

Discussion Points

1. The Governor's budget incorporates an estimated \$5.183 billion over two fiscal years in federal stimulus funding provided by the American Recovery and Reinvestment Act (ARRA) of 2009. According to a table on page 42 of the Governor's abbreviated budget, the State will use \$3.074 billion (\$854 million in FY 2009 and \$2.220 billion in FY 2010) from ARRA for budget relief. In addition to these funds which will offset revenue shortfalls, \$2.109 billion will be used for new or expanded programs or initiatives. The ARRA allocates funds to states both by formula and by competitive awards. Most executive departments anticipate stimulus funding in either FY 2009, FY 2010 or both.

- **Question:** Please itemize the federal stimulus funding, other than portions of the \$3.074 billion allocated for budget relief, included in the department's budget, by fiscal year and federal program, setting forth program goals and eligible uses together with the amount for state administrative expenses and the amount for allocation to local public and private recipients, respectively. Please identify intended and actual recipients and the process by which the department determines recipients and funding awards. Are there ARRA funds that flow through your department for which the State has no discretion? Please also set forth the timetable for obtaining federal approval of funding, obligation and allocation of funding to recipients, and use by recipients. Could any of this funding be used to offset other State appropriations, and if so, what programs and in what amount? What additional positions, if any, have been and will be hired with these funds? If this money is being used for new or expanded activities, will the new or expanded activities be continued in FY 2011? If so, how will they be funded?
- **Question:** In addition to funding incorporated in the FY 2010 budget, what specific competitive grant opportunities has the department identified that it is eligible to pursue, has applied for, and has been awarded, respectively?

Answer:

The Department does not anticipate receiving any federal stimulus funding. As part of our Lead Safe Model Cities initiative, however, we are applying for outreach grants from the Environmental Protection Agency and the U.S. Department of Health and Human Services. These grants would help ensure that sufficient resources are made available for community training and outreach for our Model Cities.

Additionally, through our Model Cities program we have provided significant assistance to towns in identifying and applying for grants from foundations and government sources. For example, Newark recently was awarded a \$1.5 million grant from the Kresge Foundation due, in part, to our efforts. The grant will be used principally to build lead-free "safe housing" where families can temporarily reside while their homes are being lead abated. Moreover, Model Cities staff assisted most cities in identifying and applying for grants from DCA to purchase new lead-identification equipment for code enforcement officers to use when conducting housing inspections. Also, our program recently provided free weeklong training to Model Cities to cross-train staff to become certified lead inspectors. To make this possible, we assisted DHSS in identifying and providing funding for the weeklong training.

Discussion Points (Cont'd)

2. Over the past several years, the overall staffing level in the Executive branch has been reduced through restrictions on hiring and an early retirement program. The FY 2010 budget proposal envisions continuation of the hiring restrictions coupled with possible furloughs or further reductions in positions.

- **Question:** How has the reduction in staffing affected your department? What strategies has the department employed to deal with staff reductions? What projects, work products or functions has the department discontinued or deferred because of staffing levels? Will the department be able to accommodate furloughs in FY 2010 without increasing spending for overtime?

Answer: Because of the hiring freeze imposed by the Governor, the Department's staffing level, including the Office of the Child Advocate, has declined from the proposed fiscal year 2008 level of 227 to the current level of 172, a difference of 24%. In order to deal with the significant staffing shortage, the Department has had to consolidate its Division of Elder Advocacy and its Division of Developmental Disability Advocacy into one division operating under the supervision of one Director and sharing staff. Additionally, the Public Advocate has assumed the responsibilities of the Child Advocate on an acting basis. This has resulted in the assumption of most managerial and administrative functions for the Office of the Child Advocate and the elimination of several high level positions within the Child Advocate.

While the Department has not discontinued any of its functions completely, it has been forced to reduce the pace of or scale back on some of its projects. For example, our Model Lead-Safe Cities Program, which currently includes the cities of Camden, East Orange, Elizabeth, Irvington, Hackensack, Long Branch, Newark, and Paterson, continue to expand to new cities, but at a slower rate.

