



**TO: CMHDA Members**

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**DATE: June 16, 2011**

**SUBJECT: FY 2011-12 State Budget Passed by Legislature on June 15, 2011**

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## Overview

Yesterday on the state constitutional deadline, the Legislature passed a majority budget on a strict party line vote. However, late this morning, Governor Jerry Brown vetoed the budget bill (AB 98). The budget passed by Democrats contained \$9.6 billion in state budget solutions for FY 2011-12, including tax and fee increases, spending cuts, and revenue assumptions (some of which were highly likely to be challenged in the courts). The budget package did not include the Governor's proposal to send to voters an initiative to extend sales and VLF taxes for five years, nor did it include the Governor's "Realignment 2.0" proposal.

Some were calling the Democratic budget package a "placeholder" that simply allowed the Legislature to avoid the pay cuts they would have endured had they not passed a budget by June 15. In a letter to legislators today after vetoing the budget, Governor Brown lauded Democrats for making a valiant attempt to pass a timely budget. However, he stated the plan is "not a balanced solution. It continues big deficits for years to come and adds billions of dollars in new debt. It also contains legally questionable maneuvers, costly borrowing and unrealistic savings. Finally, it is not financeable and therefore will not allow us to meet our obligations as they occur."

The Governor's veto continues the uncertainty of the FY 2011-12 state budget, as well as the fate of the Governor's Realignment 2.0 proposal. We presume the Governor will continue with negotiations to try to convince four Republicans to extend the sales taxes and VLF, as well as place the taxes on a special election ballot. Democrats are saying that the multi-month "tax bridge" between now and the special election (presumably in September) would be crucial if there is any chance for a successful special election on taxes later this year.

This morning before the Governor's veto, CSAC pointed out that the Democrats' budget package did not include funding for public safety subventions and created "an unclear path toward funding and implementing AB 109." As discussed in this month's All Directors meeting, AB 109 which was previously signed by the Governor, realigns responsibility for many adult and juvenile offenders from the state to counties. We will provide you with additional information once it is available as state budget negotiations continue and we learn about the plan to provide funding for AB 109 implementation.

Another major part of the Governor's May Revision budget proposal that was not included in the Democrats' budget package is the transfer of all Healthy Families enrollees to Medi-Cal in FY 2011-12. On the one hand, it appears the budget package may have scored some savings associated with a slightly delayed implementation of this proposal. On the other hand, the budget trailer bills do not appear to include any language to actually enact this program transfer. It is not certain why the Legislature failed to include trailer bill language that would enact this proposal. However, it appears that concerns from private health plans and potential costs to the state General Fund for expanded Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services could have impacted their eventual decision not to move forward on the proposal at this time. It is also possible that the issue may surface again in a budget trailer bill as discussions seem to be continuing behind the scenes. CMHDA will provide you with additional details about the outcome of the Healthy Families proposal as it becomes available.

## **AB 3632 Mandate on County Mental Health Agencies Repealed**

The vetoed main budget bill (AB 98) and Education budget trailer bill (AB 114) are two vehicles that specify the details of repealing the "AB 3632" mandate on counties. The four primary provisions include: 1) repeal of the existing AB 3632 mandate on county mental health agencies, 2) specify county mental health agencies' use of \$98.6 million in diverted MHSA funds, 3) provide funding to schools for mental health and residential care services to special education students, and 4) provide funding to the California Department of Education (CDE) to perform a variety of activities related to the permanent transfer of responsibility to schools. Below is a detailed description.

### *(1) "AB 3632" Mandate on Counties Repealed*

The Education Budget Trailer Bill (AB 114) strikes sections of the both the Government and Education Codes related to county "AB 3632" mental health responsibilities, and makes them "inoperative" on July 1, 2011 and repealed on January 1, 2012. For your reference, the table below lists the sections of California statutes that are either repealed, or cleaned up in a technical fashion, to permanently remove the mandate that county mental health agencies provide mental health services to special education pupils.

## Education Trailer Bill Clean Up of AB 3632

<u>Government Code</u>	
7572 (a), (b), (d)	Clean-up
7572 (c)	Repeal
7572.5, 7572.55	Repeal
7576, 7576.2, 7576.3, 7576.5	Repeal
7582	Repeal
7585	Repeal
7586.5, 7586.6, 7586.7	Repeal
7588	Repeal
<u>Education Code</u>	
56139	Repeal
56325(c)	Clean-up
56331	Repeal
<u>Welfare &amp; Institutions Code</u>	
5651 (a)(2)	Clean-up
5701.3(a)	Repeal
5701.6	Repeal
<u>Family Code</u>	
7911.1(h)	Clean-up

### *(2) Specifications for County Mental Health One-Time Use of \$98.6 million in Mental Health Services Act Funds in FY 2011-12*

The (vetoed) Budget Bill (AB 98) specified that the \$98,586,000 in MHSA funds that counties will receive pursuant to AB 100 shall be used “exclusively for the purpose of funding Individuals with Disabilities Education Act (IDEA)-related mental health services within a special education pupil’s individual education plan during the 2011–12 fiscal year.” Additionally, the bill provides that counties shall either use the funds for the above purpose, “or shall return the funding to the state for reallocation to other counties.”

