



# Restructuring State Administration of California Community Mental Health

*CMHDA Comments on the Governor's 2012-13 January State Budget Proposals*

February 2012

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## I. Medi-Cal Specialty Mental Health Services Transfer to DHCS

The Governor's budget proposes to implement the full-year 2012-13 transfer of all Medi-Cal community mental health functions from Department of Mental Health (DMH) to Department of Health Care Services (DHCS), including \$14.4 million in state operations (General Fund and Reimbursements) and 118.5 positions. CMHDA supports this transfer but has comments on the associated trailer bill language proposal and ongoing operational issues described below.

- **COMMENTS ON PROPOSED TRAILER BILL LANGUAGE**

While CMHDA continues to support the transfer of Medi-Cal Specialty Mental Health Services administration to DHCS, we have a number of questions and concerns about various provisions of the Administration's proposed trailer bill language (TBL) related to the transfer (#614). Overall, the TBL does not seem to acknowledge that realignment of Medi-Cal Specialty Mental Health programs has already been enacted, effective FY 2012-13. We understand there will also be "Realignment" TBL, but it is not clear to us how they will be reconciled, if different. An important issue associated with the realignment of Medi-Cal Specialty Mental Health to counties in 2012-13 is the county right of first refusal for serving as the county's Mental Health Plan. The TBL keeps this provision intact, which we had assumed would be eliminated in light of realigning the program to counties. We would like to better understand the Administration's perspective and approach on this issue.

We are concerned about the broad authority included in the TBL with regard to DHCS's ability to use all county letters, provider bulletins, or other administrative approaches to changing regulations -- without taking formal regulatory action. While clean-up of former DMH regulations and Information Notices/Letters may be desirable in order to further the Governor's goal of making state government more efficient, we are concerned that DHCS could utilize this proposed authority to modify state regulations without important opportunities for public participation. We are particularly concerned about this in the context of realignment, where full financial risk for Medi-Cal Specialty Mental Health has been transferred to counties without Constitutional protections, thus far. In addition to these broad areas of concern, CMHDA has

identified a number of technical questions on specific proposals in the TBL on which we hope to learn more about the Administration's intent.

- **IMPLEMENTATION OF AB 1297 (CHESBRO)**

We look forward to continuing to work with DHCS toward successful and timely implementation of AB 1297 (Chesbro) (Statutes of 2011), which was sponsored by CMHDA last session. This bill will bring the state's requirements for Medi-Cal Specialty Mental Health services into alignment with federal requirements in order to maximize federal reimbursement, and is estimated to generate millions of dollars in additional federal Medicaid reimbursement funds.

## **II. Non-Medi-Cal Transfers from DMH to Other State Agencies**

The Governor's budget continues to propose elimination of DMH, and to transfer a total of 58 positions and funding authority for \$119.9 million across six departments. Most of the DMH non-Medi-Cal functions are proposed to be transferred to DHCS, and a number of the functions to be transferred are related to state-level administration of the Mental Health Services Act (MHSA).

- **MHSA HOUSING PROGRAM**

### ***Support Transfer to DHCS***

As enacted by AB 102 (Committee on Budget, Statutes of 2011), DHCS has been charged with providing focused, high-level policy and regulatory leadership for behavioral health services within the state administrative structure. With the proposed elimination of DMH, DHCS will be the state agency responsible for major community mental health programs and associated funding. As such, we believe transferring policy and regulatory responsibility for the MHSA Housing Program to DHCS is appropriate.

### ***Opportunities for Improvement***

- The structure and environment for housing finance has dramatically changed from five years ago when this program was crafted. Therefore, it is critical that DHCS provide an option for counties to either continue to utilize the current DMH/CalHFA program for their assigned Housing Program funding, or to withdraw their unused but assigned funds for use by the county for housing, consistent with the MHSA.
- Consistent with the recommendations outlined in the recently released Senate Office of Oversight and Outcomes report on the CalHFA MHSA Housing Program, DHCS should require flexibility in the CalHFA program rules to better enable small counties (population under 200,000) to participate in the program.
- DHCS should remove the current state-imposed cap on housing operating subsidies and allow counties to determine the amount of their Housing Program funds dedicated to operating subsidies and capital costs.

- **MHSA WORKFORCE, EDUCATION, & TRAINING (WET)**

***Support Transfer to Office of Statewide Health Planning & Development (OSHPD) (With One Contract Exception)***

Given OSHPD’s current role and leadership in state government related to health care workforce development, including loan repayment programs, we support the Governor’s proposal to transfer the vast majority of the existing MHSA-WET functions and contracts to OSHPD.