Another example is our program to protect the rights of tenants during foreclosure. During the first three months of calendar year 2009, the Public Advocate responded to more than 75 complaints from tenants. Whenever a preliminary investigation reveals that real estate professionals, asset managers, or attorneys are sending misleading notices, the Department of the Public Advocate contacts them, warns them in writing of the unlawful nature of their actions, and sends the relevant information to the regulating agency, for example, the Real Estate Commission. We also assist the tenants with obtaining legal representation through legal services organizations. Unfortunately, the reduction in staffing, has reduced the pace at which we are able to respond effectively to the growing number of complaints that we are receiving from tenants. The Public Advocate has also undertaken the task of drafting a proposed court rule to address this issue through the Civil Practice Division of the Administrative Offices of the Court. However, this endeavor has been delayed by the shortage of staff.

With regard to the work we do through the Division of Rate Counsel, we have deferred some cases that do not have statutory deadlines, so that we can complete those that do in the necessary timeframe. We have also raised our threshold for getting involved in some legislative and national advocacy issues, as we do not have sufficient resources to get involved in all such

Discussion Points (Cont'd)

initiatives that impact NJ ratepayers. Because we have been dealing with increased workload relating to economic stimulus projects and Energy Master Plan-related programs, we have not been able to discontinue any of our functions. With respect to legislation, we are sometimes unable to cover all of the hearings at which we would like to provide live testimony. In those cases, we comment via a letter rather than providing live testimony. We have also taken a less prominent role in a few national cases, where we have co-counsel that is willing to adequately represent our mutual interests. In those circumstances we are still involved, but take a less prominent role. Overall, we have dealt with decreased staffing levels by reallocating resources within the division to meet the increased workload in certain areas, and by utilizing law students and interns to supplement the legal work of the division.

Additionally, we have substantially cut back on the consumer education activities of the Division of Rate Counsel. We still maintain our website, respond to consumer inquiries and will be updating our consumer handbook. However, we have discontinued the consumer education presentations to the elderly and our conservation for kids presentations in elementary schools. We have also discontinued the Rate Counsel Conference that had been held in the past.

The Department of the Public Advocate anticipates that it will be able to accommodate the proposed furloughs in Fiscal Year 2010 without having to increase spending on overtime.

3. The FY 2009 appropriations act anticipated that \$25 million in procurement savings would be achieved by executive departments. A chart on page 75 of the Budget in Brief categorizes those savings and indicates they will continue into FY 2010. The FY 2010 budget includes another \$25 million from procurement savings (Budget in Brief, Appendix I, page 8).

- **Question:** Please indicate the FY 2009 amount of procurement savings achieved by your department, by the categories set forth in the referenced table, and the sources of those savings by department program? What is the annual amount of these savings as continued into FY 2010? How have these reductions affected the department? What projects, work products or functions has the department discontinued or deferred in order to achieve these savings?

Answer: The Office of Management and Budget will provide information responsive to this question on behalf of the Department.

4. According to the Public Advocate, "New Jersey ratepayers are paying exorbitant costs for energy supplies while deregulation of generation has led to record profits for generating companies and has reduced the incentive to build new generation plants. Rate Counsel has been actively participating in the BGS Auction proceedings before the Board to advocate for New Jersey ratepayers to ease the burden of energy costs and combat unjust and unfair rates. Rate Counsel has argued for more transparency in the procurement process to ensure fair dealing from the bidders. (Public Advocate 2008 Annual Report, page. 60)

- **Question:** How has the increased cost of gas and oil products affected the Ratepayer Advocate in its monitoring of the home heating industry? What actions have

Discussion Points (Cont'd)

been taken by the Division of Rate Counsel to advocate for New Jersey ratepayers and to assure the imposition of fair energy rates?