In order to access the MHSA funds counties will receive pursuant to AB 100, Local Education Agencies (LEAs) are *permitted to* develop an MOU or contract with county mental health agencies to “address the interagency service responsibilities for the provision and transition of mental health services identified on a pupil’s individual education plan during the 2011–12 fiscal year.” If an LEA and county develop an MOU or contract, the LEA must provide a copy to CDE.

### *(3) Funding Provided to Schools for Mental Health Services & Residential Care*

Below is a description of the funds provided to local education agencies in the (vetoed) Budget Bill (AB 98) for Individualized Education Program (IEP)-required mental health services and out-of-home residential services for emotionally disturbed pupils, pursuant to federal IDEA law.

Federal IDEA:

- Up to \$2 million in IDEA carryover funds are available on a one-time basis for mental health service dispute resolution services provided by the Office of Administrative Hearings. CDE must submit documentation to the Department of Finance (DOF) justifying any increased mental health services caseload and obtain written approval from DOF prior to expenditure.
- \$69 million only for the purpose of providing mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction (SPI) must allocate these funds to Special Education Local Planning Areas (SELPA) on a one-time basis in FY 2011–12 as follows:
  - Using data available from the California Special Education Management Information System (CASEMIS) as of December 1, 2010, each SELPA will receive the following funding, per pupil, if the pupil's IEP requires these particular services:
    - (1) \$3,607 -- individual counseling, counseling and guidance, parent counseling, social work services, or behavior intervention services;
    - (2) Twice the amount in #1 -- psychological services;
    - (3) Four times the amount in #1 -- day treatment services; and
    - (4) Nine times the amount in #1 -- mental health related residential treatment services.
  - The SPI shall count individual pupils in only one of the four categories above, based on the most intensive level of services required by the IEP.
  - If the overall \$69 million funding allocation is insufficient, or if there is excess funding available, the SPI shall adjust the amount in order to match the full allocation.
- The trailer bill states that it is the intent of the Legislature that any funds appropriated for FY 2012–13 for the purpose of providing the mental health related services shall be allocated based on an equal rate per pupil (using a methodology specified in Section 56836.07 of the Education Code), and using average daily attendance for FY 2011–12.

*Proposition 98 (Totals \$249,786,000)*

- Up to \$31 million shall be available only to provide mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by an IEP pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.) The SPI shall allocate these funds to SELPA) on a one-time basis in FY 2011–12 based upon an equal rate per pupil (using the methodology specified in Section 56836.07 of the Education Code).

- Up to \$218,786,000 shall be available only to provide mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by an IEP pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The SPI shall allocate these funds to SELPAs in FY 2011–12 based upon an equal rate per pupil using the methodology (specified in Section 56836.07 of the Education Code).

*(4) Funding Provided to CDE for State-Level Transitional Activities*

The (vetoed) Budget bill (AB 98) provides up to \$800,000 in federal IDEA carryover funds to CDE to provide oversight and technical assistance for LEAs, as the responsibility for overseeing educationally necessary mental health related services transitions from county mental health agencies to SELPAs. CDE is required to use the funds to help SELPAs:

- Minimize disruption and maintain quality of services for pupils through the transition period and in future years;
- Develop internal capacity for overseeing, contracting for, and providing quality mental health related services;
- Identify best practices and effective models for service delivery;
- Identify options for controlling costs and accessing Medi-Cal and other local, state, and federal funds; and
- Strengthen linkages between mental health and education services.

Additionally, CDE is required to identify options for improving accountability for effective services and positive pupil outcomes, including a system for tracking and reporting outcomes. As part of this effort, CDE must establish working groups to “generate recommendations regarding best practices, accountability systems, and other matters.” CDE must also hold public meetings with stakeholders to solicit input and share results.

In undertaking these activities, CDE must consult with the California Department of Mental Health (DMH), representatives of county mental health agencies, representatives of LEAs and SELPAs, and other interested parties.

In addition to these funds, the budget makes available \$3 million in Proposition 98 funds to the SPI, in collaboration with the DOF and the Legislative Analyst, and subject to approval by the DOF, to administer an extraordinary cost pool associated with mental health related services, including out-of-home residential services for emotionally disturbed pupils, necessary for small SELPAs (as defined in Section 56212 of the Education Code).

