were finalized, based on the needs of the consumer at the time of placement, prior to the payment reduction statute. Since all of the individuals had already moved to the community, the majority of the exemption requests were submitted to the Department at one time. Upon the Department's review of the detailed list of individuals and related services, an exception was approved in September 2009.

It is also important to clarify the perception that "*any request for a waiver can only be made after the placement*…" The request for an exemption can be requested prior, or after, an individual moves from LDC to the community. There is nothing precluding the Department's ability to approve the request prior to an individual moving. Understandably, the exemption can not be requested before the rate has been negotiated with the regional center. That is where we are today, many of the regional centers and providers have not negotiated their final rates for the LDC closure. Since the regional center and providers are in the process of negotiating rates it is anticipated that the rate will be established to meet the need of the individuals. In the unique instances that the provider and regional center believe that an individual's health and safety is at risk, based on the supports that can be provided under the approved rate, the Department will give careful review and consideration to the request.

In summary, as with ADC closure, the Department will carefully consider each health and safety exemption request for individuals moving from LDC. To date, four such requests, based on individual needs, have been approved for consumers moving from LDC and two are pending review.

It is important to note that the Department's budget assumes the 4.25% payment reduction ends in June 2012, assuming the Department can identify savings to achieve an overall budget reduction of $200 million General Fund. We greatly appreciate CASH/PCR's participation in the budget workgroup meetings to identify savings proposals.

DDS please explain what policies or provisions are in place to ensure that the state staffing program will mirror that of Agnews, along with a projected timeline for the implementation of the program.

We understand the ability to hire state staff is an important option as part of the LDC closure plan. The Community State Staff (CSS or State Staff) program, as recommended by the Department in the closure plan adopted by the Legislature, has been implemented at LDC. The Department has worked with the State Department of Personnel Administration to establish agreements with the appropriate union bargaining units to support the program. Interested parties can work with the Department to develop contracts, job descriptions and employment bulletins to recruit and select Lanterman employees for the program. It is important to note that the statute authorizes the use of state staff by community providers, but does not require the providers to use state staff. Statute Welfare and Institutions Code (WIC), Section 4474.2 states the following: "…the department may…provide its employees to assist in the operation of any facility…" and "[t]he department may contract with any entity for the use of the department's employees to provide services…" However, the provider's rate is not adjusted to accommodate the cost of the state employee. The difference between the ADC and LDC State Staff programs is that statute limits the LDC program for up to a two-year period following transfer of the last resident from the facility, unless statute is enacted to delete or extend this time period.

The concern expressed in your letter that the provider's ability, or inability, to hire state staff due to the 4.25% rate reduction is understandable. For LDC closure, the regional centers and providers have the same opportunity to negotiate rates as the providers for the ADC closure. However, just after most of the rates for ADC closure were negotiated, statue was changed to establish a median rate cap for services where the regional center negotiates the rate. Any new development of a negotiated rate service must adhere to the statewide or regional center median rate, whichever is lower. However, in the instance of many of the specialized homes, such as the newly developed Adult Residential Facilities for Persons with Special Health Needs (ARFPSHNs, or 962 homes), the negotiated rate is based on the costs established by the providers for ADC. When the ARFPSHN rates were established, the Department based the assumption for employee wages on comparable wages in the private sector. For the ADC closure, the providers who hired state staff were able to do so under rates comparable to the negotiated rate cap. It is important to note that it is the provider who ultimately determines the circumstances under which they want to hire state staff and/or private sector staff. When the provider does hire a state employee, the state staff receives their paycheck from the State of California and, in turn, the provider is billed, and reimburses, the State for the full cost of the employee.

The Department remains committed to the CSS program. To support the LDC Community State Staff program, the Department's budget was increased to address the initial cost of the program in the current year. The Governor's Budget, released in

January 2012, increased this amount for Budget Year 2012-13 to ensure the availability of the program. The majority of community resources for LDC closure are currently under development. Utilization of the CSS program by providers is expected to increase as more community resources are finalized.

PCC request that DDS <u>clearly</u> explain any restrictions on start-up funding for service providers that may be different from what occurred at Agnews.

The overarching difference between the development of resources between ADC and LDC closure was the State's ability to secure bond financing for housing. As a result of the bond financing there were contractual differences in the development of community housing resources. That said, the Department remains committed to the same level of quality of community resources for the LDC closure and has approved Community Placement Plan funds for regional centers to use for property development and provider start-up funding.

Under the authority of WIC, Section 4418.25, the Community Placement Plan (CPP) provides the necessary resources for regional centers to develop services and supports for individuals to move from a developmental center. Start-up funds are awarded to a service provider in response to a regional center's need for resource development. The start-up proposal is the process in which the provider outlines how they intend to utilize the start-up funds, if awarded. Upon an award of the start-up funds a service contract is negotiated, between the regional center and the service provider, to outline the terms and conditions for the use. Start-up funding <u>does not</u> limit the provider to "30 days of operation". The provider is approved for a set amount of start-up funds and through their approved proposal and planning, with the regional center, it is determined how they allocate and use their start-up resources. It is incumbent on the service providers to effectively manage the development of their home and/or service and the start-up funds. To further clarify, neither statute nor regulations require that a licensed residential home be fully staffed prior to the first consumer moving into the home, as stated in your letter. Rather, the provider must staff according to the required staffing levels on a <u>per consumer</u> basis. The regional center cannot pay for services that are not provided to a consumer. As consumers prepare to move into the community the provider should add and train staff accordingly. In the case of ADC closure, every attempt was made to ensure staffing was available at the time the home became available for occupancy. We learned from the ADC closure that delays in the development of housing resulted in providers being fully staffed far in advance of any consumer services. To ensure the State's limited resources are available for direct services, it is imperative that staffing costs more closely align with the occupancy of the homes. CPP start-up funds are intended to augment the service provider's own funds to develop additional community resources.

The Department is very impressed with the level of compassion, and the quality of services, being developed by service providers for individuals moving from LDC. We are confident that the start-up funds that have been requested, and subsequently allocated, coupled with well planned development, can adequately support the establishment of the resources. We recognize that the start-up phase is not always easy, but again, with proper coordination and planning, it is reasonable and attainable under current statute. The Department remains committed to the successful transition for individuals moving from LDC and will continue to work the regional centers and providers, within statute, in modifying their CPP plans as unexpected delays occur.
We hope this letter answers your questions and helps provide assurance that you have our support that through collaboration and careful planning we can develop quality, and person-focused services and transitions for the LDC closure. We understand this is a challenging process and as a parent coordinating council, we applaud your tireless efforts to ensure that the best services are offered for your family member.

If you have further questions, please don't hesitate to contact me or any member of our executive team. We look forward to working closely with you throughout the closure process.

Sincerely,

TERRI DELGADILLO
Director