Answer: Rate Counsel takes an active role in every case before the Board of Public Utilities ("Board"), including every case that may result in an increase in rates. In these proceedings, Rate Counsel advocates for the interests of ratepayers generally. Rate Counsel also monitors and makes suggestions regarding legislation in support of the interests of ratepayers. Those interests not only relate to rates and charges, but to reliability and service as well. In the last year, for example, Rate Counsel has advocated against the immediate and broad-scale implementation of Advanced Meter Infrastructure (AMI), as such meters are very expensive and are not cost effective in terms of energy saved. Instead, Rate Counsel argued for targeted implementation of AMI to customers who were likely to take advantage of the information provided by those meters to reduce their energy costs, or to customers whose existing meters had reached the end of their useful life. Rate Counsel also advocated for minimizing the costs to ratepayers of programs to reduce peak usage, and encourage energy efficiency and renewable energy. Rate Counsel has been a pivotal participant in the development of the Energy Master Plan and the development of economic stimulus programs, making sure that these essential initiatives are designed fairly and to minimize the impact on rates. Finally, while commodity prices are generally market-based and are therefore not regulated in the matters in which Rate Counsel participates, the office monitors the auction for basic generation service each year, advocating for changes that will increase transparency and better insulate New Jersey ratepayers from extreme fluctuations in the market. While the Board has yet to adopt these changes, Rate Counsel continues to serve as the voice for ratepayers arguing to hedge against price volatility and increases.

With respect to the home heating industry, Rate Counsel does not monitor home heating oil prices, as they are not regulated by the Board. Rate Counsel does monitor natural gas prices, and this year successfully litigated a rate case with New Jersey Natural Gas that saved ratepayers \$26 million from the amount originally requested by the company. Rate Counsel is currently reviewing a rate case that was just filed by Elizabethtown Gas, and expects additional rate cases from the other gas companies within the next year or two. In all of these proceedings, Rate Counsel will continue to advocate against unnecessary increases, and for rates that are fair and necessary to ensure continued reliable service for New Jersey ratepayers.

5. News reports indicate that, as a result of lax lending practices and the proliferation of adjustable rate mortgages that have ratcheted up the mortgage payments of individuals who have taken out these mortgages, a large number of individuals nationwide are faced with foreclosure on their homes. In addition to a statement released by the Public Advocate on February 10, 2009, and posted on the department's website, the Public Advocate stated:

"In New Jersey, foreclosures have more than doubled in the last three years from a total of 23,044 in 2006, to 34,457 in 2007 and 47,989 in 2008. It is estimated that foreclosures could increase to as high as 60,000 this year, according to figures compiled by the NJ Administrative Office of the Courts . . .

Discussion Points (Cont'd)

tenants who rent properties that are subject to foreclosure are being kicked out of their homes when the bank takes over the property. . . . This practice is almost always illegal in New Jersey.”

- **Question:** What steps has the Public Advocate taken to protect the rights of tenants turned from their homes as a result of foreclosure on their rented properties? How is the Department of the Public Advocate coordinating its actions in this regard with other State agencies, such as the Department of Banking and Insurance, Division of Consumer Affairs in the Department of Law and Public Safety and the Department of Community Affairs?

Answer: We recently launched an advocacy, education and outreach program to help tenants combat illegal eviction when the property in which they live is foreclosed. In 1994, in a case litigated by the Department, the New Jersey Supreme Court held that a tenant who lives in a residential property that is covered by the Anti-Eviction Act remains protected during and following foreclosure proceedings.

Unfortunately, few tenants know their rights and in late 2008, the Department began to receive calls from both individual tenants and housing advocates alerting us that tenants were being pressured to leave their homes when the properties where they lived were in foreclosure. The typical story we heard from tenants went like this: After acquiring the property through foreclosure, the lender hired agents – generally real estate professionals, asset/property managers, and sometimes attorneys – who contacted the tenants in an effort to get them to leave. These agents would not advise tenants of their right to stay, and instead sometimes sent notices to tenants threatening eviction or warning that the locks would soon be changed. Universally, the notices demanded that the tenants make immediate contact with the lender’s representative to discuss possible relocation assistance or eligibility for a “cash for keys” settlement (if they left they would get money; the sooner they left the more money they would get) – all predicated on the tenants’ vacating within a very short time-frame.

To vindicate the rights of tenants, the Public Advocate launched a multi-faceted campaign, beginning with public education and outreach. We are collaborating with the Department of Banking and Insurance (DOBI), the Real Estate Commission, and nonprofit organizations. Brochures explaining tenants rights are available on our website, and we distributed more than 13,000 of these brochures to tenants, nonprofits, and government agencies across the state. We have sent letters explaining the rights of tenants and the obligations of public officials to every mayor, chief of police, county prosecutor, sheriff, freeholder and legislator. Moreover, we participate in the Essex-Newark Foreclosure Taskforce and the newer Union County Foreclosure Taskforce, in which the local governments bring together all advocates and government agencies working on foreclosure-related issues to share information and strategies for easing the crisis.

