

DEPARTMENT OF DEVELOPMENTAL SERVICES

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



May 20, 2011

Drew Cutler, M.D.
Board President
Inland Counties Regional Center, Inc.
P.O. Box 6127
San Bernardino, CA 92412-6127

Dear Dr. Cutler:

The Department of Developmental Services (Department or DDS) would like to thank the members of Inland Regional Center's (IRC) Board or Trustees and staff involved in developing and submitting IRC's plan of correction. The plan was submitted in response to IRC's special contract language. Based on the submitted plan, it appears that IRC staff and the Board have collaboratively made progress in each of the areas identified by the Department as requiring improvement or resolution, and we commend you for your achievements thus far; however, many significant issues remain unresolved.

Below is a listing of each special contract provision followed by the Department's assessment of IRC's response. The Board should take action to provide additional analysis and/or information to the Department within 45 days of the date of this letter, for each of the areas below in which the plan as submitted is insufficient. The Board and regional center executive management must immediately become well versed in all aspects of the regional center's contract with the Department and related laws, as the plan of correction contains information that is contrary to some contractual and statutory provisions.

1. **Board Fiscal Management, Oversight of Contractor and Stewardship of Public Dollars**

- a. **Special Contract Language Requirement:** Contractor shall develop and submit to the State a plan of correction detailing how contractor will ensure compliance with Article IV, Section 4, State Property, of its contract with the State. Contractor shall also prepare an inventory of all state property maintained by the regional center and submit this information to the State by March 31, 2011.

DDS Response: IRC submitted Inventory Control Procedures and an equipment list (Fixed Assets dated March 30, 2011). The Department did not identify any issues with the Inventory Control Procedures. However, as required by the State Contract,

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Article IV, section 4(a), the State Equipment Management Guidelines, section III (F) and (E), and the State Administrative Manual, section 8652, IRC did not provide documentation to substantiate that it conducted a complete inventory of all state property, including the date the inventory was conducted, who conducted the inventory, who reviewed the inventory after it was conducted, and what items were added and disposed of since the last inventory, including copies of the forms for new equipment and disposed equipment, as supporting documentation. IRC needs to prepare the contractually required inventory of all state property maintained by the regional center and submit the inventory to the Department within 45 days from the date of this letter.

- b. Special Contract Language Requirement:** Contractor shall conduct a review of all rates negotiated from July 1, 2008 to present, to ensure compliance with rate freezes, median rate requirements, and other applicable laws and regulations and submit by March 31, 2011, the outcomes of this assessment, a list of the rates negotiated by vendor, the vendor's corresponding service code and plans of corrective action, as needed.

DDS Response: IRC states that it completed a review of all rates negotiated between July 1, 2008, and the present to identify any negotiated rates that exceeded the maximum allowable. IRC also provided a chart identifying these vendors and associated rates. In all but three of the listed vendor numbers and rates, the justification for rates that exceed the maximum allowable are not consistent with law. Using another regional center's rate, using a rate that is determined to be competitive and aligns with the statewide median, and using a pre-2008 rate under a new vendor number, are not justifications for exceeding the statutory rate freeze or the median rates established pursuant to statute. For vendor numbers PJ3620, PJ3482 and PJ3397, the regional center had the authority to use the prior rate as, according to the Uniform Fiscal System, the only change that occurred was that of a change in ownership type. For all other vendors listed by IRC, the regional center must take immediate action to correct the vendors' rates to comport with statute. IRC must also provide the Department, within 45 days of the date of this letter, with follow-up documentation so the Department can verify that corrective action has been taken. Additionally, within 45 days, IRC must provide an accounting of the overpayments and its plan for repayment to the Department.

- c. Special Contract Language Requirement:** Contractor shall conduct an analysis and accounting of all purchase of service funds used for start-up of new programs not approved in its community placement plan from Fiscal Year (FY) 2002-03 to present. The accounting is to include the amount expended, the recipient of the

funding, the purpose of the funding and the date the funding was awarded, and must be submitted to the State by March 31, 2011.

DDS Response: IRC provided an accounting of Community Placement Plan (CPP) and non-CPP start-up funds expended since FY 2002-03; however, the documentation submitted was incomplete.

IRC identified non-CPP start-up expenditures of \$30,000 and \$17,857 in FY 2007-08 and 2008-09 respectively. IRC states, "This is the only instance IRC was able to identify where start up funds were used for a project that was not CPP." The authority cited for the use of regular Purchase of Service (POS) funds for start-up funding is a November 22, 2006, memo issued by the Department regarding FY 2006-07 start-up funding. Based on the documentation provided, these funds were not encumbered by June 30, 2006, as required for their use. If IRC has additional information regarding these expenditures, it must be submitted to the Department within 45 days of the date of this letter.

