

**CMHDA Legislative Language to Implement the One-Time MHPA Redirection for
Realignment of EPSDT and Medi-Cal Specialty Mental Health Managed Care**

February 23, 2011

BACKGROUND AND PURPOSE

The proposed legislative language that begins on page 4 is intended to:

1. Implement the Governor’s 2011-12 State Budget Proposal to Shift Full Responsibility for Medi-Cal Specialty Mental Health Managed Care and EPSDT to Counties

Under the Governor’s proposal, counties would be fully responsible and financially at risk for the Medi-Cal Specialty Mental Health Managed Care and EPSDT programs, both of which are federal entitlement programs.

The proposed legislative language below clarifies that the **MHPA funds** used to pay counties for their obligations for these realigned programs would *not be subject to federal or state cost settlement and audit processes* since the state would no longer hold financial risk for either program. Under existing law (WIC 5778), the state General Funds provided in the annual state budget appropriation for Medi-Cal Specialty Mental Health Managed Care are considered to be *funds of the county, to be used for the program*, and thus, are not subject to federal cost settlement and audit. This proposal would treat the redirected MHPA funds to be used for Medi-Cal Specialty Mental Health Managed Care and EPSDT similarly.

Counties would continue to comply with all federal requirements, including *federal cost settlement and audits* of federal financial participation (FFP) funds. If realigned, counties would hold full risk for these programs and would need to manage them with the limited resources proposed to be provided.

It is important to note that for the purposes of the Governor’s proposal to permanently realign these two programs, the funds proposed to be provided (\$579 million for EPSDT and \$183.6 million for Medi-Cal Specialty Mental Health Managed Care) to counties in FY 2011-12 will be *approximately \$201 million short* of what is likely to be needed (given caseload projections for FY 2011-12). Going forward, the baseline funding amounts for these programs will need to be adjusted upward if they are to be adequate to cover the federal requirements to which beneficiaries are entitled.

The Governor’s proposal to realign “AB 3632” to counties is not included in this proposed legislative language. For a variety of public policy reasons enumerated in other CMHDA correspondence, we do not believe “AB 3632” is appropriate to be realigned to counties. For example, we do not think the proposal to use MHPA funds to pay counties for prior year SB 90 claims, and yet provide no funding for FY 2011-12 services, makes sense. The LAO also points out that it is inappropriate to use MHPA funds – which are not “general purpose funds” – to pay for a state mandate. Since we were unable to identify a tenable way to make the Governor’s “AB 3632” realignment proposal work, it is not included in the proposed legislative language.

2. Comply with the Mental Health Services Act by Establishing that the One-Time Redirection of MHSA Funds is a *Loan* to the State General Fund

In order to comply with the MHSA requirement that, by a 2/3 vote of the Legislature, the MHSA may be amended as long as there is consistency with the purpose and intent of the Act, the “redirection” of MHS funds for state General Fund obligations must use the authority granted to the State Controller to borrow MHS funds. The funds borrowed in FY 2011-12 must be repaid in an appropriate timeframe. Language to implement this is provided below in WIC Section 5891(c).

3. Outline the Sequenced Steps Needed to Redirect MHSA Funds in a Manner Resulting in the Least Harm to Local Programs Serving Consumers and Families

Language provided below in WIC Section 5891(c) provides a sequential list of steps the State Controller should use to borrow and distribute to counties funds for EPSDT, Medical Specialty Mental Health Managed Care, and MHSA component allocations in FY 2011-12. *The sequence is also illustrated in a flow chart on page 4.*

We have also included two additional changes to current practice that are critically necessary for ensuring uninterrupted cash flow for service obligations. First, provide protections so the redirected MHS funds from FY 2011-12 are used to pay for EPSDT obligations in FY 2011-12, and not for prior year state obligations. This change is critical to implementing the ongoing fund distribution described in our proposed language below in WIC Section 5891(e). Second, remove the current authority of the Department of Finance to defer cash payments from the MHS fund – not just in FY 2011-12, but ongoing. This change is included below in Government Code 16326 (a)(5)(E) and (b).

4. Align MHSA Fund Distribution Practices with Deposits into the MHS Fund, and Link with Plan Approval Process

Align MHSA fund distribution practices with deposits into the MHS Fund through cash transfers distributed to counties on a monthly basis, using a distribution formula that is consistent with the estimated amount of available funding for the fiscal year. This continuous distribution of MHSA funds for approved MHSA programs would somewhat mitigate the impact of reduced resources for mental health services at the local level in FY 2012-13 due to the Governor’s proposed one-time supplantation of MHSA funds in FY 2011-12. Specific details of the administration of this proposal would need to be negotiated between CMHDA, DMH and the MHSOAC, with the goal of making the distribution of MHSA funds comparable to the distribution of existing sales tax and vehicle license fees under realignment, while also complying with the provisions of the MHSA related to MHSA plan approval.