Through our Office of Citizen Relations, we field calls from tenants of foreclosed properties who allege they are being improperly evicted. We work to link them to legal resources while making referrals to licensing authorities concerning improper behavior by real estate professionals. Often, by educating the tenant and the new owner of the property about the tenant’s rights, the tenant is able to achieve a good outcome. In at least one case, we represented the tenant in

Discussion Points (Cont'd)

court. The Real Estate Commission has been extremely collaborative in undertaking investigations of possible misconduct by real estate licensees. In addition, we have written to the CEOs of the major real estate companies in New Jersey suggesting model language for accurate notices to tenants during and following a foreclosure proceeding.

We also are making progress in achieving some systemic solutions to this problem. We are in discussions with the Administrative Office of the Courts about the adoption of a court rule that would require the foreclosing mortgagee to determine whether the property is occupied by residential tenants, and to notify those tenants of their rights during the foreclosure process. The AOC has been very receptive and asked us to draft a proposal for an expedited rule. We are also considering potential legislative responses to strengthen the remedies available to tenants who are misled into leaving their homes after a foreclosure.

6. Based on information from advocates, the Public Advocate has become aware that staff at some State institutions may be filing criminal charges and administering psychotropic drugs inappropriately as ways to control the behaviors of disabled residents. The Public Advocate is currently examining these concerns. (Public Advocate 2008 Annual Report, page 25)

- **Question:** What is the status of the Public Advocate's investigation into these allegations? What recommendations, if any, does the Public Advocate have to alleviate the problem?

Answer: In the first instance, the Public Advocate was informed that residents and staff were bringing criminal charges against residents. We initially obtained documentation from the Woodland Township Municipal Courthouse of complaints filed between 2005 and September 30, 2007. During that period, 26 complaints were filed, representing 21 different incidents. Fifteen different residents were the defendants in those complaints. Twelve of the 26 complaints were dismissed by the prosecutor, 2 were downgraded, 2 were transferred to the county prosecutor, 3 plead guilty, 1 was found guilty and 1 was found not guilty. Only 3 of the 26 cases were filed between January 1, 2007 and September 3, 2007. During our conversations with the prosecutor during 2007, he informed us that he dismisses most cases because he does not believe that the defendants have the legal capacity to understand the oath or to stand trial.

In 2008, resident's family members brought this issue to our attention again. In November 2008, the Woodland Township Municipal Clerk sent us documentation of 5 (we need to check this number) new complaints filed against New Lisbon residents between October 1, 2007, and November 15, 2008. Three different residents were the defendants in these complaints. At least one complaint was forwarded to the county prosecutor. At least 3 were dismissed by the prosecutor because of the defendant's lack of capacity.

The Public Advocate has joined with the DD Council and Senator Vitale's staff to look at this issue more closely, and make policy recommendations to DHS.

Discussion Points (Cont'd)

In the second instance, the Public Advocate sought information from DDD in 2007 regarding the use of psychotropic drugs in developmental centers. DDA did an initial analysis of that information in 2008, and will seek additional information from DDD.

7. The waiting list of individuals who are seeking residential and other community services climbed to more than 8,000 in January. Of these individuals, 4,843 are considered "priority" because their needs are so serious, and the large majority of these people are living at home with older parents. The department is working in partnership with The Arc of New Jersey to investigate waiting list issues and develop recommendations and strategies for addressing this significant problem. This work includes extensive outreach to meet with individuals and their families who have spent years on the waiting list with no clear information about when they can expect to be offered the services they need. (Public Advocate 2008 Annual Report, page. 26)

- **Question:** What is the status of the Public Advocate's investigation into the issue of large number of individuals in need of residential and other community services languishing on waiting lists for such services for, in some cases, years? What conclusions and recommendations has the Public Advocate formed as a result of this investigation?

