Mental Health Services Act Fiscal Reversion Policy Reconsidered: Challenges and Opportunities

A Report of the Mental Health Services Oversight and Accountability Commission

Discussion Draft: March 2017

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Introduction

In 2004, California voters authorized the Mental Health Services Act (MHSA) under Proposition 63 and established a special tax to support investments in mental health services. The Act generates approximately $2 billion annually for mental health programs. Under this law, MHSA funds distributed to California's 59 local mental health agencies must be spent within specific categories and within a defined period of time. In order to incentivize local (typically, county) mental health agencies to make full use of these allocations, any funds left unspent in those statutory timeframes must be returned to the state for reallocation. This expenditure incentive, known as a fiscal reversion policy, is the focus of this report.

The California Department of Health Care Services, which oversees fiscal rules governing California's mental health system, reports that no mental health funds have reverted since 2008 despite evidence of counties retaining MHSA revenues beyond the statutory time limit (Department of Health Care Services, n.d.). Typically, counties have three years in which to spend MHSA funds for their primary MHSA programs, but funds also can be set aside for workforce development and capital investments and those funds have a ten year reversion limit. Counties also can dedicate MHSA funds to a prudent reserve, which is not subject to reversion.

Despite these rules, mental health advocates have raised concerns that counties have retained MHSA revenues rather than dedicating those resources to unmet needs in their communities, and that the Department of Health Care Services is not requiring unspent funds to revert.

In response to these concerns, in early 2016, the Mental Health Oversight and Accountability Commission initiated a project to better understand the requirements of the MHSA fiscal reversion policy, how it has been implemented by the State, how counties have responded to those practices and whether there is sufficient public access to information on mental health revenues, expenditures and, of course, unspent funds. The balance of this report describes the context and background for the fiscal reversion requirement under the Mental Health Services Act, including how relevant aspects of the Act have changed and how this project was conducted. This report identifies key challenges and potential responses that emerged from that process.

Background

California's Welfare and Institution Code requires counties to spend their MHSA funds within three years of receipt, with certain exceptions. The statute (WIC Section 5892(h)) states that:

> *Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to a county which have not been spent for their authorized purpose within three years shall revert to the state to be deposited into the (Mental Health Services) Fund and available for other counties in future years, provided however, that funds for capital facilities, technological needs or education and training may be retained for up to ten years before reverting to the Fund.*

Under current law, local mental health agencies, which are the legal entities that administer public mental health programming, and typically are the county mental health or behavioral

health department, hereafter referred to as "counties," receive MHSA funds on a monthly basis from the State Controller's Office based on the amount of revenues that are generated by the tax. Once distributed to the counties, these funds are distributed into three primary funding components. Eighty percent of the funds are attributed to Community Services and Support (CSS) and 20 percent to Prevention and Early Intervention (PEI). The counties then are required to shift five percent of the CSS and PEI amounts to exclusively fund Innovative Projects (thus leaving, on net, 76 of the original allocation in CSS and 19 percent in PEI).

Counties may then elect to transfer up to a total of 20 percent of the CSS funds received in any year to three further categories: a "Prudent Reserve" fund; Workforce Education and Training (WET); and Capital Facilities and Technological Needs (CFTN). As noted above, Welfare and Institutions Code Section 5892(h) specifies that the county must spend PEI and Innovation funds within three fiscal years of receipt, and must spend or transfer CSS funds within three years of receipt. Any funds transferred to WET or CFTN must be spent within ten years of initial receipt by the county, while funds placed in the Prudent Reserve are available until called upon by the county.

The practice of monthly deposits into county Mental Health Services Funds has been in place since 2012 with the enactment of Assembly Bill 100 (Chapter 5, Statutes of 2011). Prior to AB 100, the California Department of Mental Health distributed MHSA revenue to the counties in two annual payments. The first was an initial payment of approximately 25 percent of their estimated allocation, with the balance paid out later in the year pursuant to department approval of a county MHSA Three-Year Program and Expenditure Plan or an Annual Update to that plan. That process was intended to ensure that mental health funding was used by counties to support community priorities as determined through a required Community Planning Process (Welfare and Institutions Code 5848(a)).

