



MARTY OMOTO COMMENTARY

## CDCAN

California Disability Community Action Network

*ACCOUNTABILITY WITH ACTION*

*Advocacy without borders for the rights of children and adults with disabilities, mental health needs, the blind, deaf, persons with traumatic brain and other injuries, seniors, workers and organizations who provide or advocate for services and supports. This report and commentary goes out to over 55,000 people with disabilities, mental health needs, the blind, seniors, community organizations, facilities, workers, policymakers and advocates across the State. Reply to this commentary:*

Marty Omoto is the director of CDCAN (California Disability Community Action Network)

Email: [martyomoto@rcip.com](mailto:martyomoto@rcip.com) Website: [www.cdcan.us](http://www.cdcan.us)

FEBRUARY 2, 2010 - TUESDAY

### **DEFYING GRAVITY: POLICYMAKING NEEDS TO CHANGE – AND WE NEED TO MAKE THAT HAPPEN – NOW**

*There exists in State law now a vehicle for the Legislature to have budget proposals reviewed comprehensively*

SACRAMENTO - There is a song I heard not too long ago that was about going against what is conventional in things that are important in one's life – and to leap and “try defying gravity”. Not a mindless leap of faith, but a trust in one's self and recognition of the power that one has – to make a change. To defy gravity.

I heard that song recently on the TV show “Glee”, but the song was originally from the musical “Wicked” (which I never saw, but the title seems appropriate to describe the California budget process and crisis). Aside from the aspirations that we all may have as advocates and policymakers for the crown of “Ultimate Diva”, the meaning of that song applies – at least for this diva, on how we need to change our advocacy so that it in turn changes how policy is made.

Defying gravity.

After 9 consecutive years of budget deficits, spending cuts and cost containment measures one would think a change in how policymaking would have already happened. But the status quo is a powerful thing – for people in government and for how we advocate. We all need to change. And we haven't. The cost of not changing any of that is evident to us as advocates, especially when we see the lives that are harmed.

Even a small step for some requires a leap to defy gravity. We need to give policymakers – and ourselves - a push to make that leap. We need to insist that it happens because this will be how it will be unless we all force a change. Defying gravity.

### **Inadequacy of Justice – We Need to Defy Gravity**

In these difficult days in our community of people with disabilities, mental health needs, the blind, the deaf, seniors, families, people with MS, Alzheimer's and other disorders, people with traumatic brain and other injuries, government, community organizations, facilities and workers who provide supports and services – there is a sense, as Camus once wrote of the astonishment of the apparent inadequacy of justice. People are amazed and astonished how policymaking can seem to be so unfair, so unjust and so lacking in logic, sensibility or deliberation and our advocacy seems to be so ineffective to fight back.

And yet it continues in the same way year after year – 9 years at least - of consecutive deficits and cuts – proposed and enacted, in policymaking that defies common sense and fairness. That type of policymaking – for Democrats, for Republicans, for Green Party people, Independents, advocates, legislators, people in the Administration – brings every one of us down.

We need to change not only how we fight proposals that we believe are bad or unfair – we need to change that way policymaking that holds all of us down.

We need to, defy gravity, to break convention, to change. I previously offered up a different way of advocacy – called “accountability with action” (people can write to me at [martyomoto@rcip.com](mailto:martyomoto@rcip.com) for more information on that). Tied to that are some other critical small steps in defying gravity – in making the changes not only in policymaking, but in our advocacy:

### **DEFYING GRAVITY – STEP 1:**

#### **Some Proposals Need To Be Rejected Immediately**

- First, there are proposals that are obviously so wrong that it needs to be rejected immediately and taken off the table, and force new proposals to be made.
- For instance, if this or any Governor had proposed changing eligibility to attend public school that would eliminate nearly 90% of the student population based on whether or not their birthday included the numbers “4” or “3” “2” or “1” , I don't believe that anyone would think twice that this would be wrong and bad, no matter what one's belief on education spending. Policymakers would not need months or weeks to decide whether a proposal like that deserves further consideration other than outright rejection. Rocket scientists would certainly rest easier knowing that it does not require them to intervene on a proposal like that.
- So proposals like making major changes to eligibility to In-Home Supportive Services (IHSS) – no matter what one's opinion of fraud, abuse or the caseload growth and spending is – that would use an internal assessment number that was never meant to determine eligibility – for the purpose of eliminating nearly 90% of children, adults and seniors with disabilities, mental health needs, the blind, from the

program – within weeks – not even a year - from enactment needs to be immediately rejected by the Legislature - not later – but now.

