



June 26, 2009

TO: CMHDA Members

FROM: Patricia Ryan
Executive Director

SUBJECT: Budget Issues and Potential Legal Strategies Related to State Funding of the AB 3632 Program

As you may know, the Legislature's Budget Conference Committee recently adopted the Administration's proposal to "defer 50 percent of the State's payment for county claims for providing mental health services to students with serious emotional disturbances who are enrolled in special education for a reduction of \$52 million (General Fund). "

Background:

In November 2004, the voters of California approved Proposition 1A, an amendment to the California Constitution intended to restore predictability and stability to local government budgets. Among other provisions, Prop. 1A requires:

- "For the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, ***the full payable amount that has not been previously paid***, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law;
- Pay claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year (these claims may be paid over a period of years).
- Reimburse local governments when the state mandates that local government assume a greater percentage of the financial responsibility for a program or service previously shared with the state.

Current Issues:

According to the State Controller's Office (SCO), the State currently owes counties a total of \$160 million for AB 3632 claims from FY 2006-07 through FY 2009-10. For claims submitted and owed in prior years (prior to the passage of Proposition 1A), the State owes counties nearly \$500 million (according to the Legislative Analyst's Office, as stated in the Budget Conference Committee hearing June 9, 2009).



In its analysis of the Administration's proposal to reduce funding for the AB 3632 program in the FY 2009-10 budget, the LAO states that the "level of funding proposed in the May Revision to pay prior year claims is insufficient to meet constitutional requirements for sustaining this mandate under Proposition 1A of 2004. To sustain this mandate, the state is required to allocate about \$160 million in funding for this program in the budget year based on the State Controller's deficiency report published on April 29, 2009. The administration proposes only \$52 million General Fund under DMH to pay prior year claims, which leaves a shortfall of about \$108 million General Fund."

During the Budget Conference Committee's deliberations on this issue, Marianne O'Malley from the LAO clearly pointed out to the Administration and legislators that failure to authorize funds to fully pay for this mandate in the FY 2009-10 budget would be a violation of the State constitution (pursuant to Prop. 1A of 2004). She also warned that "counties would be likely to sue" if the State failed to include sufficient funds in the budget to fully pay for the mandate. Nevertheless, on a party line vote (Democrats for, Republicans against), the Committee voted to authorize only \$52 million to pay counties for past mandate claims in the 2009-10 budget year.

It is our understanding that the State has not paid county SB 90 reimbursement claims related to the AB 3632 program since FY 2006-07. This essentially means that the State has been in violation of Proposition 1A for several years, with no legal challenge from counties thus far.

Again, the LAO clearly advised the Legislature this year that it would be in violation of the State constitution if it did not fully fund the counties for the AB 3632 mandate claims from 2006-07 through 2009-10 in this year's budget. LAO also clearly informed the Committee that the State already owes counties "nearly half a billion dollars" for this mandate for unpaid claims prior to FY 2004-05.

Issues for Consideration:

- The State constitution is clear. If the fiscal year 2009-10 budget does not include full funding for this mandate, and counties do not initiate legal action for *intentional* failure to provide full payment for a mandate it has chosen not to suspend, what recourse will they have to receive full payment in a timely manner – or at all -- for these services in the future?
- Given all of the other budget hits to counties, how can counties continue to fund mandated educational services to students for which they cannot count on full reimbursement in a timely manner?
- In short, absent legal action, the state is not compelled to either suspend this mandate, or fully fund the program. County mental health directors should be prepared to consult with county counsel and others as appropriate regarding potential legal action against the state related to this issue.