A comparative analysis of the California Regional Center: Fair hearing process for individuals with developmental disabilities

Deborah Kay Crudup

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A COMPARATIVE ANALYSIS
OF THE CALIFORNIA REGIONAL CENTER
FAIR HEARING PROCESS
FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

A Project
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Public Administration

By
Deborah Kay Crudup
June 2000
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OF THE CALIFORNIA REGIONAL CENTER
FAIR HEARING PROCESS
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Approved by:

David Bellis, Ph.D., Chair,
Public Administration

Brian Watts, Ph.D., J.D., Associate Professor
This graduate research project in public administration is a comparative analysis of the changes to the Fair Hearing process for Consumers of the regional center system. These legislated changes were implemented as a result of noncompliance citations made against the State of California during an audit of the Home and Community Based Services Waiver (HCBS) participants. This project examines: 1) the increased cost of the provision of ancillary services for due process; 2) the number of hearings proceeding to a formal hearing with an Administrative Law Judge; 3) the period of time needed to bring cases to culmination; and, 4) the impact of the revised hearing Process on hearing outcomes. The study reveals a lack of available data necessary to adequately analysis and provide recommendations for possible needed legislative change. It was found there was a significant increase in cost for ancillary services in the revised process. However, the the percentage of hearing requests that proceed to formal hearing and the age of cases has not changed significantly. Further, the revised Process has had no impact on hearing outcomes.
ACKNOWLEDGMENTS

The completion of a research project is the product of many individuals, not just the author. I would like to acknowledge and thank the following individuals for their support and assistance with this project: Mark Paxson, Department of Developmental Services for returning my phone calls so promptly and providing needed statistics. The Association of Regional Centers Agencies (ARCA) for valuing my opinion and including me in numerous discussions regarding the Fair Hearing process changes. Terry Bremer of Alta Regional Center for commiserating about the Process and brainstorming problem areas that eventually developed into this project. Frances Herbert for sharing her skills and knowledge and honing my writing skills. The staff at Inland Regional Center for their encouragement and support throughout the Project.

A special note of appreciation to Dr. David Bellis and Dr. Brian Watts for their time, efforts and comments on the Project. Especially for their patience with my many telephone calls and questions.

Last and most important, to my husband Kris for reading the first agonizing pages, cooking meals, delivering and picking up my revisions and your words of encouragement. Your support has made this finished product possible.
To the Regional Center Consumers

and Their Families
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CHAPTER ONE
THE ISSUE
INTRODUCTION

This graduate research project is a comparative analysis of the impact made by changes to the Fair Hearing Process (Process) for individuals with developmental disabilities who receive services from the system of regional centers in California. These changes were effective January 1, 1999 as a product of California Senate Bill (SB)1038 (1998) and a portion of the California Budget language of 1998. These changes were initiated in response to the corrective action plan developed by the Department of Development Services (DDS) as a response to the non-compliance citations issued by the Health Care Financing Administration (HCFA) in their review of the State of California’s participation in the Home and Community Based Services Waiver (HCBS) program.

This study has been initiated as a review of a privatized public service because of the significant increase in the cost of providing due process to the individuals served under the regional center system. As with much change in the administration of public services, the common pattern is for information to be inadequate, alternatives to be unidentified or unappraised. More often than not, we appear to drift into solutions, or expedients, forced by
circumstances to take action even before having obtained any clear picture of the complexities of the problem. A pessimist might state that we react to crisis by sowing the seeds of new crises as yet unforeseen. (Ritchie, 1989)

In the program under investigation in this graduate research project, the changes made to the Process were developed by a group of stakeholders without adequate information and without the participation of the "process people." The "process people" would be those individuals who could project the impact of the new Process in relationship to cost and relationship to the individuals the Process is intended to serve.

The purpose of this study is to analyze and compare the impact of these procedural changes on: 1) the cost of delivery of the due process; 2) length of time it takes to process a fair hearing request; 3) the number of hearings that proceed to a formal hearing; and, 4) the impact on hearing decisions. This information will be used to assist DDS and the other stakeholder agencies in proposing new legislation which will refine the Process. The current research will also assist in the development of potential legislation which will allow the Process to continue to meet the requirements of the Waiver, be effective for the Consumer, as well as cost effective to the taxpayer.
In 1974, the Lanterman Developmental Disabilities Act (the Act) was passed. The Act has been promulgated as California Welfare and Institutions Code (W & I), Divisions 4.1 through 4.7. The Act created a service system of state agencies to ensure the delivery of services to the developmentally disabled residing in the State of California. Prior to the passage of the Act, services for developmentally disabled were provided by the Department of Developmental Services (DDS), a state agency. The Act of Developmental Services (DDS) is a state mandate of both federal and state law. The Act determined the specific population to be served, the methodology for the provision of services and created a system of state-wide agencies to ensure the delivery of quality services, the mandates of both Federal and State law were met in the delivery of those services and the rights of individuals were updated.
(HCFA) completed an audit of the HCBS Waiver functions and found California to be out of compliance with it's Waiver contract with the federal government. California instituted a plan of correction which included extensive legislative change to the due process/fair hearing procedure for regional center consumers. The purpose of this study is to analyze and compare the impact of these procedural changes on: 1) the cost of delivery of the due process; 2) length of time it takes to process a fair hearing request; 3) the number of hearings that proceed to a formal hearing; and, 4) the impact on hearing decisions.

THE LANTERMAN DEVELOPMENTAL DISABILITIES ACT
SERVES A SPECIFIC POPULATION

The Act has defined the population to be served as individuals with developmental disabilities. A developmental disability is defined in W & I § 4512 (a) as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment, similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.
In addition, this definition is further clarified in California Code of Regulation (CCR), Title 17, Section 54000(c) to exclude individuals with a conditions that was "solely psychiatric in nature . . . or solely a learning disability . . . or solely physical in nature . . . ."

**THE ACT HAS PROVIDED PRIVATIZED SERVICES FOR THE DEVELOPMENTALLY DISABLED THROUGH A SYSTEM OF REGIONAL CENTERS**

Section 4620(a) & (b) of the Act states:

... the state shall contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, to the end that these persons may have access to the services and supports best suited to them throughout their lifetime. It is the intent of the Legislature in enacting this division that the network of regional centers for persons with developmental disabilities and their families be accessible to every family in need of regional center services. It is the further intent of the Legislature that the design and activities of regional centers reflect strong commitment to the delivery of direct service coordination and that all other operational expenditures of regional centers that are necessary to support and enhance the delivery of direct service coordination and services and supports identified in individual program plans.

The Legislature finds that the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies. Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

The Act created twenty-one (21) regional centers
(service agencies). Each of these service agencies serves a geographic catchment area. For example, Inland Regional Center (IRC) provides services for individuals who reside in San Bernardino and Riverside counties. The legislative intent was to provide local centers of contact for Consumers which would develop services based on the needs unique to each regional center area and Consumer base. Each regional center acts as a case coordination agency. The regional centers are mandated by W & I Code § 4640.7(b) to provide a Consumer Services Coordinator (CSC) "... who is responsible for providing or ensuring that needed services are provided to the consumer..." The services are identified through the Individual Program Plan (IPP) process. This process is an interdisciplinary one, facilitated by the CSC, in which family, friends and professionals meet with the consumer to develop a life plan based on the needs and desires of the developmentally disabled individual. The IPP is the contract between the consumer and the regional center for the provision of services. These services defined in W & I § 4512(b) may include, but not be limited to diagnosis, evaluation, treatment, personal care, day programs, domiciliary care, special living arrangements, physical, occupational and speech therapy, training, education, transportation, advocacy and a wide variety of
services necessary to assist consumers in living a quality life. These services may only be funded by the regional center as a payer of last resort. Only after the regional center staff identifies and pursues all governmental and private sources of funding on behalf of the consumer may the regional center consider providing funding for services. These services must meet a need of the Consumer and must be provided in a cost effective manner. [See W & I §4648(a)(8) & §4659(a)].

Each of the twenty-one regional centers is a separate, private nonprofit entity governed by a Board of Directors directly responsible for the operation of that service agency. The Act requires that the Board of Directors for each regional center consist of 50% community representatives and 50% individuals with developmental disabilities or parents or legal guardians of individuals with developmental disabilities. The Legislature intended the local community share equally with the consumers the responsibility for providing appropriate services for its disabled citizens.

Further, the Act specifies in Section 4622 that the State contract only agencies whose governing boards conform to the following:

a) . . . be composed of individuals with demonstrated interest in, or knowledge of
developmental disabilities . . .; b) . . . be composed of individuals with . . . legal, management, public relations and developmental disabilities program skills; c) . . . include representatives of the various categories of disability to be served by the regional center; d) . . . shall reflect the geographic and ethnic characteristics of the area to be served by the regional center.

THE DEPARTMENT OF DEVELOPMENTAL SERVICES IS THE STATE CONTRACT AGENCY

The Department of Developmental Services (DDS) is the State agency identified to contract with the individual regional centers as stated in W & I Code § 4621. The Act in § 4434(a) has vested the responsibility with DDS of ensuring that “. . . the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of this division.” The Director of Developmental Services is appointed by the Governor in conjunction with Senate confirmation (W & I §4405). Further, DDS is “vested with the duties, purposes, responsibilities, and jurisdiction exercised by the State Department of Heath with respect to developmental disabilities . . .” (W & I §4406).

The contracts are mandated by W & I Code §4629 to be five years in length, and are “. . . subject to annual appropriation of funds by the Legislature.” The contracts
are based on annual performance objectives developed through a community public hearing process. The public hearing process includes the use of surveys, as well as oral and written public comment.

The Department has the responsibility of promulgating regulations (rule making) mandated by the statutes that govern the developmental disabilities service model. Those regulations are established under California Code of Regulation (CCR), Title 17. The rule making is subject to public review and comment prior to finalization. In addition, DDS is further responsible for maintaining statistical information regarding the Consumer base and services provided throughout the state.

THE COST OF REGIONAL CENTER SERVICES

"The Legislature finds that services for persons with developmental disabilities constitute a major expenditure of public funds...." (W& I §4520) The Act has established the services provided to individuals with developmental disabilities under this Act as an entitlement. Regarding services for individuals with developmental disabilities, "California is the only state that has an entitlement. Some states have mandated services such as case management, but generally services are voluntary." (Survey, 1996) As an
entitlement "... services cannot be interrupted regardless of budget shortfalls." (Sylvia, 1994) Further, this means that there can not be a waiting list for services due to funding shortages. "The public administration problem is this one of devising and enforcing rules to govern the production and consumption of such services." (Hood, 1986)

The 1995-96 budget for the provision of services to the developmentally disabled for the State of California, exclusive of the services funded specifically funded by Medi-Cal, was $1,550.3 million. Those funds provide services for 133,940 individuals. Funding for the developmental disabilities program comes from both state and federal sources. The federal funding is received through the State of California's participation in the Home and Community Based Services (HCBS) Waiver. As specified in the Executive Summary of the "Health Care Financing

Medi-Cal is California's title for the federal Medicaid program. "...Congress amended Title XIX of the Social Security Act in December 1971, permitting state mental retardation institutions, or portions thereof, to receive reimbursements for ICFs/MR. No one thought it possible at the time, but reimbursements for ICF/MR services have become the largest federally financed mental retardation program." (Braddock, 1987) Medi-Cal funds residential services to consumers of the regional centers. The residential services funded are Intermediate Care Facilities (ICF) and are funded at $133.00 per day. There are approximately 1500 consumers residing in ICF facilities in California. This would equate to an additional expenditure of $72,817,500 dollars per year.
Administration's Compliance Review of California's Home and Community Based Services Waiver Program for the Developmentally Disabled," HCBS waivers were initiated with Section 1915 of the Social Security Act and are the statutory alternative to Medicaid funded institutional care.