5. Give Counties Discretion to Manage Local Reserves to Sustain Service Obligations

While moving to monthly cash distribution from the MHS fund (see #4 above) will help mitigate the local dilemma of cash available to support services obligations, services will be impacted at the local level in future years. While strategies to fix this can primarily be achieved through changes to current DMH administrative practices, there are two minor corrections to current statute needed. In 2009-10, the MHSA was amended [see WIC

Section 5847(b)(7)] to clarify that counties' prudent reserve funds could be used to support continued funding for Prevention and Early Intervention (PEI) programs concurrent with an approved plan. However, changes were not made to the sections of statute that describe which MHSA component funds could be placed into and then later withdrawn to meet service obligations during economic downturns. Below, we have provided legislative language to clarify that PEI funds can be placed in a county's prudent reserve and extracted from that reserve for the purposes described in WIC Section 5847(b)(7).

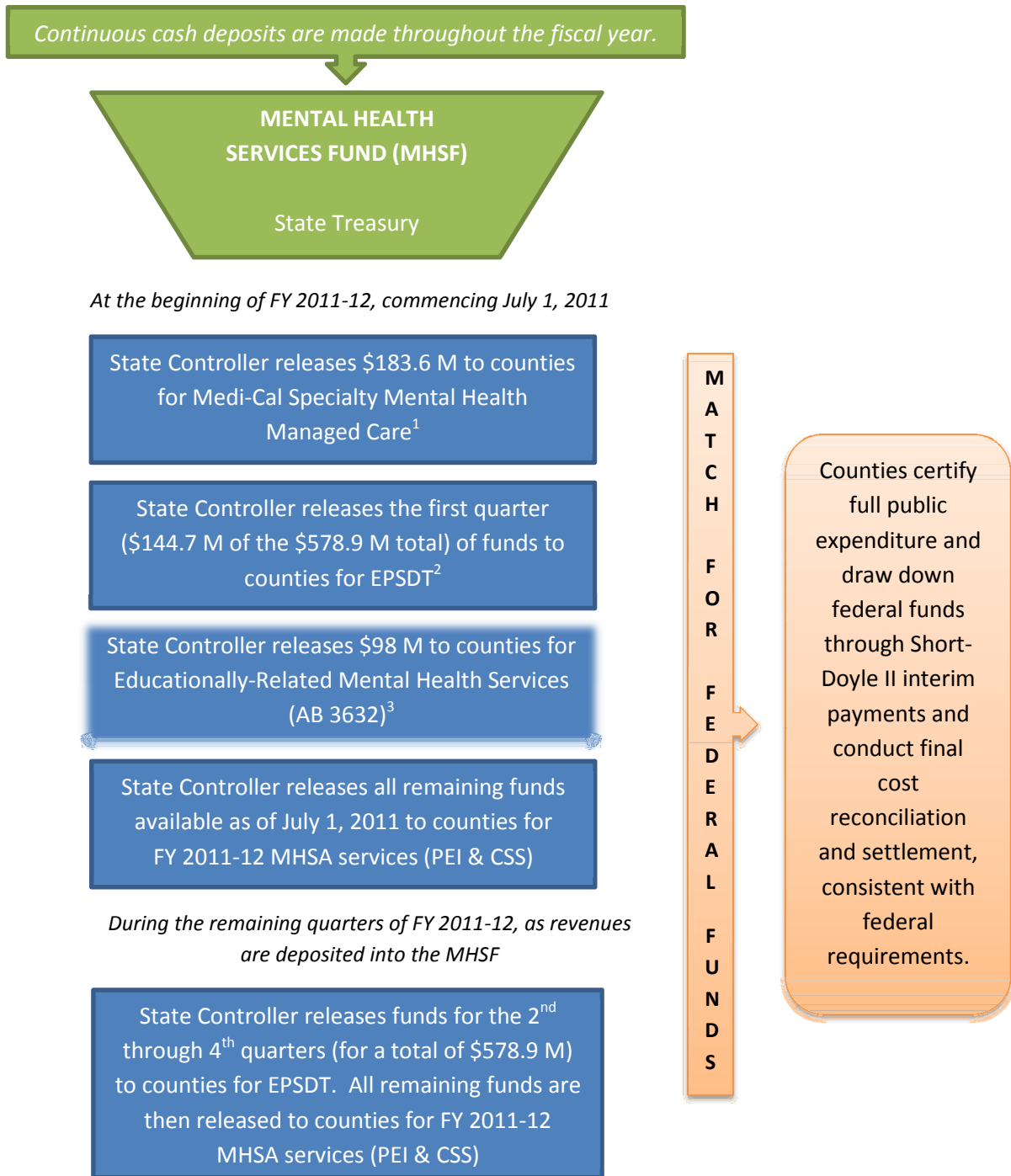
6. Require that MHSA Administrative Policies are Consistent with Statute and Statutory Changes