The one exception we would recommend is the “Working Well Together” contract. While all of the other contracts proposed to be transferred to OSHPD for workforce development require a state agency to play a primarily fiscal and administrative role, we believe the Working Well Together contract should be administered by DHCS where community mental health policy and program activities will be located. The Working Well Together is a collaborative project that produces curricula to train both the mental health workforce and employees with lived experience as consumers and/or family members.

***Opportunities for Improvement***

- We would like to see OSHPD work more closely with counties to ensure the statewide WET investments are meeting counties’ workforce needs. This could include working with and/or contracting with the California Mental Health Services Authority (CalMHSA), a joint powers authority of member counties that develop, fund, and implement mental health services, projects, and educational programs at the state, regional, and local levels.
- Evaluation of the outputs and deliverables of all current WET investments should be conducted to assess their effectiveness and inform decisions about funding levels for these contracts in future years.

***Additional Information Needed***

- A funding reconciliation of MHSA-WET funds is needed. It is our understanding that the MHSA-WET fund was originally established with \$450 million in MHSA funds and that: \$210 million was designated for county-administered WET efforts; \$93 million was obligated for regional partnerships, technical assistance and statewide financial programs; and that \$78 million has been earmarked for transfer to OSHPD. Given these funding amounts, \$69 million of the \$450 million remains to be detailed.
- Since the current five-year WET plan covers the period of April 2008 to April 2013, how will OSHPD and the Mental Health Planning Council collaborate in the development of a new WET five-year plan once this timeframe expires?
- How will OSHPD work with local mental health WET programs, including the WET Regional Collaborative projects?
- How will OSHPD continue to utilize the expertise of counties, stakeholder organizations, other state agencies, and professional trade associations to communicate program implementation issues and achievements?

- Since the existing WET fund is limited, how will OSHPD work with counties, DHCS, the Mental Health Planning Council, and other stakeholders to examine the sustainability of investments to build the mental health work force?

- **MHSA TRAINING AND TECHNICAL ASSISTANCE**

***Propose Function be Administered by DHCS***

As enacted by AB 102 (Committee on Budget, Statutes of 2011), DHCS has been charged with providing focused, high-level leadership and regulatory authority for behavioral health services within the state administrative structure. Additionally, a number of existing state statutes already require DMH to provide technical assistance to local mental health departments. With the proposed elimination of DMH, DHCS will be the state agency responsible for major community mental health programs and associated funding. Currently, the California Institute for Mental Health (CiMH) receives funding to provide MHSA Training and Technical Assistance, and this CiMH contract is proposed to be transferred from DMH to DHCS. As such, we believe MHSA Training and Technical Assistance is an appropriate function to be provided by DHCS.

- **EVALUATION, ACCOUNTABILITY, AND DATA COLLECTION/REPORTING**

***Propose DHCS Lead an Integrated Approach to Evaluation, Accountability, and Data Collection/Reporting***

Rather than disperse the vital state function of evaluation, accountability, and data collection/reporting among a variety of separate state agencies, we believe a more integrated approach would be beneficial to the state, counties, community providers, and consumers. As enacted by AB 102 (Committee on Budget, Statutes of 2011), DHCS has been charged with providing focused, high-level leadership and regulatory authority for behavioral health services – including Medi-Cal Specialty Mental Health and MHSA – within the state administrative structure. Additionally, the Mental Health Planning Council, MHSOAC, and local Mental Health Boards have important roles under existing law to review mental health program performance.

Given the extent to which MHSA and Medi-Cal resources are used in close conjunction to meet client needs, separate evaluation and data collection efforts for MHSA and Medi-Cal would be ineffective and inefficient. Additionally, significant federal Medicaid funds are available to California for quality assurance and evaluation activities that DHCS (as our single statewide Medicaid agency) could conduct for the mental health system.

In order to maximize available federal funds, MHSA state administrative funds, and other state and local resources, we believe DHCS should lead a collaborative effort with the Mental Health Planning Council, MHSOAC, counties, stakeholders, and an experienced research entity to consider existing measurement efforts, conduct a gap analysis, develop measurement methods, and identify critical indicators.

To be effective, the state’s evaluation efforts must look cohesively at the community mental health system, not be siloed by funding source. The efforts must make effective use of existing data and data management systems, and provide information on the mental health system from a consumer, system and community perspective.

- **FISCAL OVERSIGHT**

- ***Support Transfer to DHCS***

- As enacted by AB 102 (Committee on Budget, Statutes of 2011), DHCS has been charged with providing focused, high-level leadership and regulatory authority for behavioral health services within the state administrative structure. With the proposed elimination of DMH, DHCS will be the state agency responsible for major community mental health programs and associated funding. As such, we believe this function is appropriate to transfer to DHCS.