"In 1981, the Omnibus Budget Reconciliation Act authorized waivers permitting states to provide alternative community-based home care and related services, provided that states could meet a rigorous cost test that required such services to be demonstrably cheaper than institutions care." (Braddock, 1987)

"These waivers allow a State to offer non-State plan Medicaid services as medical assistance to individuals who would otherwise require the level of care provided in hospital, nursing facility (NF), or intermediate care facility for the mentally retarded . . ." (Health Care Financing Administration, 1998) Participants are provided the option of residing in their family home, a Community Care Licensed (CCL) Board and Care (B&C) or in their own home with supports. The Waiver provides partial funding for the services of the licensed board and care, day programs, transportation, in home nursing and attendant care and other

---

2Institutional care in this instance means Intermediate Care Facilities (ICF) or State Developmental Centers (SDCs), otherwise known as State Hospitals.
supports necessary to assist Consumers in remaining outside of institutional settings. The primary goal is deinstitutionalization. This is accomplished by reimbursement to the State of California for services to individuals who qualify for and agree to Waiver participation. On the Consumers' part, participation in the Waiver merely means the Consumers sign an agreement to participate in the Waiver program and makes their choice of where to reside. However, the regional center staff and providers must maintain extensive, specific documentation on the consumers' progress as required by the Waiver. In addition, the regional center is required to have an annual case file review of each participant completed by specially trained nursing staff or Qualified Mental Retardation Professionals (QMRPs) to ensure that the consumer continues to meet Waiver requirements; necessary services are provided; documentation is in place and services being billed to the State/Federal government under this program meet the Waiver requirements. Reimbursement equates to fifty cents for every dollar spent for Medicaid reimbursable services and a set case management fee of $135.00 per month for each participating consumer. These expenditures are made with the primary goal of integrating Consumers into their communities, increasing their quality of life in a more cost effective manner than services.
provided in institutional settings.

### 1995-96 Budget, Percent Federal Funds and Per Consumer Cost

<table>
<thead>
<tr>
<th>Service</th>
<th>Number of Consumers</th>
<th>Budget (Million)</th>
<th>% Federal Funds</th>
<th>Per Consumer Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCB Waiver*</td>
<td>35,105</td>
<td>$376.0</td>
<td>50%</td>
<td>$10,712</td>
</tr>
<tr>
<td>Total Serviced**</td>
<td>135,940</td>
<td>$1,550.3</td>
<td>39%</td>
<td>$10,067</td>
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Further cost review for regional center services was completed in The City Gate Regional Center Core Staffing Study of 1999. This Study states:

"Purchase of Service (POS) funds comprise almost 80% of the RC's total budget, exceeding $900 million in 1997-98, and budgeted at nearly $1.1 billion for 1998-99. The number of active consumers in RCs has increased by over 50% from 1990 to 1998, while RC total budgets have increased between 7.3% and 19.7% annually, for a total of 143 percent since FY 90-91. This amounts to a 62% increase in expenditures per consumer.

* Source: MR/DD Waiver Programs 1996 Summary and comparative Data Table, Special Supplement: More than 200,000 People with Developmental Disabilities Participating in HCBS Waiver Program, NASDDS. Presented to show a comparable number across all states. ** total budget for 1995-96 as shown, includes institutional and community services and headquarters support. Budgets are not comparable across states. Presented to show the reliance on federal funding. California’s budget included $953.3 million for community services with a per consumer cost of $7,376; $570.5 million for institutions with a per consumer cost of $121,135. (Survey, 1996)

RC is the Survey's abbreviation for regional center.
The State has struggled to control this expenditure, especially during the fiscal pressures of the early 1990s. However, the volatility of these numbers is substantial, and several RCs have had budget crises triggered by POS overruns in recent years.

With POS representing 80% of an RC's budget, and the demand for POS depending on the outcome of the IPP process, the IPP takes on a much larger meaning than a collaborative process to develop and individualized plan. Fiscal accountability requires that oversight and control be exerted over something so substantial and critical to financial results. . .\""

**THE STATE COUNCIL ON DEVELOPMENTAL DISABILITIES HAS A MANDATE TO PLAN AND COORDINATE STATE RESOURCES**

The designers of the Act recognized that the services provided to individuals with developmental disabilities are such a high cost item and are so extensive an additional agency was specified in W & I §4520 as follows:

\". . .that these programs are provided by hundreds of public and private state and local agencies that the legal, civil, service rights of persons with developmental disabilities are frequently denied and there is no effective method for planning and coordinating the states's resources to assure these rights. Therefore, a State council on Developmental Disabilities with authority independent of any single state service agency is needed and is hereby created.\""

The Act established the State Council with nineteen (19) members, appointed by the Governor. W & I §4521(b) specifies members of the State council as:
“1) Secretary of the Health and Welfare Agency . . . who shall represent the agency and state agency that administers funds under Title XIX of the Social Security Act . . . ; 2) Director of DDS . . . 3) Director of Rehabilitation . . . 4) Superintendent of Public Education . . . 5) Representative of non governmental agency or group concerned with provision of services to persons with developmental disabilities; 6) a representative of higher education training facility providing training in the field of developmental disabilities services. That individual shall have expertise in the field of developmental disabilities and shall represent all university affiliated facilities . . . 7) Chairperson of Organization of Area Boards . . . 8) Member of Board of Directors of the agency established in California to fulfill the requirements of Section 184 of Developmental Disabilities Act of 1984 . . . the remaining shall be Consumers or Family members of individuals with Developmental Disabilities.”

In addition, W & I§ 4523, states “. . . Persons appointed to membership on the state council shall have demonstrated interest and leadership in human service activities.” Amongst other duties W & I § 4540 mandates the Council develop the “California Developmental Disabilities State Plan” and “be the official agency responsible for planning the provision of the federal funds allotted to the state under Public Law 94-103 . . . which shall apportion these funds among agencies and area developmental disabilities boards.”
THE AREA BOARDS HAVE A MANDATE TO

MONITOR AND PROTECT THE RIGHTS OF THE CONSUMER
THE PROTECTION & ADVOCACY AGENCIES
HAVE A MANDATE TO ADVOCATE ON BEHALF OF
THE RIGHTS OF THE CONSUMER

To meet the requirement of Section 184 of the Developmental Disabilities Act of 1984, Section 4901 of the Act specifies the creation of a protection and advocacy agency as an additional private, nonprofit corporation designed by the Governor for the protection and advocacy of the rights of persons with developmental disabilities and mental illness. This agency is known as Protection and Advocacy, Inc. (P&A). P & A consists of a group of attorneys that are available to assist consumers, at no cost, with legal actions to include administrative filings against the regional centers. This has included the filing of class action suits on behalf of individuals with developmental disabilities. A recent suit was the Coffeldt case which resulted in the State of California being mandated to move two thousand individuals from the State Developmental Centers (SDCs) into the community. This mandate was accomplished by the regional centers in three years. In addition, two SDC's were closed as a result of this action.

Further, Assembly Bill 1038, passed in 1998 and
implemented January of 1999, provided for a contract which removed the position of the Clients Rights Advocate (CRA) from the regional centers and established it as a separate office. This contract was put out to bid and was acquired by P & A. Further, the Act mandates P & A to establish a grievance procedure in regard to regional center services and vests P & A with the investigative authority in that process. This complaint procedure is specified in W & I Code, § 4731.

THE ACT PROVIDES FOR ADMINISTRATIVE DUE PROCESS REGARDING ANY REGIONAL CENTER DECISION THE CONSUMER DISAGREES WITH

Further, the Act in Sections 4700 through 4725 provides an administrative due process known as the Fair Hearing Process (Process) to Consumers. This Process can be initiated by the Consumers or their representatives whenever there is a dispute with the regional center. The regional center is required under this Process to provide Consumers, in language that they will understand, explanations of any decision made by the regional center that has a negative impact on them, the specific actions that will be taken and the reasons for that decision and provide the due process option. Prior to 1999, the Process initially mandated an informal meeting with the Director of the Regional Center or
his designee, in an attempt to resolve the dispute. If the issues were not resolved through the informal process the consumer was then offered the opportunity to request a formal hearing in front of an Administrative Law Judge (ALJ). The formal hearing provided the opportunity for the Consumer and the regional center to present evidence and testimony as their positions in the matter. The Consumer had the opportunity to be represented by counsel or by an advocate and cross examine witnesses. Following the presentation of evidence and testimony the ALJ then provided a written decision in the matter. Under this process the informal meeting could not be waived by either party. In most instances, the regional centers report that matters were resolved. This is supported by the Regional Center Fair Hearing Statistics for July 31, 1997 through June 15, 1998 that indicate in only 20% of the cases was a formal hearing later requested and completed.

The Fair Hearing Process was part of the HCFA review. The HCFA audit found

The DDS' process of annually maximizing Federal reimbursement by replacing eligible and non-eligible waiver consumers with the most costly waiver eligible consumers without notice to the individuals being replaced violates Federal fair hearings requirements at section 1902(a)(3) of the Social Security Act . . . Therefore, $8,716,801 in Federal funds was overpaid for adjustments made in 1995/96 waiver year. (Emphasis added)
In other words, the regional centers failed to provide consumers with their due process rights when their participation in the Waiver program was terminated. To correct this violation the Department of Developmental Services (DDS) in collaboration with the organizational Stakeholders (the Association of Area Boards, Protection & Advocacy, Inc., and the Association of Regional Center Agencies (ARCA) developed and submitted legislative change to the Fair Hearing process. These changes were implemented as law on January 1, 1999.

The new Fair Hearing process is patterned after the due process system for students requiring special education services under the Education Code, Part 30, Chapter 5 regarding Procedural Safeguards. The initial Fair Hearing Request is now a request for a formal hearing with an ALJ. There is no mandated informal process to resolve disputes. The consumer is provided the options of an informal meeting or a mediation with an impartial third party as alternative dispute resolution methods. This provides the consumer with the opportunity proceed directly to a formal hearing, with

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5At the time that this process was adopted the Department of Education was reviewing the developing alternative dispute resolution processes, as they had discovered their own process to be cumbersome, costly and non family friendly.
the regional center having no recourse to informally resolve the matter. In addition, time lines for the hearing process were extended.

"Mediation is a process in which a neutral third party in identifying areas of agreement assists disputants in reaching a negotiated settlement of differences on their own rather than having outsiders impose a settlement."