IRC provided four exhibits regarding start-up funds attributed to CPP. IRC states, "The majority of payments on Exhibit A-Summary of All Start-Up payments were matched as closely as possible to Exhibit B or Exhibit C according to the FY.... Not all were matched... Not all of the dollar amounts match exactly either." Based on the information submitted, the Department cannot ascertain the purpose of the funding (Exhibits A, B, C, and D) and if IRC's expenditures of CPP start-up funds were for the purposes approved by the Department (Exhibit E).

Within 45 days of the date of this letter, IRC must provide complete and accurate information including, the purpose of the expenditure, and to which Department-approved CPP project the expenditure applied.

- d. Special Contract Language Requirement:** Contractor shall conduct an analysis and accounting of all purchase of service funds used for Housing Services (Service Code 101) from FY 2002-03 to present. The accounting is to include the amount expended, recipient of the funding, the UCI numbers of the consumers for whom the Housing Services was sought, the purpose of the funding and the date the funding was awarded, and must be submitted to the State by March 31, 2011.

DDS Response: IRC provided an accounting of funds the regional center issued by fiscal year commencing in 2002-03, to Developmental Services Support Foundation (DSSF)/California Housing Foundation (CHF), and the names and UCI numbers of

consumers and amount of funds DSSF/CHF provided for "move in costs/household items". This includes an expenditure of \$400,000 in FY 2005-06 and \$317,178 in FY 2007-08.

Notwithstanding the apparent value to the consumers who received the grant funding, IRC does not have the authority to give POS funds to a foundation and/or vendor to be awarded to consumers as grants. In addition, IRC provided no evidence of having a contract with the service provider regarding the use of the POS funds, and POS funds have been used to pay the service provider a 10 percent administrative fee for the service provider to accomplish a task that should be performed by the regional center on an individual consumer basis through the individual program plan process. IRC must immediately cease this practice. IRC states that CHF is holding an unspent balance of \$128,335 of IRC's purchase of service funds. These funds must be returned to the Department within 45 days of the date of this letter. Also, by using POS funds in this manner, the regional center is negatively impacting the State's ability to capture federal funding.

Also, based on the submitted documentation, several instances of improper service coding were identified. IRC needs to review the definitions of service codes and ensure the correct usage of the service codes.

IRC also indicates that, "Other Housing Services Code 101 included the following vendor: Southwest Properties--\$2,425. Southwest Properties did housing inspections for consumers who were living in their own home and needed assistance to get estimates for repairs or who were in the process of purchasing a home." IRC does not provide any of the information required in the special contract language above for these expenditures; this information must be submitted to the Department within 45 days from the date of this letter.

- e. Special Contract Language Requirement:** Contractor shall advise the State by March 31, 2011, of its intent and action relative to the continuation of the Bungalows project.

DDS Response: IRC's plan of correction states that a contract of \$450,000 was let to CHF in FY 2005-06 for "seed money" for two) 6 to 8 [unit] bungalow projects. The plan also includes documentation that the IRC Executive Director stated that, "the project was not seen as a match with current program trends and philosophy. The project is not feasible for continued support," and that the CHF Board voted to discontinue the Bungalows Project on May 18, 2010. According to IRC's plan of

correction, the project expended \$306,111 and that CHF is holding a remaining balance of \$143,887. This project was not approved by the Department in IRC's CPP. It is the Department's understanding that the Bungalows Project never became operational. Also, as noted above, pursuant to IRC's contract with the Department, the regional center may, "...use Purchase of Service (POS) funds for developing new community resources to protect the consumers' health or safety or because of other extraordinary circumstances, and the State has granted prior written authorization for the expenditure." (State Contract, Article II, section 2, emphasis added). Within 45 days of the date of this letter, IRC must submit its plan to the Department for recouping the \$450,000 and repaying the Department.

It is imperative that the Board and IRC executive management are fully aware of their contract requirements with the Department pursuant to Article II, Program Provisions, Item 2, Resource Development.

- f. Special Contract Language Requirement:** Contractor shall develop a plan to ensure it has adequate processes and safeguards in place to guarantee it expends community placement plan funding allocated by the State solely for its approved purpose. Contractor shall submit this plan of correction to the State by March 31, 2011.

DDS Response: IRC's plan of correction was limited to the use of CPP start-up funding, but does not address the other components of the CPP, including deflection, placement, continuation or regional center Operations funding. In addition, the plan does not state how the regional center will ensure CPP funds are used only for the approved purposes. IRC needs to revise its plan to demonstrate how the regional center will guarantee it expends CPP funding allocated by the State solely for its approved purpose and submit the revised plan to the Department within 45 days of the date of this letter.

- g. Special Contract Language Requirement:** Contractor shall submit to the Department by February 15, 2011, the Board-approved procurement policy.