Answer: Staff from the Public Advocate's Division of Developmental Disability Advocacy (DDA) met with DDD staff, including Assistant Commissioner Ken Ritchey, on more than 4 occasions in the spring of 2008 to review the status of the waiting list, discuss the historical and current system for providing servicing to consumers, and to review the then-pending DDD federal Community Care Waiver amendment request and 5 year renewal request. Based upon these discussions, a review of DDD waiver applications and research, the Public Advocate drafted an overview of available services and the current method of accessing those services. DDA also completed an initial legal analysis of pertinent statutory and regulatory laws. We are in the process of reviewing those efforts, and determining our next action. We also are aware of effort by DHS to address waiting list issues. For example, they have advised us that they were able to reduce the size of the list by 540 individuals between July 1, 2008 and January 6, 2009 by contacting families and identifying those who were receiving services and no longer needed to be on the list. Notably, when DHS reached out to 100 individuals to discuss placement issues, it learned that nearly half (44) needed in-home services, and not an out-of-home placement. In addition, DDA staff continues to meet with consumers both in the community and in developmental centers who want to participate in our Voices Project – a video project to give consumers the opportunity for their voices to be heard and to talk about their struggles and their hopes and dreams for the future.

8. In 2007, the department conducted research regarding the potential for New Jersey to obtain Medicaid support for community services for those who do not quite qualify for Medicaid but who would qualify if their significant medical expenses were excluded from their income. Currently, these individuals can only qualify for Medicaid if they agree to enter a nursing home. The department's study examined ways to ensure these individuals could receive

Discussion Points (Cont'd)

supportive services in their own home or assisted living facilities so they do not need to enter a nursing home. (Public Advocate 2008 Annual Report, page. 33)

- **Question:** Please provide an update of the Public Advocate's examination of this issue. What steps has the Public Advocate taken to address this situation?

Answer: The Public Advocate's Division of Elder Advocacy continued to conduct in-depth research into the issue of providing home and community based waiver services for applicants who are over-income for these benefits, but who qualify for services in nursing homes where higher income levels are permitted under federal law (these recipients are known as "Medically Needy"). We spoke with state officials in Washington State and Wisconsin where higher income residents can use the home and community based Medicaid waiver options (like assisted living). During the course of this research, we spoke with the Division of Aging and Community Services who informed us that the federal government would be looking at this issue as well to determine if it could relax some of its requirements making it easier for states to get a waiver for moderately higher income Medicaid applicants. We decided to hold off on making our recommendations while the federal government revisited the issue. However, in our recent assisted living investigation, former residents of facilities owned by Assisted Living Concepts Inc. and their representatives reported to us that they were forced to leave their assisted living home after spending down tens of thousands or even hundreds of thousands of dollars – never having been told that they might not be Medicaid eligible – because they were over income. In several cases, residents were over income by less than \$100.

9. The department has undertaken a comprehensive review of the contracts between the counties and Sequoia, the primary voting machine vendor in New Jersey. Sequoia threatened to sue county election officials for violation of their contract if they turned over their machines for independent review following glitches on primary Election Day in February 2008. The Department obtained a copy of the contract in question and found troubling provisions that might hobble elections officials both in seeking independent review of problematic machines and in obtaining appropriate remedies for machine failures. (Public Advocate 2008 Annual Report, page. 43)

- **Question:** What is the status of the Public Advocate's review into this matter? If appropriate, please share any preliminary findings or recommendations.

Answer: The Public Advocate's review of the contracts at issue is nearing completion. Our preliminary review revealed that contracts between Sequoia and the several counties purchasing its equipment, software, and services generally contained unfavorable terms for taxpayers. These unfavorable terms included warranty periods as short as 30 days; disclaimers of liability by Sequoia for "data loss," even though the express purpose of voting machines is to store and count votes; disclaimers of liability by Sequoia for "consequential damages" in the event its machines fail (e.g., legal fees, overtime, costs of new elections, etc.); and limitations on total damages that border on the unconscionable (one contract capped damages at \$100,000 even though it was a \$5.8 million contract). Other identified flaws included provisions that allow Sequoia to impose unlimited increases in the annual license fees counties must pay in

Discussion Points (Cont'd)

order to continue operating these machines; to prevent counties from meaningfully testing equipment to determine the causes of machine malfunctions or anomalies; and to require litigation over contract disputes to be brought in California or Colorado.

To remedy these problems, and to help counties better protect themselves and the public with appropriate contract provisions, we have drafted a model contract that eliminates these and other damaging provisions. The model contract would provide a template for future acquisitions of voting hardware, software, and services, whether from Sequoia or other vendors, and whether for electronic voting machines or paper-based systems. We have also prepared a cover memorandum explaining our findings and how the model contract would address the problems we identified. Prior to releasing the cover memorandum and model contract, however, we plan to share them with state election officials, county purchasing officers, and Sequoia to solicit their reactions.