(Ahearn, 1994) DDS has contracted the mediation services to McGeorge School of Law, who in turn contracts with specially trained individuals as mediators. "This service is funded at a cost of $40.00 per hour. The mediators bill by the minute for telephone calls and other contacts." (Talley, 1999) The Office of Administrative Hearings (OAH) is the contract agency that provides Administrative Law Judge’s (ALJ) to hear formal cases. These decisions are based on the application of statute, regulation and legal interpretation of policy after hearing testimony and reviewing evidence. This service is billed at $137.00 per hour. The ALJ’s bill by the half hour for any services such as conference calls. The consumer may use one or all three of these methods to resolve disagreements with the service agency.
THE HCPA AUDIT REVEALED THE OVERSIGHT SYSTEM WORK HAS NOT BEEN EFFECTIVE

Data indicates that the extensive systems of oversight designed in the Lanterman Act have not been effective. In 1998, the Health Care Financing Administration (HCFA) began a monitoring review of California’s HCBS waiver program. As indicated in the Compliance Review report at the time of the review, the program "... had grown from 433 enrollees at the time of its inception in 1982 to the current enrollment of 35,105. The annual cost of this program is approximately $500 million in State and Federal Medicaid Expenditures.”

This Waiver was provided through the California Department of Health Services (DHS) as the single Medicaid State agency. DHS had established a memorandum of agreement with DDS to administer the Waiver program. DDS, in turn, contracted with the twenty-one regional centers to operate the waiver on a day-to-day basis. Because the Waiver program is so extensive in California the review team for the audit only visited five regional centers.

"The review showed that the State is not in compliance with the statutory and regulatory requirements set forth to protect the health and welfare of waiver participants and to safeguard the integrity of Federal funds expended. The DHS has not fulfilled its responsibilities to oversee the integrity of the programmatic and financial aspects of the waiver program. It has not adequately overseen DDS functions and activities by failing to perform evaluations of the waiver’s
implementation including programmatic and fiscal integrity, and accountability for both Federal and State funds expended by DDS, the regional centers and providers of service." (HCFA, 1998)

The review found the State to be out of compliance in all areas of the program to include an administrative error which violated consumers' rights to due process which resulted in an $8.7 million dollar overpayment to the State of California in the Federal fiscal year 1996. In addition to the due process noncompliance, the review noted, but was not limited to the following, deficiencies: 1) violations of Consumers' rights in access to timely and appropriate medical, dental and behavioral health care services; 2) Consumers were not provided with choices in the provision of services; 3) service providers and CSCs were lacking training and ability to adequately meet the consumers needs; and, 4) the Federal government had been billed for waiver services for ineligible consumers.

The State was provided with a three month time frame to develop and submit a plan of correction. This plan included the development of new Legislation to amend the Lanterman Developmental Disabilities Act to meet the federal criteria for due process, which in turn has promulgated new regulations and additional safeguards to consumer’s rights and services. This plan of correction was developed to provide California with the opportunity to reestablish a new
waiver contract with the Federal government. This writer has been advised by John Paxson, DDS legal department, that as of this date, the contract is in place and provides access by the State of California to Federal funds in the amount of approximately $500 million per year for services to the developmentally disabled. In addition, negotiation is currently underway which would allow California to add additional consumers to the waiver and increase the amount of federal funding.

SUMMARY

The service system for individuals with developmental disabilities in the State of California evolved from a single state agency, DDS, which provided services to the developmentally disabled. These services were privatized under the Lanterman Developmental Disabilities Act which created a network of private non profit regional centers. To safeguard the services to the developmentally disabled, an oversight system was developed by the Act that included State agencies and private nonprofit agencies with overlapping responsibilities for oversight of the service delivery system. Even with this extensive system of oversight the State of California was found to be out of compliance by a HCFA review of the HCBS Waiver contract.
program in 1998. The corrective action plan developed by DDS which would continue the Waiver contract included significant legislative changes to the Fair Hearing process. This legislation has been instituted within the calendar year 1999. There is indication that the legislative changes have developed a more cumbersome and costly Fair Hearing process. In addition, the changes have been confusing to the Consumers and their families; and have not been directly applicable to the violations cited by HCFA. Further, this Process was developed to meet the federal requirement for only 25% of the population served under the regional center system. This study will compare the cost of implementation of the current Fair Hearing process with the previous process, review the time lines and actual implementation of those time lines in the process, impact on the number of hearings going to formal hearing and impact on hearing decisions. It is this writer's opinion, as stated by Patricia Ingraham,

"...the popularity of policy diffusion... has contributed to a general tendency to choose a solution before a problem is clearly specified and to base expectations for reforms on political symbols and demands, rather than on careful analysis of civil service structures."

It will be obvious from the data that there was a "rush to solutions" before the exact Fair Hearing process was clearly
specified in terms of costs and benefits.

It is important to keep in mind that the only requirement made by the HCFA audit was that the regional centers provide waiver participants the opportunity to file for a Fair Hearing when terminated from participation in that program and the process meet the federal mandates for due process. The necessity of change in the Fair Hearing component of the Act offered the opportunity for stakeholder organizations to implement changes other than those required to be in compliance with the Waiver contract.
CHAPTER TWO
RESEARCH QUESTIONS AND METHODOLOGY

SERVICES TO THE DEVELOPMENTALLY DISABLED
AS PUBLIC POLICY

The regional center system, although consisting of private non profit agencies, is a privatized, public system for the provision of services to the developmentally disabled. "The public administration problem is this one of devising and enforcing rules to govern the production and consumption of such services." (Hood, 1986) This study is a comparison of the cost of implementation of the current Fair Hearing process with the previous process, review the time lines and actual implementation of those time lines in the process, impact on the number of hearings going to formal hearing and impact on hearing decisions. The Process was developed out of a need to continue participation in a federal funding program and to provide appropriate services of Consumers. The current laws and regulations developed to meet this need appear not to meet either need. As it has been demonstrated in the previous presentation of the stakeholder agencies there are a variety of agencies mandated to provide input into the development of public policy regarding the provision of services to the developmentally disabled in California. The service needs
for Consumers are continually in flux as are the mandates of

The problem of how to organize public services can
never be solved once and for all, if only because
the context in which public services are operated
rarely remains static for long. Circumstances of
one kind or another conspire to make the rules
out-of-date, to throw the enforcement machinery
out of gear, to destroy the foundations on which
service organization is built. . . “ (Hood, 1986)

In this instance, need for change came from the non
compliance citation by HCFA, a federal mandate. The
solution used to resolve the crisis was the ready made due
process methodology currently in use by the Department of
Education, another public agency. As previously referenced
by Ritchie, there is a common pattern in public
administration of reacting to crisis by developing a
solution without adequate information. In this case, the
crisis was the HCFA noncompliance issues. In this case, the
crisis was the HCFA noncompliance issue. The corrective
action plan needed to be developed within ninety days to
meet the HCFA mandate and continue the federal funding. The
stakeholders developed their plan without the benefit of
input from the Department of Education or a review of
current research regarding the process to be adopted. There
was no statistical data available or cost projections
completed. Further, most legislation after passing through
committee, is changed. In this case, the laws were passed under two separate pieces of legislation. The result has been another financial crisis. As stated by Quade in regards to public policy making:

One difficulty is that organizations and bureaucracies with which the public decision maker must work—his own and those interacting with it are often beset with red tape, poor communication, low morale, inadequate staff, incomplete records and pressures from special interest groups with ready-made solutions. . . Also, the legislative process itself is not a model of efficiency.

The stakeholders involved in the development of these legislative changes to meet the HCFA crisis were not the individuals who would be implementing the process, and who would have a better knowledge of the impact the Process would have on the regional centers and the ancillary agencies. Nor did the stakeholders have access to the information necessary to assist them in clarifying the issues. Further, each of the stakeholders were special interest groups with their own political and economic agenda. In addition, prior to the most recent changes in legislation which were effective in January of 1999, there have been no mandated requirements to report due process statistics to a central location. Further, the stakeholders did not have adequate data to project the cost impact of the implementation. Consequently, we have arrived at the end of
the first year of implementation of the new process with an increase in fees to the Office of Administrative Hearings, alone, of 300%; from $120,000 in the calendar year 1998 to $500,000 in the calendar year 1999. This increased cost is to implement a Process that was directed by funding for less than twenty-five per cent of the population served. This is the single comparative factor available in reviewing the impact of the change to the Fair Hearing Process in the past year. “When government does act, the outcome often does not match intent.” (Quade, 1989) Further,

Government programs rarely have an automatic regulator that tells us when an activity has ceased to be productive or could be made more efficient, or should be displaced by another activity. In private business, society relies upon profits and competition to furnish the needed incentives and discipline and to provide a feedback on the quality of decisions. The system is imperfect, but basically sound in the private sector. In government, we must find another tool for making the choices which resource scarcity forces upon us.

(Schultze, 1989)

This study will be an analysis of a privatized public service. The study will provide an analysis of statistical data regarding the Fair Hearing Process gathered from a survey of the regional centers. In addition, information has been obtained from DDS, OAH and Mc George School of Law.
HYPOTHESIS OF THIS STUDY

HYPOTHESIS I: THERE HAS BEEN AN INCREASE IN THE COST OF ANCILLARY SERVICES NECESSARY FOR THE FAIR HEARING PROCESS

There are four areas of impact this study will investigate: 1) the cost of the provision of ancillary services; 2) the number of hearing culminating in a formal hearing before an ALJ; 3) length of the Fair Hearing process; and, 4) impact on the outcome of hearing decisions.

The most noticeable impact has been the increased cost of the provision of ancillary services. Ancillary services, for the purposes of this study, are defined as those services provided by agencies other than the regional center or DDS in the Fair Hearing Process. In this instance, the ancillary services are provided by the Office of Administrative Hearings (OAH) for formal hearings, and McGeorge School of Law of the Pacific for mediation services. OAH provides the services of Administrative Law Judges (ALJ) who preside over the Formal Hearings between the Consumer and the Service Agency/Regional Center. The cost of ancillary services are funded directly by DDS. It is not a service billed to the regional center budget.

The contract for those services has been held by OAH for many years. Initially each case filed is billed a
$55.00 dollar filing fee. The services are provided at a cost of $137.00 per hour. Any partial hours are billed by the half hour. The contract allows for billing of any involvement of an ALJ, even a three minute telephone conversation. In this instance, DDS will be billed for thirty minutes. The ALJ travels to the service agency for the hearings and bills for travel time, time at the hearing and time to research and write the decision.

An example of billing for a case where the claimant failed to show for a hearing at IRC could result in the following billing:

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing Fee</td>
<td></td>
<td>$ 55.00</td>
</tr>
<tr>
<td>Travel</td>
<td>4 hours round trip from San Diego</td>
<td>$548.00</td>
</tr>
<tr>
<td></td>
<td>@ 137.00</td>
<td></td>
</tr>
<tr>
<td>Hearing</td>
<td>1 hour @ 137.00 (wait for claimant, attempt to contact</td>
<td>$137.00</td>
</tr>
<tr>
<td></td>
<td>Go on the record to dismiss)</td>
<td></td>
</tr>
<tr>
<td>Write dismissal order</td>
<td>½ hour @ 137.00</td>
<td>$ 68.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Cost</td>
<td></td>
<td>$708.50</td>
</tr>
</tbody>
</table>

DDS met recently with OAH to discuss the extensive increase in cost due to the new process. There has been mutual agreement that OAH will make the following procedural change in practice in an attempt to reduce the use of ALJ’s. Previously, all decisions regarding the continuance of a hearing would have to have incurred through verbal
discussion by both parties with the Presiding Judge or the Judge that would be hearing the case. This incurred a minimum of ½ hour of billing time. At this time, the information will be taken from both parties by Administrative Staff of OAH. If both parties agreed to the continuation of the matter, the Presiding Judge will be consulted by the Administrative staff and the matter will be continued. It is expected that both parties will also confirm their agreement in writing. DDS will not be billed separately for this service. It is included in the cost of administrative overhead.