DDS Response: IRC submitted its Board-approved procurement policy to the Department, and as requested in the Department's March 21, 2011 letter, the regional center revised its policy to address issues noted by the Department. In its plan of correction, IRC submitted a policy pertinent to the Resource Development and Transportation Unit. Under Recruitment Practices Applied to Prospective Vendors of Services and Supports, it states, "Implementation of this protocol may be

circumvented when a longstanding service and support development is present and/or an emergent [sic] is evident." This statement is inconsistent with the need for a Request for Proposal for longstanding services and supports; therefore the policy needs to be revised. Also, IRC's procurement policy states that service providers shall include IRC as an additional insured on their liability insurance policies. This practice is inconsistent with the Department's letter to IRC dated March 18, 2010 (enclosed), and must be omitted from the policy. Please submit your revised policy to the Department for review within 45 days of the date of this letter.

- h. Special Contract Language Requirement:** Contractor shall submit to the State its board training materials pursuant to Welfare and Institutions Code 4622(g) by March 31, 2011. Contractor shall also assess whether unmet Board training needs exist, develop a plan of correction and submit to the State by March 31, 2011, the results of this assessment and corresponding plan of action.

DDS Response: IRC indicated that a Board committee met to discuss and choose training topics. IRC also listed training topics and dates as well as training being developed for new board members. However, IRC did not submit board training materials to the Department and did not state whether such materials exist or need to be developed. IRC needs to submit its board training materials to the Department, and provide a status update on the implementation of its training plan within 45 days of the date of this letter.

2. Employee and Community Complaints

a. and c.

Special Contract Language Requirement: The Board must take swift action to address and remediate the culture within the organization which has discouraged employees from raising issues for fear of intimidation and retaliation and improve its relationship with the community.

Special Contract Language Requirement: Contractor shall develop and submit to the State by March 31, 2011, its plan to fully identify and address community concerns and to develop an open and collaborative relationship.

DDS Response: IRC provided a one-year communications plan it has developed to improve relationships internally (board members and employees) and externally (community members, consumers and families). The plan extends to community partners, such as agencies that provide generic services, and provides the

frequency of the communication. IRC also provided a plan for staff training. These actions should go a long way in improving IRC's internal and external relationships. IRC did not include information on how it will provide quality assurance tracking and monitoring of its plan to determine if outcomes are being achieved. IRC should develop indicators of success that will inform the Board, at various time intervals, if relationships are improving and help to determine what, if any, additional action needs to be taken. For example, a decrease in the number of complaints or the significance of complaints received by the regional center may be one indicator of success. This information should be submitted to the Department within 45 days from the date of this letter.

- b. Special Contract Language Requirement:** Contractor shall develop and submit to the State by March 31, 2011, the actions to be taken to ensure the working environment at the regional center is in compliance with the contract and law.

DDS Response: IRC stated its intention to comply with the DDS contract and all employment and non-profit corporate laws, and financial reporting. The regional center indicated that its Operations Manual has the policy and procedure statements necessary for the corporation to operate in adherence with the applicable laws and regulations. IRC should provide the Department with a copy of its Operations Manual within 45 days of the date of this letter.

- d. Special Contract Language Requirement:** Contractor shall conduct a complete review to ensure current conflict of interest disclosure statements are on file for all employees and Board members. Contractor will review such statements to identify any conflicts requiring elimination or request for a waiver from the State, and take appropriate action accordingly as required by law. Contractor shall provide documentation that such corrective action has been taken. Contractor shall submit to the State by March 31, 2011, documentation as to actions taken and outcomes.

DDS Response: IRC indicates that all required conflict of interest disclosure statements are on file for employees and board members. IRC did not produce confirmation that the statements were reviewed, or the outcomes of the reviews. IRC needs to provide the Department with documentation as to the actions taken and the outcomes. It appears IRC is moving in the right direction. Shortly, the Department will be promulgating emergency conflict of interest regulations. Please inform the Department immediately of any board or staff member conflict of interest requiring a waiver from the Department.

- e. **Special Contract Language Requirement:** Contractor shall develop and submit to the State by March 31, 2011, a Board approved Conflict of Interest Policy addressing both employees and Board members. Contractor shall also submit along with this policy, an employee and Board member training plan on the policy, including implementation timelines.

DDS Response: IRC's Conflict of Interest policy comports with current statute and regulations. Nevertheless, minimal information was provided regarding employee and board member training.

- f. **Special Contract Language Requirement:** Contractor shall submit its Board approved Whistleblower Policy to the State by February 15, 2011, for review.