CMHDA has identified several current administrative policies that are either inconsistent with statute or reach above and beyond the scope and authority the statute has provided. Of primary concern are current policies regarding the prudent reserve, [see WIC Sections 5847(a)(7), 5847(h) and 5892(b)], and appropriation of Innovation funds, [see WIC Section 5892(a)(6), Section 5892(h), and 5847(f)].

To achieve the stated goals of the Administration and to implement the MHSA redirection in a way that causes the least amount of harm to individuals and families relying on services, CMHDA suggests the following legislative language that guarantees that previous and future administrative policies are removed if inconsistent with statute:

The Department of Mental Health, in consultation with the California Mental Health Directors Association, the Mental Health Services Oversight and Accountability Commission, and the Mental Health Planning Council, shall review, remove and/or revise all current administrative policies that are inconsistent with the direction provided in existing MHSA statute. All state administrative policies must be consistent with the MHSA statute.

FLOW CHART: PROPOSED FY 2011-12 MHSA FUND REDIRECTION



¹ Based on a formula developed in consultation with the California Mental Health Directors Association under the provisions of WIC 5778.

² Based on a formula developed in consultation with the California Mental Health Directors Association. MHSA funds to be considered the funds of the county for EPSDT or MHSA programs only.

³ Based on a formula developed in consultation with the California Mental Health Directors Association and reconciled with each county's federal IDEA funds appropriation.

PROPOSED LEGISLATIVE LANGUAGE

Section 5891 of the Welfare and Institutions Code is amended to read:

SEC. 1. 5891. (a) The funding established pursuant to this act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this act. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program. These funds may not be loaned to the state General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section 5892.

(b) Notwithstanding subdivision (a), the Controller may use the funds created pursuant to this part for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with interest commencing to accrue on the date the loan is made from the fund. This subdivision does not authorize any transfer that would interfere with the carrying out of the object for which these funds were created.

(c) Commencing July 1, 2011 and pursuant to subdivisions (a) and (b), the Controller may borrow \$762,600,000* from the Mental Health Services Fund in the State Treasury to meet the General Fund obligation for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) and Medi-Cal Specialty Mental Health Managed Care in fiscal year 2011-12. This loan shall be subject to repayment in full within five fiscal years. The loaned Mental Health Services Fund monies shall be obtained and utilized in the following sequence:

(i) The Controller shall borrow and distribute to counties \$183,600,000 of the funds available as of July 1, 2011 in the Mental Health Services Fund, consistent with Section 5778(c) and based on a formula determined in consultation with the California Mental Health Directors Association to meet the fiscal year 2011-12 General Fund obligation for Medi-Cal Specialty Mental Health Managed Care.

(ii) Upon completion of (i), the Controller shall distribute to counties all remaining funds available as of July 1, 2011 in the Mental Health Services Fund to be used for fiscal year 2011-12 MHSA component allocations, consistent with Sections 5847 and 5891.

(iii) Upon completion of (i) and (ii), and as revenues are deposited into the Mental Health Services Fund, the Controller shall borrow and distribute \$579,000,000 in Mental Health Services Fund monies to counties to meet the General Fund obligation for EPSDT for fiscal year

* Please note that this amount would be \$861,000,000 if Educationally-Related Mental Health Services (ERMHS) (AB 3632) were included in the proposed realignment of programs to county mental health departments, which CMHDA opposes. While CMHDA opposes its inclusion, if ERMHS were to be included, it would be our recommendation that the redirection of MHSA funds for those purposes be managed in the same way as described above in WIC 5891(c)(i), wherein the Controller borrows and distributes to counties \$98,000,000 of the funds available as of July 1, 2011 in the Mental Health Services Fund, consistent with Section 5778(c) and based on a formula determined in consultation with CMHDA to meet the FY 2011-12 General Fund obligation for ERMHS services. Consultation with CMHDA is vital to ensure reconciliation with the federal IDEA funds distributed to each county through their local Offices of Education.