In July of 1999, Mc George School of Law of the Pacific through a competitive bidding process was awarded the contract to provide mediation as a voluntary option for resolution of disputes. Previously, OAH did provide mediation or settlement discussions, although this was not provided as a formal option under the law. The contract rate for this service is $40.00 per hour. Billing in this case is done by the minute for telephone calls. Again however, the mediator does bill for travel time and time in mediation.

This research is expected to demonstrate a significant increase in cost the cost of services from Office of Administrative Hearings, in conjunction with the additional
mediation service from McGeorge. Further, this graduate research project will endeavor to explore whatever relationship between the use of mediation and the reduction in the number of formal hearings.

**HYPOTHESIS II: THERE HAS BEEN AN INCREASE IN THE NUMBER OF FORMAL HEARINGS HELD**

This study will provide a statistical comparison of the increase in population served to the number of hearing requests received within the past several years and the same data in 1999. It is the hypothesis of this writer that due to the current Process immediately providing the Consumer with notice of his/her formal hearing with an ALJ, the Consumers and their representatives are less likely to negotiate with the service agency's designee and will hold out for a formal hearing with an ALJ. This has, therefore, caused an increase in the number of formal hearings held under this Process.

**HYPOTHESIS III: UNDER THE NEW PROCESS FAIR HEARINGS TAKE LONGER TO REACH CONCLUSION**

It is projected that cases take longer to conclude under the current Process. This provides a less timely conclusion to disputes for the Consumer. In cases where the Consumer is requesting a new service it may delay the provision of
needed services. In a case where the regional center has determined the Consumer is no longer eligible to receive an existing service it may incur additional costs to taxpayers by prolonging an inappropriate service.

The study will provide a comparison of the age of Fair Hearing cases over a period of the past three years. The age of a case has been defined as the date it was initiated as follows: A case is considered when a written withdrawal is received from the Consumer/Claimant or the decision of the ALJ is received. If no written request is postmarked or received by the hearing agency, which ever is earlier. The date the hearing request form is postmarked or received by the regional center and considered closed within ten days of the Consumer's receipt of the informal decision is determined by the current process, W & I Code, § 4710.6(b)(1). This is defined as the date the case was initiated. Under the current process, a case was initiated on the ALJ's receipt of the Consumer/Claimant's petition for a Fair Hearing. Under the previous process a case was initiated the date it was received by the regional center and considered closed within ten days of the Consumer's receipt of the informal decision. The Regional Center Fair Hearing Statistics of July 31, 1997 through June 15, 1998 indicate that the new Fair Hearing process has had no impact on the outcome of hearing decisions.

Hypothesis IV: The new Fair Hearing process has had no impact on the outcome of hearing decisions.
indicate that 71% of decisions in formal hearings were in favor of the regional center, with 17% a combined decision for both parties and 12% in favor of the Consumer only.
CHAPTER THREE
REVIEW OF PREVIOUS RESEARCH

THERE IS NO PUBLISHED RESEARCH ON THE FAIR HEARING PROCESS
FOR INDIVIDUALS WITH DISABILITIES
AND THE REGIONAL CENTER SYSTEM

There is no research specific to the Fair Hearing Process for individuals with disabilities within the regional center in California. The current Fair Hearing Process was implemented in January of 1999, my investigation is the first known review and comparison of that Process with that previous Process.

DUE PROCESS IS A RIGHT

Prior to 1970, due process applied only to a narrow class of cases in which the government sought to deprive an individual of a 'right' on the basis of a set of contested facts unique to the individual. Rights were defined narrowly to include only forms of property that are usually the fruits of an individual's labor, such as money, a house, or a license to practice law, as well as forms of liberty recognized in the Bill of Rights. An individual threatened with a deprivation of a 'right' was entitled to 'some kind of hearing.' Due Process did not apply at all to mere 'privileges,' such as a government job or benefits made available pursuant to a statute or any agency rule . . .

. . . Thousands of government benefits that enjoyed no constitutional protection before 1970 have been elevated to the status of 'rights' that the government could not withdraw or reduce without providing some kind of hearing.

(Pierce, 1996)

These due process rights have been extended to most areas of
The major component of the procedural safeguards contained in the federal special education law, P.L. 94-142, now known as the Individual with Disabilities Education Act (IDEA), is the due process hearing . . . Due process provisions of the Regulations Implementing the Idea Part B [34 CFR 300]. Due process provisions of the IDEA Regulations are in Section 300.500-586, Subpart E—Procedural Safeguards. Regulations implementing Section 504 of the Rehabilitation Act of 1973 also provide federal due process protections for what the law refers to as “handicapped persons.” Each state has also passed laws, adopted regulations and in many cases, developed guidelines and policies relating to due process procedures for students with disabilities. (Forum, 1997)

Regional Center services to individuals with developmental disabilities are considered an entitlement. Therefore, these benefits are considered to be a “right.” The Consumers of regional center services have due process or Fair Hearing “rights” when denied eligibility, a requested service or when services being purchased are reduced and the Consumer disagrees with that action. In fact, W & I Code, §4710.5(a) states:

Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient’s or applicant’s best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing . . . . (Emphasis added)
THE DUE PROCESS METHODOLOGY FOR CHILDREN REQUIRING SPECIAL EDUCATION SERVICES IS SIMILAR TO THE CURRENT FAIR HEARING PROCESS FOR REGIONAL CENTER CONSUMERS

A thorough review of regulations has revealed that the eligibility criteria for special education services is defined in CCR, Title 5, Division 1, Chapter 3, Section 3030. The criteria for special education services has a broader scope than that of eligibility to regional center services. However, all Consumers eligible to regional center services fit within the scope of eligibility to special education services and are eligible to receive these benefits. This includes the right to receive a "free, appropriate education from the age of three through twenty-two" under the Individuals with Disabilities Education Act (IDEA). This was initiated as Public Law (PL) 94-142.

As stated previously, the current Fair Hearing Process for regional center Consumers was adopted from the Due Process procedure developed for children who have disabilities and receive special education services under the Education Code, Part 30, California Code of Regulations, Title 5, Special Education Procedural Safeguards. This process has been modified in some minor respects, but offers the same options for dispute resolution. This procedure includes informal meetings identified as Individual
Educational Planning (IEP) meetings, the right to mediation as an alternative dispute resolution method and/or a formal hearing before an Administrative Law Judge familiar with the laws and regulations applicable to special education services.

SOME RESEARCH HAS BEEN CONDUCTED ON THE SPECIAL EDUCATION DUE PROCESS SYSTEM

Educational services for children with disabilities fall under the Individuals with Disabilities Education Act (IDEA), federal law. Not only are the criteria for eligibility to services similar and the due process methodology similar, but Ahearn revealed that the complaints regarding the due process procedures are similar to the concerns being reviewed in this study:

The due process hearing is the primary component of the procedural safeguards in education. Since the passage of the IDEA (originally known as the Education for all Handicapped Children Act) in 1975, criticisms of the hearing process have steadily increased. National Council on Disability in its report of the education of students with disabilities recognized that due process hearings are costly and have an emotional toll as well. (National report on Disability 1989). A study of parents and school officials who participated in due process hearings in Pennsylvania found little positive feelings about the experience (Goldberg & Kuriloff, 1991) Similar findings have been indicated for other states (Budoff and Orenstein, 1985). In a recent article Zirkel (1994) specified the major problems with the due process hearing it has become unduly time
consuming and open ended, it is overly cumbersome, the costs are excessive and parents perceive the process as unfair.”

(Ahearn, 1994)

This statement is further supported by the research completed by Project Forum in 1995 which concluded:

Almost from the onset of the implementation of procedural safeguards in IDEA, it was evident that special education due process hearings consume inordinate amounts of time and money, and were emotionally draining to parents and to school personnel. It soon became apparent that the result of a hearing often did not satisfy either party and left great animosity in its wake. This usually fostered a breakdown in communication and often left the parties more vulnerable to future conflicts . . .

As previously stated, in the matter of public administration and review of public policy, “When government does act, the outcome often does not match intent.” However, as Quade further stated decisions are often made with “. . . incomplete records, and pressures from special interest groups with ready-made solutions . . . .” The Department of Education, as with the regional centers have “. . . no published data on state costs for maintaining and administering due process hearing services.” (Forum, 1995). Further, “Although some studies have been carried out to assess the impact of due process hearing procedures, very little research has been done on the subject of mediation of disputes involving students with disabilities.” (Ahearn, 1994)
Similar to the regional center system "About 90 per cent of California's requests for due process hearings are settled prior to the hearing stage." (Ahearn, 1994)

As stated previously, it has been this writer's experience that the families have been less amenable to negotiation when they have the immediate option of meeting with an ALJ. An analysis of public education decisions completed by Brady in 1983 in relationship to parents continuing on to a formal hearing states:

One probability is that the pursuit of a desired outcome is more emotionally loaded for parents and they therefore need a final hearing decision before accepting something they do not prefer. Conversely, the LEAs who are more conservative about committing the required time and money to a hearing, seem more amenable to settling at an earlier level of intervention . . . .

Although this study does not review mediation as a cost effective and more amenable method of resolving disputes, research in the special education arena provides a favorable report and encourages further research and data be provided to policy makers. Ahearn has stated "... California estimates the cost of a successful mediation at 13 per cent of the cost of a due process hearing . . . ." Further, Project Forum (1995) reported,

... the limited documentation currently available appears to confirm the benefits of mediation over the more formal due process hearing as the strategy for reaching a successful settlement of disputes between parents and
schools. Given the premise that the best educational program for any student is one on which parent and school district personnel agree, it appears that the option of mediation under special education laws should be retained and expanded to all states, and consideration might even be given to expanding it to all students. However, the money and time involved should be strictly controlled so that the cost/benefit ratio yields a distinct advantage to the student and does not result in a significant negative impact on education budgets. This synthesis also suggests that further research into the entire due process component of federal and state legislation is needed to answer the questions raised and to inform policy makers.

**SUMMARY OF RESEARCH RELATED TO DUE PROCESS**

Although there is no known research on the Fair Hearing/Due Process procedures for the regional centers, there is research completed on the Due Process procedure for special education students. This research is applicable as the population served and the procedure are similar. Previous research addresses some of same concerns as this study. There has been ongoing concern that the procedure is both costly and time consuming. There has been a limited amount of research completed to provide adequate statistical information for policy makers in the making decisions regarding revisions to the process.
CHAPTER FOUR
ANALYSIS OF THE RESEARCH DATA

THE DATA USED IN THIS RESEARCH HAS BEEN COLLECTED FROM A VARIETY OF SOURCES

The four areas of impact this study is investigating are: 1) the cost of the provision of ancillary services in the Fair Hearing Process; 2) the number of hearing requests culminating in a formal hearing before an ALJ; 3) length of the Fair Hearing process; and, 4) the impact on the outcome of hearing decisions. These data have been collected from a variety of sources. The sources include, the Department of Developmental Services for actual expenditures provided for ancillary services and contract rates; each of the ancillary service agencies: Office of Administrative Hearings and Institute for Administrative Justice (IAJ); and the regional centers.