DDS Response: In a letter dated March 21, 2011, the Department requested that IRC revise its Whistleblower policy to include a process to access the board of directors for filing a Whistleblower complaint as required by contract language. The revised policy that was included in IRC's plan of correction now contains this process; however, the revised policy contains new areas of non-compliance with contract language, that were not issues in the prior policy. The revised version of IRC's Whistleblower policy now lacks: 1) procedures to investigate complaints of retaliation; 2) complainant confidentiality, consistent with the Department's Whistleblower policy, including consumer health and safety; and 3) a process to access various staff for the purpose of filing a Whistleblower complaint. In addition, IRC's policy contains "good faith" language not consistent with Labor Code section 1102.5. (Emphasis added). Please submit your revised policy, addressing each of the issues above, to the Department for review within 45 days of the date of this letter.

Lastly, the Department would like to inform the Board of a situation that came to the Department's attention as part of the recent IRC fiscal audit when reviewing IRC's residential program contracts under service code 113. It was found that four residential facilities were transitioned from one vendor to another vendor, and in these cases IRC selected and vendorized Benson House (BH), Inc. to assume operations of the facilities when the contract for the previous vendor, Independent Options (IO), Inc. ended in October 2006. Further review found that the rate for BH was at \$699 per unit compared to the previous rate of \$319 per unit for IO. Interviews conducted with IRC staff indicated that the program plan, number of consumers, and staffing ratio for these residential facilities remained unchanged. In addition, IRC could not provide a written explanation, analysis, or justification to support the \$380 rate increase for BH and whether its services were different than the previous vendor's services. IRC must

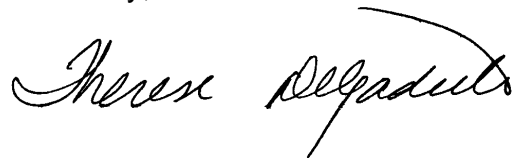
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assess the appropriateness of the rate for services and supports provided to the consumers and submit that documentation to the Department. If IRC's assessment is that the rate is inappropriate, it must provide to the Department documentation of the actions taken to adjust the rate accordingly. This information should be submitted to the Department within 45 days of the date of this letter. The Department will shortly be issuing its draft audits of IRC and Southwestern Transportation Company and at that time will consider the need for additional contract action.

The Department has determined that technical assistance is necessary to address performance issues and help the regional center and Board in building the infrastructure and capacity needed for contract compliance. Pursuant to Welfare and Institutions Code section 4629 (d) (2), the Department will be contacting IRC regarding the provision of mandated technical assistance. Based on a review of IRC's plan of correction, IRC's probationary status remains in effect.

Again, we commend the Board and staff for the actions it has taken to date and look forward to full remediation of the issues necessitating the Department's action. If you have any questions, please do not hesitate to contact me at (916) 654-1897 or Rita Walker, Deputy Director, Community Operations Division, at (916) 654-1958.

Sincerely,

A handwritten signature in cursive script that reads "Terri Delgadillo". The signature is written in black ink and is positioned above the printed name and title.

TERRI DELGADILLO
Director

Enclosure

cc: Carol Fitzgibbons, Director, IRC

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 320, MS 3-9

SACRAMENTO, CA 95814

D 654-2054 (For the Hearing Impaired)

(916) 654-1958



March 18, 2010

Ms. Corina DeLeon
Transition Coordinator
Inland Regional Center
P.O. Box 6127
San Bernardino, CA 92412-6127

**SUBJECT: REQUIREMENT FOR VENDORS TO LIST REGIONAL CENTER AS
"ADDITIONAL INSURED"**

Dear Ms. DeLeon:

The Department of Developmental Services' (Department) has been provided a copy of a January 4, 2010 and February 1, 2010, letter to Inland Regional Center (IRC) service providers regarding insurance coverage. The January 4, 2010, letter states that "The Board also finds it necessary to require that Inland Regional Center is named as additional insured on these policies, excluding the Worker's Compensation policy."

In February 2004, the Department issued a memorandum to all Regional Center Directors stating that regional centers should discontinue policies requiring vendors or prospective vendors to name the regional center as an additional insured on their insurance policies. In December 2004 Assemblymember Mervyn Dymally sent a letter to Valley Mountain Regional Center requesting they follow the directive stated in the Department's February 2004 letter.

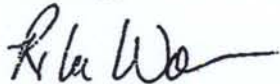
IRC states its justification for including the "additional insured" requirement is to protect the interest of consumers and their families and to control IRC's exposure to litigation. However, in *Morohoshi v. Pacific Home* (2004) 34 Cal. 4th, 482, the State Supreme Court, held that a regional center is not vicariously liable for the negligence of a contracted service provider when the regional center has fulfilled its statutory duties. Based upon the decision, the Department continues to believe that imposing such a requirement is not necessary, imposes an unfunded cost impact on certain vendors, and regional centers, such as IRC, who have such a policy should discontinue it.

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Thank you for your cooperation. If you have questions concerning this letter, please contact me at (916) 654-1958.

Sincerely,



RITA WALKER
Deputy Director
Community Operations Division

cc: ARCA