2011-12. Such revenues shall be distributed to counties on a quarterly basis and based on a formula determined in consultation with the California Mental Health Directors Association. These funds shall not be subject to reconciliation or cost settlement, and shall not be used to meet General Fund obligations for approved claims, cost settlement amounts, and audit finding amounts for EPSDT services provided prior to fiscal year 2011-12. Any revenues deposited in the Mental Health Services Fund in fiscal year 2011-12 that exceed the \$579,000,000 EPSDT obligation shall be distributed to counties for remaining fiscal year 2011-12 MHSA component allocations, consistent with Sections 5847 and 5891.

(d) Subdivision (c) of this section shall remain in effect only until July 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2012, deletes or extends that date.

~~(c) (e).—Subject to the availability of funding in the Mental Health Services Fund as determined by the Department of Finance, the State Department of Mental Health shall distribute in a single lump sum of the total approved funding to each county Commencing July 1, 2012, on or before the 15th day of each month, the Controller shall distribute to local mental health service funds established by counties through Section 5892(f), all unexpended and unreserved funds on deposit as of the last day of the prior month in the state Mental Health Services Fund established through Section 5890 for the provision of programs and other related activities set forth in Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850). Funding distributions shall be based on the amount specified in the county mental health program's three-year plan or update, as required by Section 5847 and as approved by the State Department of Mental Health and the Mental Health Services Oversight and Accountability Commission pursuant to Section 5847. This subdivision shall in no way change the authority of the State Department of Mental Health or the Mental Health Services Oversight and Accountability Commission, as applicable, to approve, deny, or request further information regarding a county's three-year plan or update. Nothing in this subdivision shall affect subdivision (b).~~

Section 5892 (b) of the Welfare and Institutions Code is amended to read:

SEC. 2

(b) In any year after 2007-08, programs for services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840) and Part 4 (commencing with Section 5850) of this division may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for purposes authorized by this subdivision shall not exceed 20 percent of the average amount of funds allocated to that county for the previous five years pursuant to this section.

Section 5847 (h) of the Welfare and Institutions Code is amended to read:

SEC. 3

(h) A county mental health program ~~shall~~ may include an allocation of funds from a reserve established pursuant to paragraph ~~(6)~~ (7) of subdivision (b) for services pursuant to paragraphs (1) (2) and (3) of subdivision (b) in years in which the allocation of funds for services pursuant to subdivision (e) are not adequate to continue to serve the same number of individuals as the county had been serving in the previous fiscal year.

SEC. 4

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to immediately assist local governments and fund services that preserve the health of California citizens, it is necessary to make these changes as soon as possible.

Amend Government Code Section 16326 (a)(5)(E) and (b) to read as follows:

SEC. 5

(5) The 2010-11 cash management plan described in Sections 16325 and 16325.5 may include deferrals in state payments for specific programs that are disbursed to cities, counties, and other public entities not addressed elsewhere in this section. Deferral of payments by the state to cities, counties, and other public entities not addressed elsewhere in this section shall be as follows:

(A) Payments shall be deferred as specified in Section 16325.5 per the specific program.

(B) Payments shall be limited to one billion dollars (\$1,000,000,000) for all programs that affect cities, counties, and other public entities not addressed elsewhere in this section at any given point in time.

(C) A maximum of three deferrals per specific program may be made during the fiscal year.

(D) The state shall not defer any payments to a county with a population less than 50,000, or a city within a county with a population less than 50,000.

(E) Payments to local governments may be deferred for social services and transportation programs. ~~and Mental Health Services Act (Proposition 63 of 2004) programs.~~

(6) In addition to implementing the payment schedule described in paragraph (4), the Director of Finance may at any time during the 2010-11 fiscal year defer payment of General Fund moneys, in a cumulative amount not to exceed two hundred fifty million dollars (\$250,000,000), appropriated to the California State University. Payment of the amount deferred shall be made in the final week of April 2011.

(b) Limits on payment deferrals specified in subparagraphs (A) and (C) of paragraph (5) of subdivision (a) shall not apply to payments authorized in paragraph (3) of subdivision (a) of Section 2103.1 of the Streets and Highways Code to cities and counties. ~~Limits on payment deferrals specified in subparagraphs (A) and (C) of paragraph (5) of subdivision (a) shall not apply to payments to the Mental Health Services Act (Proposition 63) programs.~~