THE SURVEY DISTRIBUTION WAS MADE TO THE TWENTY-ONE REGIONAL CENTERS

A survey was designed and sent to each of the twenty-one regional centers (see Appendix A) in January of 2000. In the cover letter for the survey the regional centers were advised that the statistical information requested was intended for use not only in this graduate research project, but also to assist the Committee investigating the redesign
of the hearing process. Prior to the survey being forwarded to the twenty-one regional centers telephone contact was made with each regional center to determine the appropriate contact person for the completion of the survey. The surveys were then forwarded specifically to that identified individual.

There has been a total of nine (9) responses (42.9%) received from that mailing. North Los Angeles Regional Center (NLARC) telephoned on two occasions to advise that they were completing the survey, however, due to time and staff constraints had not been able to do so as of yet. As of the date of the completion of this project, that survey has not been received. Two of the written responses were letters from Lanterman Regional Center (LRC) and Golden Gate Regional Center (GGRC) advising that they were unable to participate in the survey due to a "... shortage of personnel... lack of staff resources..." GGRC, further indicated they did not routinely compile this type of data. Completed surveys were received from the following regional centers: San Diego Regional Center (SDRC), Central Valley Regional Center (CVRC), East Los Angeles Regional Center (ELARC), Valley Mountain Regional Center (VMRC), Alta Regional Center (ARC), and Inland Regional Center (IRC). The six regional centers are representative of 28.9% of the
regional centers. Based on the DDS Information systems data of December 9, 1998 the regional centers were serving 152,713 Consumers. The population of the six regional centers completing the survey are representative of 30% of the Consumers served by the regional centers. Of the six surveys received only two had completed the entire survey. The remaining four indicated the data that was not tracked or it had not been accessible to the individual completing the survey.

These responses indicating an inability to complete the survey due to lack of staff and/or data, support Quade’s statement that one of the difficulties with organizations and bureaucracies in the arena of public administration decision making is the lack of availability of staff and incomplete records. In addition, it supports Schultze’s statement that “government programs rarely have an automatic regulator that tells us when an activity has ceased to be productive, or could be made more efficient, or should be displaced by another activity . . .” (Schultze, 1996)

CHANGES TO THE FAIR HEARING PROCESS THAT CREATED THE IMPACT BEING REVIEWED IN THIS GRADUATE RESEARCH PROJECT

The following table illustrates the changes to the Welfare and Institutions Code and Fair Hearing Process that
Table 1: Legislative Changes to the Process

<table>
<thead>
<tr>
<th>W &amp; I Code</th>
<th>Current Process</th>
<th>Previous Process</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>4701(j)</td>
<td>Requires the notice of action to the Consumer indicate participation in the HCBS waiver</td>
<td>no requirement</td>
<td>Minimal action by regional center staff</td>
</tr>
<tr>
<td>4706(b)</td>
<td>California DHS retains the right to review and modify any decision when the Fair Hearing involves HCBS services (also see 4712.5(c))</td>
<td>no requirement</td>
<td>Hearing decisions made by ALJ may not be adopted; lengthens time line for final response on hearing decisions</td>
</tr>
<tr>
<td>4707</td>
<td>Implements mediation as a option for dispute resolution by 7/1/99</td>
<td>not previously a formal option</td>
<td>additional option for consumers; both consumer and regional center must take action to initiate this option</td>
</tr>
<tr>
<td>4710.5</td>
<td>Requires the regional center to forward document to “responsible state agency within five days of receipt” upon initial receipt (this always means OAH and DDS, could also include IAJ)</td>
<td>the same time line; OAH was previously only notified of request for formal hearings; now for all requests</td>
<td>An additional agency (IAJ) has been added to mailing requirement for regional center; OAH must be notified of every hearing request increased mailing/fax cost; admin. staff time</td>
</tr>
<tr>
<td>4710.6 (b)(2)</td>
<td>Option of an Informal meeting to resolve dispute with regional center director or designee</td>
<td>Mandatory Informal meeting to resolve dispute</td>
<td>Less opportunity for the regional center &amp; Consumer to resolve disputes informally</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Time Constraints</td>
<td>Notes</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>4710.6</td>
<td>Informal meeting must be held within ten day of postmark or receipt which ever is earliest</td>
<td>Informal meeting within ten days of receipt of request</td>
<td>Shortens the time line to meet informally; it difficult for the regional center to meet this time line*</td>
</tr>
<tr>
<td>4710.6</td>
<td>Fair hearing shall be completed and administrative decision issued within 90 days of postmark or receipt</td>
<td>No maximum stipulated in the same language</td>
<td>none; this time line can be changed by the written consent of both parties</td>
</tr>
<tr>
<td>4710.9</td>
<td>Decision of the service agency shall go into effect 10 days after the receipt of the written withdrawal</td>
<td>Decision went into effect 10 days after receipt of informal decision</td>
<td>Consumer must submit written withdrawal to make the decision effective **</td>
</tr>
<tr>
<td>4711.5</td>
<td>Consumer has the option of requesting mediation; regional center may decline</td>
<td>no mediation option</td>
<td>Additional actions necessary by the regional center to decline mediation Process; mailing or fax costs</td>
</tr>
<tr>
<td>4712(d)</td>
<td>Requires Discovery: documents and list of potential witnesses and testimony be exchanged 5 days prior to formal hearing</td>
<td>no requirement</td>
<td>Should provide the Consumer with the opportunity to be better prepared for the hearing; increased cost for preparation of documents when hearings are canceled less than five days prior to date***</td>
</tr>
<tr>
<td>4712(a)</td>
<td>Formal hearing shall be held within 50 days of postmark or receipt</td>
<td>Formal hearing within 20 days of receipt by regional center</td>
<td>The Process theoretically should be shortened</td>
</tr>
</tbody>
</table>
**HYPOTHESIS I: THERE HAS BEEN AN INCREASE IN THE COST OF ANCILLARY SERVICES NECESSARY FOR THE FAIR HEARING PROCESS**

Mark Paxson, legal counsel for DDS reports the cost of ancillary services from the Office of Administrative Hearings (OAH) for the calendar year of 1999 to have
exceeded $900,000. This cost included filing fees for each of the formal hearing requests made by regional center Consumers and the time of the Administrative Law Judges (ALJs) in processing those requests. (See Chapter Three for an example of OAH costs.) The cost for the same service in the calendar year 1998, prior to the implementation of the current Process, was approximately $450,000. This is an increase of 200%. The fiscal year for DDS runs from July 1 through June 30. The budget allocation for OAH is $900,00 for the current fiscal year, with a projected budget for the 2000-2001 budget year of $980,000.

In addition to the expenses billed by OAH, there was a billing of $70,000 by Institute for Administrative Justice (IAJ) for mediation services. The contract with IAJ was implemented July 1, 1999. As it is a new option available to regional center Consumers in the hearing Process there is no comparative for previous years. The project budget allocation for the fiscal year 2000 - 2001 is $300,000. However, it is significant the ancillary costs billed to DDS in the calendar year of 1999 is 217% that of the previous year under the old Process.

The new Process for Fair Hearings was initiated due to the HCFA audit of 1998 which had cited California for failure to provide due process to Waiver participants when
their Waiver participation was terminated. Mark Paxson, Legal Counsel for DDS, has clarified the two HCFA objectives as: 1) having the Consumer receive their due process rights in all instances; and, 2) to have Consumers make their request for Fair Hearing only one time.

The HCFA audit was a review of cases which participate in the federal Home and Community Based Waiver program. Table 2 is a comparison of the number of active HCBS Waiver participants with the total population served by the regional centers. The Waiver participants comprise an average per regional center of 18.5% of the total population served by the regional centers. Further, it should be kept in mind, that this figure has been reduced over the past eighteen months pending the reinstatement of the Waiver contract following the completion of the corrections to the non compliance citations. It has been since February of 2000 that the contract for the HCBS Waiver has allowed the addition of new participants to the Waiver for California.
Table 2: HCBS Waiver Participation in Relationship to the Regional Center Population Served

The following information is based on population served by each regional center as of December 31 of each respective year.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SDRC</td>
<td>11,632</td>
<td>2,529</td>
<td>11,950</td>
<td>3,304</td>
<td>12,475</td>
<td>3,203</td>
<td>12,891</td>
<td>2,966</td>
</tr>
<tr>
<td></td>
<td></td>
<td>21.7%</td>
<td></td>
<td>27.6%</td>
<td></td>
<td>25.7%</td>
<td></td>
<td>23%</td>
</tr>
<tr>
<td>CVRC</td>
<td>8,252</td>
<td>2,163</td>
<td>8,661</td>
<td>2,133</td>
<td>9,184</td>
<td>1,910</td>
<td>9,824</td>
<td>1,766</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26.2%</td>
<td></td>
<td>24.6%</td>
<td></td>
<td>20.8%</td>
<td></td>
<td>18%</td>
</tr>
<tr>
<td>ELA</td>
<td>4,820</td>
<td>854</td>
<td>4,957</td>
<td>775</td>
<td>5,237</td>
<td>702</td>
<td>5,590</td>
<td>624</td>
</tr>
<tr>
<td></td>
<td></td>
<td>17.7%</td>
<td></td>
<td>15.6%</td>
<td></td>
<td>13.4%</td>
<td></td>
<td>11.2%</td>
</tr>
<tr>
<td>VMRC</td>
<td>6,170</td>
<td>N/A</td>
<td>6,364</td>
<td>1,692</td>
<td>6,659</td>
<td>1,790</td>
<td>6,960</td>
<td>1,542</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>26.6%</td>
<td></td>
<td>26.9%</td>
<td></td>
<td>22.2%</td>
</tr>
<tr>
<td>IRC</td>
<td>12,599</td>
<td>2,731</td>
<td>14,376</td>
<td>3,104</td>
<td>14,313</td>
<td>2,685</td>
<td>15,487</td>
<td>2,498</td>
</tr>
<tr>
<td></td>
<td></td>
<td>21.7%</td>
<td></td>
<td>21.6%</td>
<td></td>
<td>18.8%</td>
<td></td>
<td>16.1%</td>
</tr>
<tr>
<td>Total</td>
<td>43,473</td>
<td>8,277</td>
<td>46,308</td>
<td>1,008</td>
<td>47,868</td>
<td>10,290</td>
<td>50,752</td>
<td>9,396</td>
</tr>
<tr>
<td></td>
<td></td>
<td>19.0%</td>
<td></td>
<td>23.9%</td>
<td></td>
<td>21.5%</td>
<td></td>
<td>18.5%</td>
</tr>
</tbody>
</table>

Note: The following regional centers responded to this survey: San Diego Regional Center (SDRC), Central Valley Regional Center (CVRC), East Los Angeles Regional Center (ELA), Valley Mountain Regional Center (VMRC) and Inland Regional Center (IRC).

The Fair Hearing Process changes were based on services provided to an average of only 18.5% of the population served by the regional center.

The only regional center reporting Fair Hearings filed regarding the termination of HCBS Waiver participation was Inland Regional Center. IRC's survey reports 57 Fair Hearing Requests filed in 1999 which were in regards to termination from the HCBS Waiver. One of the Consumers had been provided a Notice of Action advising him of his
termination of participation in the Waiver as he was not receiving Medi-Cal benefits. As stated previously, to participate in the Waiver it is necessary to be willing to participate in the Waiver program, live in the community and have active Medi-Cal. In this instance the Consumer's representative, due to a misunderstanding, had failed to complete redetermination documents to continue the Medi-Cal benefit. The Medi-Cal benefit, with the assistance of the regional center CSC was reinstated and the Consumer continued to participate in the HCBS Waiver process.