Finally, the Education Budget Trailer Bill (AB 114) states that it is the intent of the Legislature that CDE and appropriate departments of the CA Health and Human Services Agency work to modify or repeal regulations no longer necessary now that the “AB 3632” mandate on county

mental health agencies has been permanently repealed.

## **Transfer of State-Level Medi-Cal Responsibilities to DHCS**

The Health Trailer Bill (AB 102) that passed the legislature and now awaits the Governor's action adds Chapter 8.9 to the Welfare and Institutions Code, titled "Transition of Community-Based Medi-Cal Mental Health." The purpose of this language is to transfer from DMH to Department of Health Care Services (DHCS) the state administration of Medi-Cal specialty mental health managed care and EPSDT no later than July 1, 2012.

The bill describes the Legislature's intent that this transfer occur in an efficient and effective manner, with no unintended interruptions in service delivery to clients and families. The transfer is intended to do all of the following:

- *Improve access to culturally appropriate community-based mental health services, including a focus on client recovery, social rehabilitation services, and peer support.*
- *Effectively integrate the financing of services, including the receipt of federal funds, to more effectively provide services.*
- *Improve state accountabilities and outcomes.*
- *Provide focused, high-level leadership for behavioral health services within the state administrative structure.*

DHCS, in collaboration with DMH, and the CA Health and Human Services Agency, must create a state administrative and programmatic transition plan, to be provided to the Legislature as soon as feasible, but no later than October 1, 2011. The plan may be updated by the Governor, and must be provided to the Legislature upon its completion, but no later than May 15, 2012. The bill requires all regulations and orders concerning the programs to remain in effect, unless and until readopted, amended, or repealed by DHCS.

By July 15, 2011, DHCS, together with DMH, must convene a series of stakeholder meetings and forums to inform the creation of the transition plan by receiving input from clients, family members, providers, counties, and representatives of the Legislature concerning the transition and transfer. Stakeholders must be convened and consulted with at least twice after a draft of the plan is developed, and prior to submission to the Legislature. Stakeholders must also continue to be convened after transition activities are underway.

The plan must include at a minimum the following components (*italics added for emphasis*):

- Ensures *continued access and quality of service* during and immediately after the transition, preventing any disruption of services to clients and family members, providers and counties and others affected by this transition;
- A detailed description of the state administrative *functions currently performed by DMH* for these programs;
- Explanations of the *operational steps, timelines, and key milestones* for determining when and how each function or program will be transferred. These explanations shall also be developed for the transition of positions and staff;

- A list of any planned or proposed *changes or efficiencies in how the functions will be performed*, including the anticipated fiscal and programmatic impacts of the changes.
- A detailed *organization chart* that reflects the planned staffing at DHCS and includes *focused, high-level leadership for behavioral health issues*; and
- A description of *how stakeholders were included* in the various phases of the planning process to formulate the transition plans and a description of how their feedback will be taken into consideration after transition activities are underway.

## Other Items of Interest

- The Health Budget Trailer Bill (AB 102) that passed the legislature deletes the July 1, 2014 sunset date on the rate freeze that affects SNFs -- excluding IMDs. As you may recall, CMHDA sponsored AB 2645 (Chesbro) in 2009-10, which was signed by the Governor, to extend the 2009 Budget Act's SNF rate freeze to SNFs licensed as IMDs until June 30, 2012. This was an effort to conform the rate freeze on SNFs to IMDs. Now that the SNF rate freeze will continue, there will again be a misalignment in the rates counties must pay to IMDs. After July 1, 2012, counties must provide a 4.7% rate increase to IMDs, despite the fact that other SNF rates will remain frozen unless changed in future legislation.
- The Human Services Trailer Bill (AB 106) that passed the legislature and is now awaiting the Governor's approval provides for the transfer of administrative and programmatic functions of the Drug Medi-Cal program from the Department of Alcohol and Drug Programs (DADP) to DHCS, effective July 1, 2012. The requirement that a transition plan be developed with stakeholder input and be provided to the legislature substantially mirror the requirements of the Medi-Cal specialty mental health transfer to DHCS. However, the transition plan for Drug Medi-Cal is also required to include "plans for how to review monthly billing from counties to monitor and prevent any disruptions of service to Drug Medi-Cal beneficiaries during and immediately after the transition, and a description of how the department intends to approach the longer-term development of measures for access and quality of service."

Please do not hesitate to contact us at [pryan@cmhda.org](mailto:pryan@cmhda.org), [kbarlow@cmhda.org](mailto:kbarlow@cmhda.org), or (916) 556-3477 with any questions you may have. We will provide additional details about outstanding items as the information becomes available, as well as provide an update to you once these items have been considered by the Governor for approval and/or veto.