- Proposals to totally eliminate Adult Day Health Care for 37,000 adults with disabilities and low income seniors, and to eliminate the Cash Assistance Program for Immigrants (CAPI) that provides small grants to about 10,000 legal immigrants who are persons with disabilities, the blind or seniors also deserve and need immediate rejection by the Legislature – not later – but now.

I'll be issuing a separate Action Alert regarding these and other cuts (including reductions to mental health, Proposition 10)

### **DEFYING GRAVITY: STEP 2:**

#### **Any Proposed Elimination of Any Major Health and Human Service Program Must Have Transition/Closure Plan And Sufficient Time To Carry it Out**

- We need to insist and hold policymakers and ourselves accountable that any proposal to eliminate a major and needed health and human service program needs to be accompanied by a detailed plan to transition and a one to two year process to do so.
- The two year process is the minimum time in state law that is required to close a developmental center which deals with hundreds of people with developmental disabilities who are residents and hundreds more who are workers. That process and time period is right, sensible and fair, given that lives depend on a certain critical service or support, and ending it abruptly is not policymaking – it would be just cruel and unjust. No one would disagree with that. No one.
- So the same right must be applied to services and support critical in the community too, where programs – such as the recent elimination of 9 Medi-Cal optional benefits for adults in the community were implemented impacting hundreds of thousands of people across the state or proposed cuts that would significantly reduce or eliminate certain health and human services. Requiring such a transition/closure plan of a program or service either being considered for a major reduction, change or elimination would force policymakers to do the right thing that considers all the impacts and cost shifting – something that they do not do now.
- It would be just, fair and responsible because policymakers have an obligation to protect lives as much as to protect the State general fund. This would protect both in a responsible way. On this issue no one in our community would dispute. Everyone needs to be treated fairly and with respect.
- And certainly if one argues that immediate “savings” are necessary, then what they are really talking about is a proposal that does not recognize any cost shifts, does not recognize any option or way for a person to replace or transition to another service and takes absolutely no responsibility for what happens to those Californians.
- Shutting down major programs – such as Adult Day Health Care for instance involving 37,000 people, and thousands more workers and providers in three months is not only unrealistic – but outrageous for anyone to believe that no bad consequence would happen if such a proposal was approved. The analogy would be closing down a developmental center – or other state hospital in three months. Hard choices,

difficult choices and a budget crisis mean that policymakers have a pass on not making sure people are treated fairly and that government acts responsibly.

- If policymakers in either party and from either branch of government want real reform and change, then we all have to practice it – and conduct policymaking that is not only deliberate in its review, but fair and humane in its implementation.
- The real hard choice in a budget crisis like the one California has faced for nearly a decade is for policymakers – and advocates – to change the way on how hard choices are made.