The remaining 56 requests came from individuals who resided together in one CCL facility. This facility had been developed with the assistance of State and Federal grant funding approximately twenty years ago. The facility is a congregate living arrangement, in which all fifty-six individuals reside in dormitory type buildings on a several acre campus. For the past twenty years, these individuals have participated in the HCBS waiver with 50% of the cost of the programming at their residential home funded by the HCBS Waiver. In October of 1998, the DHS staff toured this and several other congregate living arrangements in the IRC catchment area and determined that the facilities no longer met the criteria under the Waiver of being integrated, "... home-like..." living arrangements. In fact, they were
considered to be institutional living accommodations. IRC was then directed, under their contract with DDS, to remove these individuals from the Waiver as the living arrangements did not meet the criteria as a billable Medi-Cal service.

In their request for Fair Hearing the Consumers and their Conservators delegated their representation to the residential Director. A meeting was held by the regional center Designee for the Director in the hearing process with the Consumers, family members and representative to explain the hearing process. Following a review of the process the Consumers, family members and representatives withdrew their request for Fair Hearing. Their requests were withdrawn as the Fair Hearing Process requires that DHS review the ALJ’s hearing decision and either adopt or reject the decision. The Consumers and their representatives made the decision to withdraw from the hearing Process as they that no matter what the result of the ALJ’s decision was, DHS, the agency that had made the determination the residence was not "... homelike..." also had the authority to reverse the decision of the ALJ, should it be in favor of the Consumers. They stated they believed the Process had a built in bias. Therefore, it was their opinion that it would not be a cost effective nor productive use of the representative’s time and energy as they did not believe they could have the
residence reinstated as a Medicaid billable service. This equates to an average of 1.39 full time staff had been or were being added to cover the new process. The survey indicates that 11.15 additional staff were added or intended to add and additional 52% of the regional centers responding had returned. Of the 21 regional centers surveyed, 11 of the 21 surveys were returned. In this instance a response was received from each of the twenty-one (21) regional centers.

It was hoped the statistics generated by this survey would support additional funding to the regional centers which may have resulted from the statutory changes that produced the revised Fair Hearing Process. As previously stated, the regional centers operate under a state contract with fixed budgetary allocations for each fiscal year. The potential workload increase created by the new process was anticipated because there was concern about the potential impact on the hearing process on administrative costs. This survey of the twenty-one (21) regional centers completed a summary of the survey reflecting the impact on administrative costs.
staff per regional center. Although 10 regional centers indicated an increased cost in mailing fees, there were no specific costs identified for mailing, nor was there an explanation of what the increase in cost may be. It is known that the regional centers are now required to deal with two ancillary agencies rather than one and additional correspondence is required with DDS. This cost could be projected based on data received from the surveys in this research. However, that is not part of this graduate research project. The estimated additional costs in staffing for the eight responding regional centers came to a monthly total of $66,061.00. This averages $8257.62 per month per regional center. In addition, there were other costs estimated at $22,564.00 per month. This equates to an average of $2,256.40 per responding regional center. In addition a specific amount mailing other miscellaneous costs not specified. The miscellaneous costs included attorney fees and translator expenses, both of which are high dollar expenses.

This information does indicates there is a projected increase to administrative costs for the regional centers of a minimum of $10,514.02 per regional center for the implementation of the Process. There are still the significant costs of attorney fees, mailing costs and other
miscellaneous fees not accounted for.

The data presented by DDS in regard to ancillary services indicate cost increases of 200%. It is projected those costs will continue to rise as is indicated by the projected budgets for the coming fiscal year. These costs have not taken into account the additional costs to the regional centers for staff time and ancillary services, such as mailing. The hypothesis that there is a significant increase in cost for ancillary services has been confirmed.

**HYPOTHESIS II: THERE HAS BEEN AN INCREASE IN THE NUMBER OF FORMAL HEARINGS HELD**

The regional center "Fair Hearing Statistics" compiled by DDS from July 31, 1997 through June 15, 1998 indicate that only 20% of the requests for informal meetings proceeded to a formal hearing with an ALJ. The data in Table 3 has been compiled from the regional center surveys.
Table 3: A Comparison of Fair Hearing Requests Initiated with those that Culminate in a Formal Hearing

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SDRC</td>
<td>91</td>
<td>14</td>
<td>65</td>
<td>7</td>
<td>58</td>
<td>3</td>
<td>67</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>15%</td>
<td></td>
<td>10.8%</td>
<td></td>
<td>1.7%</td>
<td></td>
<td>10.4%</td>
<td></td>
</tr>
<tr>
<td>CVRC</td>
<td>22</td>
<td>1</td>
<td>25</td>
<td>0</td>
<td>21</td>
<td>0</td>
<td>24</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>4.5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4.2%</td>
<td></td>
</tr>
<tr>
<td>ELARC</td>
<td>26</td>
<td>3</td>
<td>26</td>
<td>1</td>
<td>24</td>
<td>9</td>
<td>16</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>11.5%</td>
<td></td>
<td>3.8%</td>
<td></td>
<td>37.5%</td>
<td></td>
<td>56.3%</td>
<td></td>
</tr>
<tr>
<td>VMRC</td>
<td>no data</td>
<td>no data</td>
<td>no data</td>
<td>no data</td>
<td>no data</td>
<td>no data</td>
<td>53*</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>11.3%</td>
<td></td>
</tr>
<tr>
<td>IRC</td>
<td>101</td>
<td>7</td>
<td>121</td>
<td>17</td>
<td>120</td>
<td>25</td>
<td>227*</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>6.9%</td>
<td></td>
<td>14%</td>
<td></td>
<td>20.8%</td>
<td></td>
<td>18.5%</td>
<td></td>
</tr>
<tr>
<td>ARC</td>
<td>no data</td>
<td>no data</td>
<td>49</td>
<td>12</td>
<td>41</td>
<td>11</td>
<td>52</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>24.5%</td>
<td></td>
<td>26.8%</td>
<td></td>
<td>15.4%</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>240</td>
<td>18</td>
<td>286</td>
<td>37</td>
<td>264</td>
<td>18.2</td>
<td>439</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>7.5%</td>
<td></td>
<td>12.9%</td>
<td></td>
<td>16.6%</td>
<td></td>
<td>16.6%</td>
<td></td>
</tr>
</tbody>
</table>

Factors that may have attributed to an increase in the number of Formal hearings as reported on the survey:

* "Increased interest of Area Board and Vendors to effect VMRC policy thru appeals process"

** Within the past several years there has been a concerted effort to ensure Consumer's have been provided their due process rights by IRC. Further, in the calendar year 1999 Area Board XII has added a paid position that was very active in advocacy efforts on behalf of Consumers. The Area Board represented Consumers in 14 of the 42 formal hearings held. In addition, the position of Client's Rights Advocacy was filled under P & A and represented 5 Consumers in the hearing process.

These data are not consistent from one regional center to another. It is difficult to determine whether or not there has been an increase in the number of cases preceding to formal hearing based on this information. However, the average number of hearing requests culminating in a formal
hearing is less than that compiled in the “Fair Hearing”
statistics of 97-98. Therefore, the conclusion has been
drawn that there has not been an overall increase in the
number of cases culminating in a formal hearing.
Additional data are needed from the DDS statistics for the
past calendar year to make a more thorough comparison. As
of the date of this project DDS has not published data
regarding the 1999 hearing statistics.

Table 4: Comparison of the Population Served with
the Number of Hearing Requests Received

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SDRC</td>
<td>11,632</td>
<td>91 .8%</td>
<td>11,950</td>
<td>65 .5%</td>
<td>12,475</td>
<td>58 .46%</td>
<td>12,891</td>
<td>67 .5%</td>
</tr>
<tr>
<td>ELARC</td>
<td>4,820</td>
<td>26 .5%</td>
<td>4,957</td>
<td>26 .5%</td>
<td>5,237</td>
<td>24 .45%</td>
<td>5,590</td>
<td>16 .28%</td>
</tr>
<tr>
<td>CVRC</td>
<td>8,252</td>
<td>22 .27%</td>
<td>8,661</td>
<td>25 .29%</td>
<td>9,184</td>
<td>21 .23%</td>
<td>9824</td>
<td>24 .24%</td>
</tr>
<tr>
<td>VMRC</td>
<td>no data</td>
<td>n/d</td>
<td>no data</td>
<td>n/d</td>
<td>n/d</td>
<td>6960</td>
<td>53 .76%</td>
<td></td>
</tr>
<tr>
<td>ARC</td>
<td>no data</td>
<td>n/d</td>
<td>9,400</td>
<td>49 .5%</td>
<td>9,800</td>
<td>41 .4%</td>
<td>10,500</td>
<td>52 .5%</td>
</tr>
<tr>
<td>IRC</td>
<td>12,599</td>
<td>101 .8%</td>
<td>14,376</td>
<td>121 .8%</td>
<td>14,313</td>
<td>120 .8%</td>
<td>15,487</td>
<td>227 1.5%</td>
</tr>
<tr>
<td>Total</td>
<td>37,303</td>
<td>240 .6%</td>
<td>49,344</td>
<td>286 .6%</td>
<td>51,009</td>
<td>264 .5%</td>
<td>61,232</td>
<td>439 .7%</td>
</tr>
</tbody>
</table>

The hypothesis that there has been a greater number of
hearing requests culminating in a formal hearing can not be

59
supported by the data presented in this project. Additional data from other sources are needed to provide a more thorough review of the hearings completed for the calendar year 1999.

HYPOTHESIS III: UNDER THE NEW PROCESS FAIR HEARINGS TAKE LONGER TO REACH CONCLUSION

The Table 5 illustrates the average number of days required to complete the fair hearing process.

Table 5: Comparison of Number of Days to Complete the Hearing Process

<table>
<thead>
<tr>
<th>Regional Center</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDRC no no no no data data data data</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVRC 38 32 30 48/25*</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ELARC 62 33 44 91***</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VMRC no no no 40 data data data</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IRC** 37 29 40 38</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ARC**** no 66 60 84 data</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AVERAGE 45.7 40 43.5 61.4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* CVRC had "One pending case from previous year was 512 days; without that case the average was 25 days"

**These statistics were drawn from 90% of the hearings completed. Approximately, 10% of the hearings were pending in excess of 100 days. These were considered exceptional and were not included in the aforementioned statistics.

***There was no reason provided for this drastic jump in the average number of days to complete the hearing process at ELARC.
***ARC submitted case aging statistics in months; for the purposes of this research project these data has been converted to days. A month equating to 30 days.

The data provided by the surveys indicate there has been an increase of 140% in the number of days to bring a the overall average hearing to conclusion. This increase is directly related to the average number of days reported by ELARC and ARC as the other regional centers reporting did not report significant changes to the age of their Hearing case. There was no explanation provided as to the reasons for the extended period of time necessary to complete the Hearing Process for ELARC and ARC.

The data received from the other reporting regional centers indicates that the time needed to complete the Process has remained stable. It could be assumed that there is no relationship between the new Process and the length of time it takes to bring a case to culmination as there was no consistency between the aging of cases in each regional center. Further research would be necessary to determine the specific reasons for the differences in the age of cases.

