

Understanding AB 100

The Mental Health Services Act
Budget Trailer Bill

Signed by the Governor March 24, 2011

April 4, 2011

Goals for Today

1. Review events leading up to AB 100
2. Understand the key statutory changes
3. Understand what statutory provisions remain unchanged
4. Identify critical issues and concerns related to changes or lack of changes made
5. Explore implications to counties
6. Identify next steps needed by counties

Timeline

January through March 2011

- Governor's Budget Proposal to Redirect \$862M in MHSA Funds for FY 11-12 for EPSDT, Educationally-Related MH Services (AB 3632), and Specialty Medical Mental Health Managed Care;
- Governor's Realignment Budget Proposal which included realignment of the above community mental health programs; and
- Legislative proposal, supported by the Administration, to reduce allowable MHSA state administrative expenditures from up to 5% of total annual funds to 3.5%

AB 100 is Signed and Effective Now



AB 100 is the Budget Trailer Bill that amends the MHSa statute to implement the MHSa redirection and makes some significant MHSa administrative changes

AB 100 is Different than CMHDA Redirection proposal

- Is **NOT** a loan to the State General Fund and will **NOT** be repaid
- Sequential steps for taking funds from the MHS Fund and distributing to counties for the realigned programs and MHSA component allocations for FY 2011-12 is slightly different
- Includes Educationally-Related MH Services (AB 3632)
- Does not address flexibility on prudent reserve (PEI) policies or direct State to provide administrative relief to the counties

\$862M MHSA Redirection

July 1, 2011

\$183.6 M
for Specialty MH Medi-Cal Managed Care

\$98.5 M
for Educationally-Related Mental Health Services

Approximately half of FY 11-12 CSS, PEI, INN (not to exceed \$488M) beginning in August with the remainder to be paid no later than April 30, 2012

Quarterly distributions totaling \$579 M
for EPSDT

July 1, 2012

MHS Fund distributions will be “pay as you go” accrual approach, rather than cash basis.

MHSA State Administration

Expenditures Reduced to 3.5%

- Legislative Budget Committee reduced 5% cap to 3.5% and held the MHSOAC Harmless
- Administration responded with a proposal consistent with the budget proposal to realign mental health services to counties

Key Goals:

- ❖ Streamline and improve efficiency
- ❖ Significantly reduce state administrative support (by \$30M including 143 personnel) for local implementation and direct more MHSA funding to county mental health programs
- ❖ Clarify state roles in evaluation and program monitoring

Budget Conference Committee Compromise

- Eliminate DMH and OAC county plan review and approval
- OAC will take the lead on evaluation efforts
- State admin funding: totals \$22M with \$5M more now available for local MHSA services
- 67 state personnel remain
- Few MOUs with other state agencies remain including those for the Veterans Affairs, DDS, CDE and Community Colleges
- Elimination or reduction of some contracts

AB 100

Goals of Legislative Language to Implement MHSA Redirection and State Administrative Changes:

- Changes to the state role are “*surgical*” or very “*minimal*” in order to implement budget conference committee compromise
- Support MHSA cash flow to counties tied to accountability through the contractual relationship counties have with DMH
- Act is an urgency statute and will take immediately upon signature of the Governor

Note: AB 100 went into effective March 24 2011

Summary of Key Changes

Administrative

Key Changes – Administrative

Legislative Intent

In eliminating state approval of county mental health programs, the Legislature expects the state, in consultation with the Mental Health Services Oversight and Accountability Commission, to establish a more effective means of ensuring that county performance complies with the Mental Health Services Act.

Key Changes – Administrative

- Eliminates State DMH and the MHSOAC from reviewing and approving county plans and expenditures
- Replaces the *Department of Mental Health* with *the State* in the distribution of funds from the MHS fund
- Changes the amount available from revenues deposited in the MHS fund for state administration from up to 5% to 3.5%
- Plans will not longer be evaluated by DMH regarding capacity to meet unmet needs with expenditures

Key Changes – Administrative

- Replaces DMH with the MHSOAC (*or Commission*) as having a possible role of providing TA to county mental health plans for improvement of their “plans”
- Replaces DMH with *the state in developing regulations necessary for the State Department of Mental Health, the MHSOAC, or designated state and local agencies to implement the act.*

Summary of Key Changes

**\$862 MHS Fund Redirection and
Continuous Appropriation**

Key Changes – MHS Fund

Legislative Intent:

The statutory changes in this act are consistent with, and further the intent of, the Mental Health Services Act. These specified changes are necessary to adequately fund essential mental health services that would otherwise be significantly reduced or eliminated absent this temporary funding support.

Key Changes – MHS Fund

- Suspends the non-supplant requirement for FY2011-12 due to the *state's fiscal crisis*, allowing the MHS fund, rather than State General Fund, to pay for non-MHSA funded programs.
- Retains CMHDA's role in the formula for the 20% PEI fund distribution – unclear what CMHDA role is as of 2012 for non-PEI.
- Specifies a continuous appropriation commencing July 1, 2012, that the Controller shall distribute to each Local Mental Health Services Fund all unexpended and unreserved funds on deposit in the State MHS fund as of the last day of the prior month for services for CSS, INN and PEI. It retains language stating that funding distributions shall be based on the amount specified in the county mental health program's three-year plan or update.

Key Changes – MHS Fund

- Outlines the MHSA Redirection for 2011-12
(see table for details)
- The Controller shall distribute to counties 50% of their 2011-12 MHSA component allocations consistent with WIC Sec. 5847 and 5891 (plan contents and section that includes new continuously monthly distribution language) and not to exceed \$488M shall be distributed beginning August 1, 2011, and
- The Controller shall distribute to counties the remaining 2011-12 MHSA component allocations, beginning no later than April 30, 2012 on a monthly basis.