### **DEFYING GRAVITY – STEP 3:**

#### **Legislature Needs Independent and Comprehensive Review of Budget Proposals Impacting Health and Human Services**

- The Legislature needs to change how they react to proposals dealing with major changes to health and human services – including Medi-Cal, In-Home Supportive Services, Early Start, regional center funded community based services, to senior/aging services, to mental health services - that this or any Governor makes for the State budget.
- No one from either party or from any part of state government or any advocacy group would disagree that any proposal for major changes to health and human services (or policy in any area of government) should be carefully reviewed for its impact not only on the State general fund – but to the people impacted and to other areas, before a decision is made. That clearly and consistently does not happen.
- If making policy was *only* about protecting the State's general fund, and *only* about the spending aspects of caseload and use of services, then decisions or proposals in recent years on how to close the budget gap, would at least be understandable, even if we as advocates would believe it to be wrong.
- Of course, if that is what policy is all about, California surely would not need a governor or 120 legislators to make those decisions - a head certified public accountant and 120 bookkeepers could easily fill that function. *If* that was what policy is about. But it is not.
- Justice, fairness and doing what is right aren't attributes that belong to any one party or any one group or person. It is not idealism. It is not words just spoken from the podium by advocates or from the dais by legislators at budget hearings only to be forgotten when bad policy is enacted or implemented. It is realistic. It is words on a paper that form sentences that spell out clearly what a proposal really does – and spells out clearly how it would implement it and transition people from it (if it was being reduced or eliminated).
- While the Legislature has good budget staff – and there are resources with the Governor's Department of Finance and Legislative Analyst Office about the impact of state spending and the State General Fund – none of those entities have the resources to review and analyze major proposals to health and human services in a comprehensive way. This is not just an observation by advocates – it has been admitted as such by members of both the Senate and Assembly budget committees, and by representatives of the Administration and by the Legislative Analyst Office.
- As a result, policy is made without good information other than caseload and utilization budget numbers, without knowing what will happen or who will be

affected, without systemic ability to track and monitor unintended problems and consequences. The State General Fund has many offices and staff watching out for it in terms of impact of spending, cost pressures, cost avoidance, cost containment, cost neutrality. We also need people who will look at the human impact – and other impacts as well.

- *Everyone* agrees something really critical and important is missing in policymaking. And yet not doing anything about it – and doing the same thing year after year –defies logic, good sense and responsibility. So what can be done?

### **Refer Proposed Budget Changes to Health and Human Services for Review by California Health Benefits Review Program – or Similar Entity**

- As a step toward changing the way of doing things on the budget the Legislature needs to use a vehicle *already* authorized in existing state law that the Legislature *already* uses to review policy bills that propose to change, add or repeal coverage by health insurance.
- That vehicle or entity is the existing California Health Benefits Review Program (CHBRP) that is there to provide independent analysis of the medical, financial, and public health impacts for proposed legislation regarding health insurance benefit mandates and repeals.
- That program needs to be also used to provide that desperately and critical needed independent analysis of all those impacts (including the economy) on proposed budget reductions – and other changes – that have at least as equal impact of any change to health insurance.
- The California Health Benefits Review Program was signed into law by a Democratic governor – and reauthorized twice by his Republican successor. It was created in 2002 by AB 1996 by then Assemblymember Thomson and reauthorized in 2006 (authored by then State Sen. Sheila Kuehl). It was reauthorized in 2009, by legislation authored by the Assembly Health Committee to reauthorize and expand the program, and received no opposition votes in either house and was signed into law by Governor Schwarzenegger.
- The California Health Benefits Review Program was created because, as then Assemblymember Thomson said in 2002 there was a need to “...*establish an independent, nonpartisan mechanism to analyze the clinical efficacy and cost effectiveness of legislative proposals for expanded health care benefits using clear criteria for evaluating each proposa,*” and that such an entity would “...*facilitate the provision of quality, cost-effective health services by providing current, accurate data and information to the Governor and the Legislature for the purpose of determining health-related programs and policies in connection with proposed legislation.*”
- Thomson said this more comprehensive review of bills calling for changes to health insurance coverage was needed because “...*the Legislature and its policy consultants do not possess the medical, economic or actuarial expertise to adequately consider the clinical benefits and economic impact of some of the particular legislative proposals,*” and that by requiring the University to publish a written analysis that takes into account the medical, economic and public health impact of each mandated benefit legislative proposal, “...*the Legislature and the*

*Governor will be better informed when it makes decisions on mandated benefit legislative proposals.”*

If that is true for health insurance – then it is certainly true for budget proposals that call for as great or even greater change and impact in health and human services.