10. During FY 2009 budget process, the Public Advocate testified that the department had conducted a variety of investigations, including lead poisoning, eminent domain, residential health care facilities and the New Jersey motor voter law.

- **Question: What are the major research projects underway or planned by the Department of the Public Advocate during the next 12 months?**

Lead-Safe Model Cities Program

Our work on lead poisoning prevention continues. Over the past year we have developed a robust Model Lead-Safe Cities program in which we partner with communities with high incidences of childhood lead poisoning on developing action plans to tackle the problem. As of April 8, Model City agreements have been entered into with eight municipalities: Camden, East Orange, Elizabeth, Hackensack, Irvington, Long Branch, Newark and Paterson. Several other municipalities are preparing to join as Model Cities by July 1, namely Asbury Park, Bloomfield, Englewood, Morristown, Vineland, bringing the total to thirteen Model Cities.

Each Model City enters into a written Agreement with the Department in which they pledge to work cooperatively with State agencies, CBO's, FBO's and other partners to increase the municipalities' lead poisoning response and prevention efforts. Through the program, cities have received free lead inspector training and assistance in applying for grants to purchase lead inspection equipment. We have developed partnerships with DHSS, UMDNJ, Seton Hall University School of Nursing, Cooper Hospital and other health care providers to develop pilot projects that provide on-site testing of children that provide immediate initial blood test results. We work with model cities to help them enhance their municipal codes with model ordinances that enhance the city's power to attend to health concerns when rental properties change hands. We also have developed formidable consortiums with community based organizations and faith based organizations within the model cities, which support effective outreach and education efforts.

Assisted Living Investigation and Reform

We have undertaken a major new project to protect residents of assisted living facilities from being improperly discharged after they have exhausted their life savings and need to convert to

Discussion Points (Cont'd)

Medicaid. We just completed our investigation into the discharge practices of Assisted Living Concepts Inc., which operates eight assisted living facilities in South Jersey. Our public report on this investigation details how a company's change in corporate policy put many elderly people at grave risk. The company pursued a policy of keeping elderly residents until they drained their life savings and then systematically attempted to force them to move elsewhere when they needed to rely on Medicaid. The investigation also found many instances in which ALC misled residents to believe that they would be eligible for Medicaid once they spent their private savings, even though they would never be eligible either because their monthly income was too high or they did not need the level of care that Medicaid requires. Working with DHSS, which has taken aggressive regulatory action, we have been able to protect individuals who wish to remain in their ALC facility. We also are involved in litigation now in an effort to force ALC to adhere to the promise made when its certificates of need were originally issued and the company represented that it would not discharge residents because they had spent-down their assets and needed to convert to Medicaid.

As part of this work, we have identified weaknesses in the current assisted living regulatory scheme and we are advancing recommendations that would strengthen the protections of residents of assisted living facilities. We also are completing work with DHSS on a regulation requiring assisted living facilities to provide uniform disclosure to prospective tenants. Other states have adopted such disclosures, which allow consumers to do true comparison shopping.

Protecting Tenants of Foreclosed Properties From Eviction

This project is discussed in detail in answer to Question #5. We anticipate work on this project to be ongoing throughout the coming year.

Homeowner Foreclosure Mediation

The Department of the Public Advocate will continue to play a pivotal role in implementing the statewide foreclosure mediation program. We will continue to train lawyers to serve as neutral mediators, train attorneys who will to serve as advocates for homeowners, and train housing counselors to work with homeowners. In addition, we have conducted numerous mediations already, mostly involving homeowners who have been in the foreclosure process for some time and are facing a sheriff's sale within the next thirty days. In our Mercer County program, settlement rates exceed 50%, and we will help other counties develop the Mercer model.

Balance Billing Study

We have initiated an investigation into balance billing and are conducting outreach to a broad range of stakeholders to help frame this issue. Through this project we are seeking to identify ways to address the burden that is placed on consumers when they receive bills for medical services that they are not obligated to pay. Balance billing refers to the practice of health care providers billing patients for the portion of their bill that was not covered by health insurance and which is not a co-pay or a deductible.