**HYPOTHESIS IV: THE NEW FAIR HEARING PROCESS HAS HAD NO IMPACT ON THE OUTCOME OF HEARING DECISIONS**

The regional center fair Hearing statistics compiled by DDS from July 31, 1997 through June 15, 1998 indicated 20%
of the informal hearings requested during the fiscal year 1997-98 concluded in a Formal Hearing. Of those formal hearings 71% of the decisions were in favor of the regional center, 12% for the Claimant; and, 17% a combined decision. Table 6 compares the number of Formal hearings with their results:

**Table 6: Comparison of Hearing Decision Results**

(This table reflects those formal hearing decisions made in favor of the regional center, consumer or combined decisions—in favor of both parties)

<table>
<thead>
<tr>
<th>Reg Center</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reg Ctr</td>
<td>Consumer</td>
<td>Reg Ctr</td>
<td>Consumer</td>
<td>Reg Ctr</td>
</tr>
<tr>
<td>SDRC</td>
<td>7</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>CVRC</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>ELARC</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>VMRC</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>IRC</td>
<td>4</td>
<td>1</td>
<td>10</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>ARC</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>TOTAL</td>
<td>14</td>
<td>3</td>
<td>13</td>
<td>3</td>
<td>24</td>
</tr>
</tbody>
</table>

The data regarding the outcome of formal hearing decisions clearly indicate there has been no impact made by the change in the Hearing Process. Further, the outcome of
hearing decisions for the past four years has been consistent.
In Chapter Three of this graduate research project citations were made from numerous authorities in the public administration arena regarding the difficulty of evaluating services provided by public agencies. The experts have concluded that public agencies often do not have the manpower or appropriate data to make cost effective and informed decisions regarding the provision of services. The regional centers, although they verbally indicated the desire to provide statistics regarding the Fair Hearing Process had neither the manpower nor the data available to provide an abundance of information. This was reflected in the number of responses to received to the survey. Further, the responses that indicated a lack of data over the past several years implied either a lack of manpower or lack of interest in how the Process was changing. In addition, the chief contract agency, DDS has not required the regional centers to keep consistent statistics. DDS, itself, has not collected statistics on an ongoing basis, nor has it held the regional centers accountable for this data.
THE STAKEHOLDERS ARE INTERESTED IN REVIEWING AND IMPROVING THE FAIR HEARING PROCESS;

There is presently a Committee initiated by ARCA to review the current Fair Hearing Process. The Committee consists of representatives of ARCA, DDS, P & A, the Association of Area Boards and the regional centers. The Committee’s intent is to propose legislative changes to the Process that may reduce cost and the complexity of the Process. Two meetings have already occurred to review and discuss these matters. However, DDS is only able to provide statistical data that has been provided by the regional centers. DDS’s data is reflective of similar information received for the purposes of this graduate research project: incomplete, delayed, or not provided.

THE REGIONAL CENTERS ARE NOT IN COMPLIANCE WITH THE LAW

The Fifth Amendment to the Constitution, which applies to the federal government provides that no person shall “be deprived of life, liberty, or property, without due process of law. Section 1 of the Fourteenth Amendment, which applies to state government, contains similar language. State constitutions also provide for due process and may provide greater (but not lesser) protection than the federal Constitutions. (Asimow, 1998)

Gellhorn states “The concept of procedural due process implies that official action must meet minimum standards of fairness to the individual, such as the right to adequate
notice and a meaningful opportunity to be heard before a decision is made." As stated previously in this graduate research project, the benefits received by the Consumers served by the regional centers have due process rights. These rights are specifically outlined in the Welfare and Institutions Section 4700 through 4725.

The legislation regarding the change to the hearing Process was to be implemented beginning January 1, 1999. However, of the six completed survey's received: two indicated the regional center had implemented the process in January, one in February, two in July and one did not report when the Process was implemented.

During the most recent Committee meeting to review the Fair Hearing Process there was a brief report provided by Mark Paxson, legal counsel, regarding a random review of Fair Hearing request forms submitted to DDS. A review of 200 Fair Hearing Requests had 30 requests for mediation. None of the 30 thirty requests for mediation had been forwarded to IAJ. Both the failure to implement the entire Process in the time frame defined by Law and the failure to provide the requested mediation option are a direct violation of due process rights.
THE FAIR HEARING PROCESS TIME LINES ARE NOT REASONABLE

The survey requested data regarding the number of hearing proceedings held outside the time lines required by the W & I Code. It was unclear as to whether the question on the survey was understood by all of the respondents. However, two regional centers indicated that in excess of 90% of their hearings fell outside of the stipulated time lines.

THE COST OF THE FAIR HEARING PROCESS HAS INCREASED

The cost of the Fair Hearing Process ancillary services has more than doubled in the past year. However, DDS staff have met with OAH to develop practices that would reduce the cost of processing the hearing requests. This will be accomplished by the initial change in practice of using and ALJ to review continuance requests and other requests mutually agreed to by both parties. Concise and accurate statistical information is needed to assist the decision makers in developing resolution to the cost issue.

THE REGIONAL CENTERS NEED TO BE HELD ACCOUNTABLE FOR THE PROVISION OF CONSISTENT STATISTICAL REPORTING

DDS, as the contract agency, should develop a format for reporting Fair Hearing Request data. Quarterly reports
of statistical information should be required under the
performance contracts. This data can then be used to assist
the stakeholders in the continuing development of change to
both legislation and practice in the Fair Hearing Process
that would benefit the Consumers and in turn be more cost
effective to the tax payers.

In addition, this data would assist the individual
regional centers in the review of their policies and
practice regarding to the provision of services to
Consumers.

THE REGIONAL CENTERS ARE INTERESTED IN MEETING
AND DISCUSSING THE FAIR HEARING PROCESS

During the initial telephone contact with the regional
centers prior to the mailing of the surveys and on the
survey itself. The regional center staff indicated a desire
to meet and discuss both the Hearing Process and mutual
hearing issues. As privatized public service agencies
operated by separate non profit agencies, the services
provided, although all coming under the same legislation are
open to the interpretation and policy of each individual
regional center. Meeting regarding mutual concerns would
provide the opportunity to develop consistency in the
provision of services and offer them the opportunity to
collaborate in the provision of input to change through
legislation and regulation.

**LEGISLATIVE CHANGE IS NEEDED TO MODIFY THE FAIR HEARING PROCESS**

The current fair hearing process was implemented with limited statistical data available. A more extensive review than this graduate research project has provided is necessary. A cost benefit analysis of the HCBS funds generated by the Waiver Participation in relationship to the increased cost of the Process would be beneficial. This will require consistent reporting of ongoing data by the regional centers and ancillary services.

**SUMMARY**

The data gathered in this graduate research project has proven the current Fair Hearing Process has generated a significant increase in the cost of ancillary services to provide the Process. In addition, the information gathered indicates there are numerous other increased costs to the regional centers and potentially to DDS that need to be analyzed. Further research is needed into both the regional centers cost of implementation of the Process and any costs DDS has incurred to obtain and maintain their mandated data base. Further, collected data must be disseminated to the stakeholders to assist them in making appropriate, needed
changes to the Process to reflect a more effective Process for the Consumer, cost effective service for taxpayers and continue to meet the requirements of the HCBS Waiver process.

The data gathered does not support the hypothesis that an increased number of Fair Hearings are culminating in formal hearings. Nor has the data supported the hypothesis that the hearing process is taking a greater length of time. In fact, in both instances the current Process does not appear to have any impact on either the number of cases culminating in formal hearings or the length of time it takes to resolve disputes.

The research data gathered does support the hypothesis that the new Process has had no impact on the outcome of decisions resulting from the hearing Process. Formal hearing decisions continue to be found in favor of the regional center in approximately 80% of the disputes, 20% of the decisions found in favor of the Consumer. Further research is recommended to better understand the reasons for the consistency in the outcome of hearing decisions.

The data presented through the survey of the regional center further support the individual nature of the services provided by the regional centers’ policy and practices. It would be of benefit to the regional centers to meet and
compare their policies and practices to better understand the similarities and differences. As a privatized public service the regional centers could reduce duplication of research from gathering information from each other regarding the hearing process.

It is further recommended that additional research be conducted with input from Consumers and their representatives regarding the Fair Hearing Process.

This graduate research project is only an initial step in the development of data to be used to monitor implementation of the Fair Hearing Process for the regional centers. Ongoing statistics need to be gathered from the system as a whole to assist the regional centers and DDS in the review of its on practices and policies.
APPENDIX A

REGIONAL CENTER FAIR HEARING SURVEY

January 2000

The following information refers to appeals filed on behalf of regional center consumers only. It does not include vendor appeals nor does it include Early Start cases.

How many consumers were being served by this regional center as of:

December 31, 1995  December 31, 1997

December 31, 1996  December 31, 1998

December 31, 1999

How many consumers were participating the Home Community Based Services (HCBS) Waiver?

December 31, 1995  December 31, 1997

December 31, 1996  December 31, 1998

December 31, 1999

How many Fair Hearing requests were filed in 1999 in objection to a termination from the HCBS Waiver?

How many Requests for Fair hearings (informal) were received in:


How many Requests for a Formal (State Level) Hearing were filed in (Note all fair hearing requests filed in 1999 were considered a request for a formal hearing)

How many cases filed with the Office of Administrative Hearings (OAH) were settled prior to the Formal hearing: (In 1999 how many cases were settled after the evidence packet was sent, but before the Formal hearing?)

<table>
<thead>
<tr>
<th>Year</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>

How many cases were settled at the formal hearing?

<table>
<thead>
<tr>
<th>Year</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>

In how many cases did the claimant fail to show up for the formal hearing; therefore the case was dismissed due to default?

<table>
<thead>
<tr>
<th>Year</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>

How many Formal hearing decisions were decided in favor of the regional center?

<table>
<thead>
<tr>
<th>Year</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>

How many Formal hearing decisions were decided in favor of the claimant?

<table>
<thead>
<tr>
<th>Year</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>

What was the average age of fair hearing cases for each of the following years? (The age of a case is defined as follows: the birth of the case is the initial filing date and the death of a case is the end of the process. Prior to 1999 W & I Code, § 4705 defined the date of receipt of the request at the regional center as the initiation of a request. Effective January 1, 1999 the postmark or date of receipt, which ever came first was the initiation of a case. Prior to 1999 the death of a case was the date the informal decision was rendered, if no further action occurred. If there was a formal hearing the date of the decision or final action in the matter is the death of the case. In 1999 this would be the formal decision date or any subsequent court action or the date the withdrawal was signed). This answer should be in days.

<table>
<thead>
<tr>
<th>Year</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>
What %age of cases in 1999 were processed out side of the mandated times lines, i.e. what %age of cases required a waiver of time lines during any step of the process?


The Area Board represented the consumer in how many cases?


Protection & Advocacy, Inc. represented the consumer in how many cases?


Are there other factors which may have impacted a change in the number of appeal requests received for your regional center in 1999? If so what are those factors? Yes      No

What month did your regional center implement the 1999 mandates for the fair hearing process?

Would your regional center be interested in participating in a forum regarding the fair hearing process to include discussion of cases, policy and process? Yes      No

Are you interested in receiving a summary of this research? Yes      No

Regional Center          Person completing this survey

Telephone #
APPENDIX B

Fair Hearing Survey
(Administrative)

Due to the statutory changes amending the fair hearing process, concern was expressed about a potential workload issue for which Regional Center are not being reimbursed.