The Legislature needs to use this existing vehicle to review all of the budget proposals – whether by the Governor or legislature – that deals with major changes to health and human services. .This year – now.

And we as advocates need to demand and push for this to happen. I will be issuing an Action Alert on this too later this week.

### **Can This Help In Budget Policymaking on Health & Human Services?**

Policymaking needs to change. This is one small step toward making better policy.

The process and program is there – and has proven it can provide valuable cost benefit and other information that is often missing in the process of considering budget proposals.

Is it the perfect or the complete answer to getting to better policymaking in the budget process? No, but it certainly is better than what we have now.

Is the California Health Benefit Review Program a perfect entity? No – but it was re-authorized twice – the last time in 2009 with no opposition votes and the concept behind it is sound. And it must have been doing something right or useful if 120 legislators, the Governor, health committee staff in both houses, and advocacy groups from all sides of health issues were either in support or not opposed to reauthorizing the program. .

## **BACKGROUND OF THE CALIFORNIA HEALTH BENEFIT REVIEW PROGRAM**

### **How this Program Works and Conducts Its Analysis**

- A small analytic staff in the University of California's Office of the President supports a task force of faculty from six of the University's campuses (Berkeley, Davis, Irvine, Los Angeles, San Diego, and San Francisco) and three private universities (Loma Linda University, the University of Southern California, and Stanford University) to complete each analysis.
- Currently, as required by existing state law, analyses are completed within 60 days of a legislative request.
- The task force has developed methods for evaluating relevant medical effectiveness, cost impact, and public health impact of a health insurance benefit proposal.
- As required by existing state law, a certified actuary is used to help determine the financial impacts. Currently the California Health Benefit Review Program has contracted with Milliman to fulfill this role.

- The California Health Benefit Review Program has also adopted what they call a “strict” conflict of interest disclosure policy adapted from one used by the National Academies of Science to assure, as required by existing State law, that the analyses are undertaken by individuals without any financial or other material interests that could bias the results.
- A National Advisory Council, made up of experts from outside the state of California to provide representation among groups with an interest in health insurance benefit mandates, reviews draft reports to assure their quality before they are transmitted to the Legislature.
- Each report summarizes scientific evidence relevant to the proposed mandate or proposed mandate repeal, but does not make recommendations, deferring policy decision-making to the Legislature.
- Currently the State funds this work through a small annual assessment of health plans and insurers in California.

### **Existing State Law**

The state law that authorized this program was first enacted in 2002 by AB 1996, and subsequently reauthorized in 2006 and 2009.

The first part of that state law dealing with the California Health Benefit Review Program clearly shows what it is currently required to do – and what impacts it is required to cover when doing an analysis, that could clearly help in clarifying and answering questions raised by various budget proposals by the Governor and others impacting health and human services:

*127660. (a) The Legislature hereby requests the University of California to establish the California Health Benefit Review Program to assess legislation proposing to mandate a benefit or service, as defined in subdivision (c), and legislation proposing to repeal a mandated benefit or service, as defined in subdivision (d), and to prepare a written analysis with relevant data on the following:*

*(1) Public health impacts, including, but not limited to, all of the following:*

*(A) The impact on the health of the community, including the reduction of communicable disease and the benefits of prevention such as those provided by childhood immunizations and prenatal care.*

*(B) The impact on the health of the community, including diseases and conditions where gender and racial disparities in outcomes are established in peer-reviewed scientific and medical literature.*

*(C) The extent to which the benefit or service reduces premature death and the economic loss associated with disease.*

*(2) Medical impacts, including, but not limited to, all of the following:*

*(A) The extent to which the benefit or service is generally recognized by the medical community as being effective in the screening, diagnosis, or treatment of a condition or disease, as demonstrated by a review of scientific and peer reviewed medical literature.*

*(B) The extent to which the benefit or service is generally available and utilized by treating physicians.*

*(C) The contribution of the benefit or service to the health status of the population, including the results of any research demonstrating the efficacy of the benefit or service compared to alternatives, including not providing the benefit or service.*