Developmental Disabilities and Mental Health Advocacy

During the coming year, we plan to undertake a study of the provision of mental health services in county jails, and an examination of the status of mental health reforms five years after the report by Governor Codey's Task Force on Mental Health. During the coming year we also will be working with the Supreme Court's rule committee on changes to court rules to ensure they

Discussion Points (Cont'd)

reflect current law concerning patient privileges, and to develop commitment procedures and standards for children, which do not currently exist. We also anticipate working to ensure that community and state hospitals are abiding by the Patient's Bill of Rights.

In the area of developmental disabilities advocacy, we hope to conclude several broad advocacy projects in the coming year: a study of how best to reduce or end admissions to developmental centers, except for very time-limited emergency admissions; an inventory of the community based programs available to families who are waiting for services, and ways in which the waiting list could be reformed to in order to quantify the types of nonresidential community based supports that families are seeking.

In addition, we have undertaken an aggressive outreach program to residents of developmental centers that includes a video project that permits consumers to tell of their struggles and their hopes and dreams for their future, and ensures that they have a voice in policy making that affects their lives.

11. In order to save money, or to obtain expertise that may not be available within the State workforce, various State departments contract with private vendors to provide State services.

- **Question:** Does the Department of the Public Advocate use private contractors to perform any statutory, regulatory or other functions of the department? If so, what are these functions? What are the estimated or actual costs for any such contracts for FY 2008, FY 2009 and FY 2010? How has the use of private contractors increased since the implementation of the Early Retirement Incentive program? How does the department retain an oversight function over these private vendors?

The Division of Rate Counsel utilizes the services of private contractors, specifically expert accountants, economists and engineers, to assist in the performance of its statutory functions. These contractors provide expert testimony and guidance for the Division's attorneys in connection with the litigation of their cases and the preparation of comments or other advocacy documents for federal and state agencies. They serve as witnesses in complex, unique and highly specialized areas of utility law and accounting as related to telecommunications and cable TV, gas, electric, water and sewer services and insurance.

The Division actively oversees the work of these experts. When the Division decides to intervene in proceedings or submit positions to task forces and working groups, after major issues have been identified by staff attorneys, the Director selects the types of expert consultants needed to provide expert assistance. Since time is of the essence due to the deadlines provided in these cases, and because of the limited number of experts available to do this work for the Division, a bidding waiver has been approved by the Attorney General's Office and the Department of Treasury. The Division thus solicits proposals from several potential experts and selects the least cost proposal submitted. From that point on, the staff attorneys work closely with the experts to oversee their work. All testimony, comments or other written materials prepared by the experts are reviewed by at least one staff attorney. An attorney from

Discussion Points (Cont'd)

the Division accompanies the experts to all hearings, forums and conferences. The cost for utility experts was \$2,166,785 in FY 2008, and we expect the cost to be approximately \$2,200,000 per year for FY 2009 and 2010.

The Division of Mental Health Advocacy uses Pool Attorneys, Court Transcribers, Interpreters, and Expert Witnesses for court. Pool Attorneys are used in Mental Health, Guardianship, and Sex Offender Commitments when the office has a conflict with the individual who we are representing (e.g. when a client has assaulted a staff person.) In addition, pool attorneys are used by the Sexually Violent Predator (SVP) unit to write appellate briefs after the Appellate Division determined that SVP committees had an absolute right to appeal. The Division uses attorneys approved by the Public Defender, and they are required to follow the Public Defender rules for appellate attorneys when they are writing appellate briefs. They are paid at the Public Defender statutory rate of \$50 out of court and \$60 in court. The cost for Pool Attorneys in FY 2008 was \$74,893 and the estimated costs for FY 2009 and 2010 are expected to be approximately \$75,000 per year.

Court transcribers are used when the Division wishes to obtain a transcript of a court proceeding for the purpose of appeal. Since the Division is also required to provide free transcripts to SVP clients as a result of the above mentioned case, prior approval is not required to order a SVP court hearing transcript. All other requests for transcripts must be approved by the regional attorney manager and the Director. The price for court transcription is fixed by statute and the transcribers are assigned by the court to insure accurate transcription untainted by the individual ordering the transcript. The cost for Court Transcribers was \$155,416 in FY 2008 and is expected to be approximately the same in FY 2009 and 2010.