Please provide the following information

1. Have you added, or you plan to add, additional staff to address changes in the Fair Hearing forms and procedures?

2. If so, how many FTEs, including clerical support?

3. Monthly costs associated with new FTE’s (including benefits and staff operating costs).

4. Additional costs associated with the Fair Hearing process (/e. Witness fees, sign or language interpreters, office supplies, etc.)

5. What has been the impact or affect of implementing the new Fair Hearing forms and procedures (optional)?

Please return survey to Bette Baber at Orange County Regional Center by 11/1/99
<table>
<thead>
<tr>
<th>RC</th>
<th>Add staff?</th>
<th>How Many?</th>
<th>How Much? (Monthly)</th>
<th>Other monthly Costs</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alta</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>CV</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>East Bay</td>
<td>Yes</td>
<td>1.60</td>
<td>$6,848</td>
<td>Mailing, etc.</td>
<td></td>
</tr>
<tr>
<td>East LA</td>
<td>No</td>
<td>0</td>
<td>0</td>
<td>Minimal</td>
<td></td>
</tr>
<tr>
<td>FN</td>
<td>Yes</td>
<td>1.0</td>
<td>$3,840</td>
<td>$600</td>
<td></td>
</tr>
<tr>
<td>Lanterman</td>
<td>No</td>
<td>0</td>
<td>0</td>
<td>Attorney</td>
<td></td>
</tr>
<tr>
<td>Golden Gate</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Harbor</td>
<td>No</td>
<td>0</td>
<td>0</td>
<td>$5,000</td>
<td></td>
</tr>
<tr>
<td>Inland</td>
<td>Yes</td>
<td>0.75</td>
<td>$8,945</td>
<td>$1,005</td>
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<tr>
<td>Kern</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>North Bay</td>
<td>No</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>North LA</td>
<td>Yes</td>
<td>1.00</td>
<td>$17,909</td>
<td>$3,686</td>
<td></td>
</tr>
<tr>
<td>Orange</td>
<td>Yes</td>
<td>2.00</td>
<td>$7,402</td>
<td>$1,500</td>
<td></td>
</tr>
<tr>
<td>RC</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>San Andreas</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
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<tr>
<td>San Diego</td>
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<td>1.30</td>
<td>$5,392</td>
<td>$9,523</td>
<td></td>
</tr>
<tr>
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<td>0</td>
<td>0</td>
<td>Mailing</td>
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<tr>
<td>SCLA</td>
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<td>2.5</td>
<td>$10,380</td>
<td>$1,250 plus mailing, translator, supplies, messenger, attorney fees</td>
<td></td>
</tr>
<tr>
<td>Tri-Counties</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>VM</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Westside</td>
<td>Yes</td>
<td>1.00</td>
<td>$5,345</td>
<td>0</td>
<td></td>
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<tr>
<td>Totals</td>
<td>11.15</td>
<td></td>
<td>$66,061.00</td>
<td>$22,564.00</td>
<td></td>
</tr>
</tbody>
</table>
Fair Hearing Survey

1. Have you added, or do you plan to add, additional staff to address changes in the Fair Hearing forms and procedures?

2. If so, how many FTE's, including clerical support?

Inland Regional Center currently has one full time administrative person assigned to forward hearing document; schedule appointments; manage the calendar and other related tasks. She has always had other job assignments also. The new procedure has doubled her work load related to appeals.

In addition, we have had one individual assigned as the Director's designee to complete the informal process. With the new procedure, we have added an additional 3/4 time person.

3. Monthly costs associated with the new FTE's (including benefits and staff operating costs).
   Salaries & Wages = $7,167.00/mo
   Benefits = $1,778.00/mo
   Operating Costs = $1,005.00/mo
   TOTAL = $9,950.00/mo

4. Additional costs associated with the Fair Hearing Process (i.e. witness fees, sign or language interpreters, office supplies, etc.)

IRC has received approximately 220 request for appeal this year. In 1998, IRC received 124 requested for appeal. To date, we have been to state level hearing on 43 cases; in 1998 we went to state level hearing on 19 cases. WE have an increase in cost in witness fees--however; this is a part of our employees job. Therefore, we do not pay an outside fee. Our mailing costs have tripled due to the number of cases appealing and due to the additional mailing we must complete because of the process (i.e. DDS and Mc George school of law)

5. What has been the impact of affect of implementing the new Fair Hearing forms and procedures (optional)?

It is the belief of the appeals coordinator and consumer services representative that the new process has made families less willing to negotiate an agreement regarding services; therefore, more cases have processed to an Administrative Law Judge.
made families less willing to negotiate an agreement regarding services; therefore, more cases have processed to an Administrative Law Judge.

The forms are confusing both to staff and families. We have had several occasions where families have not understood what a mediation or informal meeting were and have not checked the box requesting either meeting. When contacted by telephone, they have readily agreed to either process. We spend far more time explaining the process to both families and staff.
APPENDIX C

GLOSSARY OF TERMS

The Act: The Lanterman Developmental Disabilities Act

ALJ: Administrative Law Judge

Administrative Law Judge (ALJ): A judge employed by the Office of Administrative Hearings (OAH) to hear and make decisions in due process filed under the Administrative Procedural Act (APA) or due process procedures defined by federal or state law or regulation. For the purposes of the presiding over cases for the regional center the ALJ is required to have five years of experience as a practicing attorney. (See W & I Code, §4712(d))

ARCA: Association of Regional Center Agencies

Association of Regional Center Agencies (ARCA): The organization of Regional Centers which coordinates many of their legislative activities

Catchment area: Geographic area whose residents are served by a given regional center.

CCL: Community Care Licensing

Community Care Licensing: A state agency responsible for licensing and monitoring board and care facilities. The agency is guided by California Code of Regulation, Title XXII regulations

CCR: California Code of Regulation

Client: Traditional term for an individual qualified to receive services from Regional Centers under The Lanterman Developmental Disabilities Act (also see Consumer)

Consumer: The preferred term for an individual qualified to receive services from Regional Centers under The Lanterman Developmental Disabilities Act.

Consumers Service Coordinator (CSC): The title given to the Regional Center staff responsible for the
coordination of services to regional center consumers. The CSC provides case coordination to a defined, ongoing caseload of consumers and is responsible for facilitating the collaborative planning for consumer services. The collaboration includes the development of Individual Program Plans (IPPs) facilitates access to services and monitors the effectiveness of those services.

**Consumers (Clients) Rights Advocate:** A position previously held by a regional center staff member responsible for representing consumers in due process actions, investigations complaints regarding violations of consumers rights and monitoring. Under SB 1038 this responsibility went out to contract. The contract was awarded to Protection and Advocacy, Inc. (P & A) and is monitored by the Department of Developmental Services (DDS).

**DDS:** Department of Developmental Services

**Department of Developmental Services (DDS):** A department of the California Health and Welfare Agency charged by state and federal law with the administration of services and funds for persons with developmental disabilities. DDS operates the state developmental centers (SDC) and contracts with the twenty-one (21) regional centers for community based services for individuals with developmental disabilities.

**Department of Health Services (DHS):** A state agency responsible for the delivery of public health services.

**Developmental Disability (DD):** For the purposes of receiving regional center services in the State of California the Welfare and Institutions Code, Section 4512(a) defines a developmental disability as mental retardation, cerebral palsy, epilepsy, autism or a condition similar to mental retardation or requires treatment similar to that of an individual with mental retardation.

**DHS:** Department of Health Services

**Health Care Financing Administration (HCFA):** A federal agency withing the U.S. Department of Health and Human
Services responsible for Medicare and Medicaid (Medi-Cal in California) financing. This agency also oversees Medicaid Waiver programs.

**Generic Services:** Consumer services and supports identified in the IPP and obtained with the regional center's facilitation, but paid for by a third party, not through regional center Purchase of Services (POS) funds. Examples include health care paid for by private insurance or Medi-Cal, services funded by the Department of Rehabilitation, local school district services.

**Home & Community Based Services Waiver (HCBS):** An agreement entered into between the State of California and the federal government which provides federal funding for services to community based services to assist individuals with developmental disabilities to remain in community living settings rather than living in institutions.

**Intermediate Care Facilities (ICF):** Medicaid (Medi-Cal) funded residential facilities for individuals with developmental disabilities.

**Individual Education Plan (IEP):** A plan developed to define the educational program for a child with disabilities.

**Individual Program Plans (IPP):** These plans reflect consumer's choices in how to structure his/her life. Focuses on defining services and supports necessary to maximize the individuals independence. The plan outlines the expected outcomes, the natural and paid supports and defines the regional centers responsibility in the provision and monitoring of services.

**IDEA:** Individuals with Disabilities Education Act, originally established under P.L. 94-142. This is federal legislation mandating free, appropriate public education for children with disabilities.

**Institute for Administrative Justice (IAJ):** Mc George School of Law, current contract holder for mediation services for the regional centers.
Lanterman Developmental Disabilities Act (The Act): The original California legislation which defined the service delivery system for individuals with developmental disabilities. The Act is also the Welfare and Institutions Code, ...

Local Education Agency (LEA): This is typically the local school district. Although services may be augmented by the Special Education Local Planning Area (SELPA).

Medicaid Waiver: Programs by which Medicaid (Medi-Cal in California) funds are available to provide support services for consumers who reside in noninstitutional settings to include but not limited to family homes, Community Care Licensed (CCL) facilities, otherwise identified as Board and Care Facilities (B&C), or their own homes. As an exception to standard Medicaid policy, operating under a waiver requires a specific application by the state, is subject to specific terms and conditions defined by HCFA regulations.

Office of Administrative Hearings (OAH): The state agency that holds the contract with the Department of Developmental Services to provide Administrative Law Judges (ALJ) to arbitrate case in the due process for regional center consumers.

Purchase of Service (POS): A term used in the regional center system to denote the authorization for purchasing services provided to individuals with developmental disabilities.

POS: Purchase of Service

Protection & Advocacy, Inc (P&A): Firm of attorney's that provide legal advocacy for consumers at no charge to the consumers. In July of 1999, P&A also initiated a contract with the Department of Developmental Services to provide Client's Rights Advocates to the regional center catchment areas.

Regional Center: Twenty-one locally controlled not-for-profit agencies that coordinate and administer California's services to persons with developmental disabilities. Each agency has a local board of directors and contracts with the State through the Department of Developmental services.
Skilled Nursing Facility (SNF): Licensure status for nursing homes issued by the California Department of Health, dictating specific staffing and services. More nursing and clinical staff is required than in an intermediate care facility (ICF).

Stakeholder organizations: Statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations. These organizations include, but are not limited to, Area Boards, Protection and Advocacy Agencies, Office of Administrative Hearings, Association of Regional Center Agencies (ARCA).

State Developmental Centers (SDC): Otherwise known as state hospitals. There are currently three SDC's operating in the state of California which serve individuals with Developmental Disabilities. The State has been made an extended effort in the past ten years to depopulate the SDC's and service individuals with developmental disabilities in their local communities.

Supported Living Services: A living arrangement in which the consumers lives in their own home and necessary support services are provided by both natural (unpaid) and paid supports (vendors).

Vendor: A company or individual that has contracted with a regional center to provide services to consumers with funding for the service provided by the regional center under State regulation.
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