*(D) The extent to which mandating or repealing the benefits or services would not diminish or eliminate access to currently available health care benefits or services.*

*(3) Financial impacts, including, but not limited to, all of the following:*

*(A) The extent to which the coverage or repeal of coverage will increase or decrease the benefit or cost of the benefit or service.*

*(B) The extent to which the coverage or repeal of coverage will increase the utilization of the benefit or service, or will be a substitute for, or affect the cost of, alternative benefits or services.*

*(C) The extent to which the coverage or repeal of coverage will increase or decrease the administrative expenses of health care service plans and health insurers and the premium and expenses of subscribers, enrollees, and policyholders.*

*(D) The impact of this coverage or repeal of coverage on the total cost of health care.*

*(E) The potential cost or savings to the private sector, including the impact on small employers as defined in paragraph (1) of subdivision (1) of Section 1357, the Public Employees' Retirement System, other retirement systems funded by the state or by a local government, individuals purchasing individual health insurance, and publicly funded state health insurance programs, including the Medi-Cal program and the Healthy Families Program.*

*(F) The extent to which costs resulting from lack of coverage or repeal of coverage are or would be shifted to other payers, including both public and private entities.*

*(G) The extent to which mandating or repealing the proposed benefit or service would not diminish or eliminate access to currently available health care benefits or services.*

*(H) The extent to which the benefit or service is generally utilized by a significant portion of the population.*

*(I) The extent to which health care coverage for the benefit or service is already generally available.*

*(J) The level of public demand for health care coverage for the benefit or service, including the level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts, and the extent to which the mandated benefit or service is covered by self-funded employer groups.*

*(K) In assessing and preparing a written analysis of the financial impact of legislation proposing to mandate a benefit or service and legislation proposing to repeal a mandated benefit or service pursuant to this paragraph, the Legislature requests the University of California to use a certified actuary or other person with relevant knowledge and expertise to determine the financial impact.*

**URGENT!!!!**

**PLEASE HELP CDCAN CONTINUE ITS WORK!!!**

We need your help. CDCAN Townhall Telemeetings, reports and alerts, commentaries and other activities cannot continue without your help.

To continue the CDCAN website, the CDCAN News Reports. sent out and read by over 50,000 people and organizations, policy makers and media across California and to continue the CDCAN Townhall Telemeetings which since December 2003 have connected thousands of people with disabilities, seniors, mental health needs, people with MS and other disorders, people with traumatic brain and other injuries to public policy makers, legislators, and issues. Please send your contribution/donation (make payable to "CDCAN" or "California Disability Community Action Network):

**CDCAN**

**1225 8th Street Suite 480 - Sacramento, CA 95814**

paypal on the CDCAN site is not yet working – will be soon.

MANY, MANY THANKS TO the Easter Seals, California Association of Adult Day Health Centers, Valley Mountain Regional Center, Toward Maximum Independence, Inc (TMI), Friends of Children with Special Needs, UCP of Los Angeles, Ventura and Santa Barbara Counties, Southside Arts Center, San Francisco Bay Area Autism Society of America, Hope Services in San Jose, FEAT of Sacramento (Families for Early Autism Treatment), RESCoalition, Sacramento Gray Panthers, Easter Seals of Southern California, Tri-Counties Regional Center, Westside Regional Center, Regional Center of the East Bay, UCP of Orange County, Alta California Regional Center, Life Steps, Parents Helping Parents, Work Training, Foothill Autism Alliance, Arc Contra Costa, Pause4Kids, Manteca CAPS, Training Toward Self Reliance, UCP, California NAELA, Californians for Disability Rights, Inc (CDR) including CDR chapters, CHANCE Inc, , Strategies To Empower People (STEP), Harbor Regional Center, Asian American parents groups, Resources for Independent Living and many other Independent Living Center, several regional centers, People First chapters, IHSS workers, other self advocacy and family support groups, developmental center families, adoption assistance program families and children, and others across California