Interpreters are those approved by the court for interpreting services and they are paid at the rate determined by the court. Because effective representation and due process require that initial hearings occur after only 7 to 10 days notice, interpreters for attorney interviews do not require prior approval. If an investigator determines that the client needs an interpreter, one is hired for the attorney interview. Expert witnesses are hired to combat the testimony of the states expert in court. We use them sparingly in mental health and guardianship despite the statement by many commentators that they are often necessary. They are used most frequently in the SVP unit because: the state hires outside experts to testify; the state also presents a second expert from the facility; and unlike Mental Health commitments, a client cannot be released by his doctor (only a judge may order the release). In order to hire an expert witness, attorneys must obtain prior permission from the managing attorney in their office as well as the director. The approval must list the expert, their fee, why they are needed, and why they were chosen. Experts must also have gone through the advertisement waiver procedure before being engaged. The cost for Court Interpreters and Expert Witnesses was \$211,730 in FY 2008 and is expected to be approximately \$218,000 per year in FY 2009 and 2010.

It has been the practice of the Division of Public Interest Advocacy to handle the work of the Department through staff attorneys. On rare occasion, in circumstances in which we need attorneys to represent the Department and the Attorney General's office is unable to represent us, we have relied on outside counsel.

Discussion Points (Cont'd)

The Office of the Child Advocate has utilized the services of a management consultant to develop and help implement organizational changes. These organizational changes achieved significant salary savings – well over \$500,000 –and resulted in the implementation of a project-based model that effectively streamlined the organization. The cost of these services in FY 2008 was \$25,000 and is not expected to continue into FY 2010.

The Early Retirement Incentive Program has had no impact on our use of private contractors. Only one of the Department's employees participated in the ERI program and she has not been replaced by a private contractor.

12. The Office of the Child Advocate, an office "in but not of," the Department of the Public Advocate, is recommended to receive \$1.351 million in FY 2010, a decrease of \$296,000 from the FY 2009 adjusted appropriation of \$1.647 million. The office spent \$2 million in FY 2008 and carried forward \$2.1 million into FY 2009. The Budget In Brief indicates that among the reductions taken by the Executive to address the FY 2009 deficit, was \$1.163 million from the Office of the Child Advocate (Budget in Brief Appendix II, Page 16). As a result, the office has total available funding of \$2.584 million in FY 2009. Recommended budget language would permit the Office of the Child Advocate to carry forward unexpended balances into FY 2010.

- **Question:** What is the estimated carry forward for the Office of the Child Advocate in FY 2010? Does the Department of the Public Advocate anticipate the appointment of a permanent Child Advocate to replace the Public Advocate who has been serving in that position under an acting capacity? Since the office has been in operation for three full fiscal years and startup costs are no longer required, please explain the need for carry forward language for FY 2010.

Answer: At this juncture, the Child Advocate is anticipating minimal carry forward funding of less than \$100,000. The language that would permit the re-appropriation of these funds may have been originally envisioned to facilitate the funding of start-up costs inclusive of a case management system. Yet now, its retention is necessary to provide the Office of the Child Advocate some latitude with regard to achieving its mission during these difficult financial times and following significant budget cuts. The existence of the carry forward language coupled with any possible improvements to the State's fiscal situation will permit the Child Advocate some flexibility in funding staff increases, including the appointment of a permanent Child Advocate. We have achieved significant economies by sharing Public Advocate resources with the Office of the Child Advocate and eliminating a number of high level management positions. We also have made significant progress in identifying and pursuing a broad advocacy agenda that include projects to: expand enrollment in NJFamilyCare; assess current parent/child visitation practices and best practices for children in out of home placements; research and develop recommended reforms for how to improve the educational stability of children in foster care; identify positive detention diversion programs; develop an education campaign for local officials and residents with information about how community group homes are operated and the legal protections they enjoy; study the reentry experiences of juveniles who are released from secure facilities; identify needed reforms in our kinship legal guardianship practices; work with the federal monitor on projects to examine the delivery of

Discussion Points (Cont'd)

health services to foster children and the quality of investigations; strengthen child fatality reviews; and examine the current structure of the child abuse registry and any needed changes;