- ***Opportunities for Improvement***

- Streamline Compliance and Auditing: The compliance and auditing activities the state and counties conduct for community mental health should not be duplicative and needlessly time-intensive across programs. Compliance and reporting requirements should be no more burdensome than existing federal and state laws, and should provide valuable information to decision-makers and the public about the community mental health system’s performance in assisting consumers with recovery and wellness. Reducing counties’ required administrative activities would help counties maximize available resources to provide direct consumer services.
    - Focus on the Existing Performance Contract: While program administration and delivery of services is the responsibility of counties, it remains the responsibility of the state to ensure that counties administer the programs and delivery of services in accordance with applicable state and federal laws. An annual performance contract is required by statute, and we believe that should continue.

- **OFFICE OF MULTICULTURAL SERVICES**

- ***Support Transfer to DPH “Office of Health Equity,” with Reservations***

- We cautiously support the Governor’s proposal to consolidate specialty health functions that focus on health disparities into a new Office of Health Equity at DPH, which would include the current DMH Office of Multicultural Services. We agree that this holistic strategy gives California the opportunity to “better identify and ameliorate health disparities for disadvantaged and underserved communities by examining these issues through a more integrated approach to public health, behavioral health, and health care issues.” CMHDA hopes to continue a strong linkage to the state’s efforts to reduce disparities and achieve social justice for individuals living with mental illness.

### *Opportunities for Improvement*

Integrating the state's efforts to reduce disparities in access and quality of care for special populations in California would be beneficial. However, a high degree of coordination with DHCS would be needed, given that DHCS-administered MHA and Medi-Cal Specialty Mental Health programs include requirements and expectations that mental health services be delivered in a culturally competent manner and reduce disparities. It is also important to prevent redundant requirements and oversight activities from being established by the two state departments.

- **LICENSING & QUALITY IMPROVEMENT FOR MHRCs AND PHFs**

### *Oppose Transfer to Department of Social Services (DSS), Recommend Transfer to Department of Health Care Services*

CMHDA opposes transferring the DMH licensing and certification of Mental Health Rehabilitation Centers (MHRCs) and Psychiatric Health Facilities (PHFs) to DSS. Instead, CMHDA believes this function should be transferred to DHCS, to prevent further splintering of behavioral health program responsibilities across many departments. We would therefore urge the Legislature to modify the Administration's proposed TBL #601 to replace DSS with DHCS, where applicable.

If this is not possible, at least in the short term, we would prefer that these responsibilities be transferred to the Department of Public Health, rather than DSS. DPH is currently California's state agency that licenses, regulates, inspects, and/or certifies "health care facilities" in California, including Skilled Nursing Facilities, Acute Psychiatric Hospitals, Psychology Clinics, and Intermediate Care Facilities. Additionally, DPH cooperates with the U.S. Centers for Medicare and Medicaid Services (CMS) to ensure that facilities accepting Medicare and Medi-Cal payments meet federal requirements. In contrast, DSS licenses a number of facility types that are *not* health care in their primary purpose (e.g., adoption agencies, child care centers, foster and group homes, residential care facilities). According to the department's web site, DSS licenses "care facilities for persons who can not live alone but who do not need extensive medical services." Under existing state law, PHFs are defined as acute "health facilities" (Health & Safety Code Section 1250.2). Further, "health facilities" are authorized to operate MHRCs (Health & Safety Code Section 1271.15).

Again, we believe the licensing functions currently at DMH would optimally fit best at DHCS, rather than DSS or DPH. Wherever it lands, it is vital that the personnel who will perform this function have experience and/or training in mental health to ensure adequate understanding of the unique issues and capabilities of consumers with mental illness receiving care in MHRCs and PHFs. Facilities must be reviewed in the context of the recovery and rehabilitation-orientation of services for people with mental illness.

- LANTERMAN-PETRIS-SHORT RESPONSIBILITIES

*Oppose Transfer to DSS, Propose Transfer to DHCS*

The Administration’s TBL #601 proposes to transfer existing DMH roles and responsibilities related to Lanterman-Petris-Short Act involuntary holds (pursuant to Welfare and Institutions Code Section 5150) to DSS. CMHDA is concerned with this proposal, and would recommend these functions be transferred instead to DHCS. These state departmental responsibilities include, for example:

- Approval of facilities designated by counties for 72-hour treatment and evaluation;
- Certification that a facility designated for 72-hour treatment and evaluation cannot reasonably make the services available on weekends and holidays; and
- Promulgation of regulations related to good cause for a 72-hour treatment and evaluation facility not providing statutorily required advisements of their rights.

As described on the prior page in the “Licensing” section of this document, we believe DHCS, not DSS, is the most appropriate state agency to regulate “health care facilities” in California, which could include approval of facilities designated by counties for 72-hour treatment and evaluation of a person who, as a result of a mental disorder, is a danger to others, or to himself or herself, or is gravely disabled. We would urge the Legislature to modify the Administration’s proposed TBL #601 to replace DSS with DHCS, where applicable.