Remaining Provisions

Before we consider any additional amendments to the MHPA we must understand all the statutory provisions that remain unchanged.

Planning and Plan Content

- Plan content for allowable expenditures is completely untouched
- All requirements for the local planning process are unchanged
- Direction on content of expenditure plans and updates is primarily unchanged, but there are changes that describe promote approval and payment which are no longer needed due to the fund distribution changes made.

Planning and Plan Content

- DMH retains the authority to “establish” the requirements for plans while MHSOAC retains its authority to issue guidelines for PEI and INN expenditures.
- Counties are still to prepare and “submit” a 3-year plan, but in areas this does not have to be annually. The intent on whether or not this must be done annually is unclear.

Planning and Plan Content

WIC Sec. 5847 (f) [note this was (h)], was not amended to specify that prudent reserve funds can be used for PEI, which conflicts with direction given in Sec. 5847(b)(7), in which one of the functions of the prudent reserve is described as supporting PEI expenditures in years in which revenues are too low to serve the same number of people as the previous year

MHS Fund and Distribution

- Much on the language in WIC Section 5890, 5891 and 5892 remains unchanged other than the redirection in FY 2011-12 and move to continuous appropriation July 1, 2012
- Controller retains borrowing authority
- Allowable expenditures by PEI, System of Care (CSS) and 5% of each for Innovation remain
- Counties can annually dedicated up to 20% of the average of their 5-year total of MHSA funds to the PR, Cap/IT, or WET programs/projects

MHS Fund and Distribution

- Counties may still use up to 5% of their total annual MHSA revenues for planning and supporting consumers, family members, stakeholder and contractors in local planning processes
- Each county shall continue to have a local Mental Health Services fund in which interest earned remains in the fund to be used for MHSA expenditures.

Contractual Relationships & Existing Oversight Capacities

- WIC Sec. 5897 remains completely intact. This section describes key provisions in how DMH shall implement services funded by the MHS fund for services through contracts with county mental health programs, or counties acting jointly.
- This is conducted through the performance contract as described in Sec. 5897(c). When a county is not in compliance with its performance contract, the department may request a plan of correction with a specific timeline to achieve improvements.

Contractual Relationships & Existing Oversight Capacities

- WIC Sec. 5845 remains completely intact and describes the composition, role and oversight capacity of the MHSOAC, including authority to refer critical issues of county mental health performance to the State Department of Mental Health.
- WIC Sec. 5848 remains and the CA Mental Health Planning and local Mental Health Boards and Commissions retain their role in reviewing and commenting on county performance data.

Critical Issues and Concerns

A Beginning List of Issues and Questions

General

What happens if these three general fund programs are not “realigned”?

There is no mention of “realignment” in the legislative intent language; therefore, how can the argument be made that the 2/3 vote was allowable to redirect \$862M in MHSA funds because it was “consistent with the intent and purpose of the MHSA?”

Plan Approval/ Fund Distribution

- The bill retains that plans are “submitted” and “approved,” but does not specify where and by whom. This would be for expenditures for any year.
- Since the bill takes effect immediately upon the Governor’s signature, what is the process at the state to release funds for component allocations prior to FY 2011-12? This includes unrequested (unapproved) funds primarily for Innovations, Capital Facilities and IT, and PEI.
- Why can’t counties receive their full allocations? Do DMH and the MHSOAC have the authority to withhold funds that complete processes described in WIC Sections 5847 and 5848? Doesn’t AB 100 supersede CA Code of Regulation (CCR) Title 9 Section 3510(c) which states that DMH may withhold funds if a county does not submit the annual revenue and expenditure report?

Plan Approval/ Fund Distribution

- There are a few inconsistencies - while there is a continuous appropriation there is still language describing a process to determine amounts to be distributed to counties and language that states that counties will be given funds according to amounts specified in plans.
- If amendments were made to WIC Section 5813.5 identifying that the “state” rather than “DMH” shall distribute funds for the provisions of services to county mental health programs for MHSA programs, is DMH releasing funds? If not, who is?

Plan Content/Guidelines and Regulations

- DMH and the MHSOAC retain guideline authority. It is CMHDA's assumption that all guidelines for plans are still in effect.
- Current regulations, proposed regulations and guidelines are the leading cause of a administrative burdens to counties and their contract providers. Extraction of plan approval authority at the state level does not address and reduce this burden.

How are these goals, which are the stated goals of the Administration, going to be met?

Plan Content/Guidelines and Regulations

- The statute and current regulations describe specific exclusions for expenditures, including involuntary services. While the MHS fund is being used to supplant services for FY 2011-12, is it presumed that these funds (\$862M statewide) are not subject to these provisions and restrictions?
- The TBL says that the MHSOAC may provide technical assistance to county programs to implement recommendations to plans. Does that mean they will be reviewing them?

Ensuring County Performance Complies with the MHSA Statute:

- Legislative intent language states that the legislature expects the state, in consultation with MHSOAC, to establish a more effective means of ensuring that county performance complies with the MHSA.
- Is there a need to further amend the statute, or can this be established by building upon the existing structures identified in the statute?
- CMHDA contends that a thorough analysis of existing structures must be conducted before any additional amendments are made.



County Implications

Fiscal Policy and Strategies with Mike Geiss

CMHDA's Next Steps

- Identify a process for developing principles for fund distribution of EPSDT, Medi-Cal and Educational-Related Mental Health funds for FY 2011-12.
- Vet proposed implementation process with All Directors and share with Administration.
- Continue to advocate for administrative efficiencies and flexibility on prudent reserve policies, providing needed discretion to sustain service obligations. Counties will be \$80M (10% short) of expected MHSA FY 2011-12 allocations.
- Participate in MHSOAC's process with DMH, CA Mental Health Planning Council and advocacy organizations.