In those early years after the passage of the MHSA and prior to the changes enacted by AB 100, the Department of Mental Health first established planning estimates on how much revenue each county would receive as funds were generated under the new tax. Counties used those projections to prepare their community plans for submission to the State. Under that process, the Department of Mental Health established policies and practices of reversion that tracked expenditures based on the date that MHSA revenues were made available to the counties. The Department's Information Notices specified that any allocated funds not spent within three years of distribution would be returned to the state (DMH Information Notice 08-07; DMH Information Notice 10-13).

As that process was rolled out, the Department of Mental Health faced delays in approving local plans and distributing MHSA funding for essential services. As a result, county mental health leaders and mental health advocates called for changes to speed the distribution of funding from the state to the counties. The passage of AB 100 reflected that call for speeding and simplifying the distribution of MHSA funds. AB 100 eliminated the requirement for State approval of local plans and instead directly distributed revenue each month from the State fund to the local MHSA accounts according to a distribution formula developed by the Department of Health Care Services (Welfare and Institutions Code 5891(c)).

The shift that occurred under AB 100 was significant in several ways.

First, prior to AB 100, MHSA funds were distributed in defined amounts to each county. This practice provided the counties with certainty about how much MHSA funding they would receive. It also provided a clear "start date" for when the reversion clock was initiated and thus the deadline for spending those dollars. As the state changed the strategy for distributing MHSA funding, to more frequent distributions, based not on established spending plans but rather on a formula driven by the revenues received, that certainty was lost. Monthly, non-discretionary distributions of MHSA funds to the counties removed the delays caused by State review of county plans, but also may have created confusion with regard to how the State's reversion policies would apply.

Second, as a practical matter of prudent cash management, the transition to monthly receipts rather than a lump sum payments requires the counties to hold substantial cash reserves from prior fiscal year allocations to insure that the local MHSA fund always has sufficient resources to pay the county's MHSA bills during the year.

Third, when the State held MHSA revenues until the Department of Mental Health made its lump-sum allocations, interest income accrued to the State-level fund and was commingled with tax revenue deposits into the fund for distribution to the counties. Current law requiring monthly distributions to the counties reduces the balances held in the State Mental Health Services Fund available for generating interest income. Conversely, as counties receive and retain MHSA funds, interest accrues to the local MHSA accounts.

In order to monitor county spending of MHSA funds, state law requires the counties to submit an Annual Revenue and Expenditure Report (ARER). The California Department of Health Care Services is charged with implementing that requirement, including providing periodic updates to the reporting requirements (Welfare and Institutions Code 5899).

Current law specifies that one purpose of the ARERs is to "Determine reversion amounts, if applicable, from prior fiscal year distributions" (WIC Section 5899(b)(4)). These reports are used to document the revenues received by the counties, expenditures made from each fiscal year allocation to the counties, and unspent funds remaining by fiscal year of allocation, and to provide information necessary to evaluate the following programmatic categories (WIC Section 5899(c)):

1. Childrens' systems of care.
2. Prevention and early intervention strategies.
3. Innovative projects.
4. Workforce education and training.
5. Adults and older adults systems of care.
6. Capital facilities and technology needs.

The law requires counties to submit their Annual Revenue and Expenditure Reports within six months of the close of the fiscal year. California's fiscal year runs between July 1st and the following June 30th. Thus, ARERs are due by the end of each December. Under the law, ARERs must be certified by the counties as accurate, which typically means they are signed by each county's independent auditor/controller prior to submission to the State.

Study Design

To support the development of this report, the Commission charged a subcommittee, consisting of Commissioners John Buck (Chair), John Boyd, Psy.D., and Larry Poaster, Ph.D., to understand how the MHSA reversion policies and practices are structured, how well they are working, and to identify recommendations for improving those policies and practices. The subcommittee held a public meeting on February 26, 2016 in Sacramento to invite discussion from the Department of Health Care Services, county representatives, the County Behavioral Health Director's Association, and other stakeholders.

Additionally, the subcommittee supported a series of panel presentations before the Commission at the Commission's August 25, 2016 meeting in Sacramento. The Commission heard expert testimony from a former key staff member from the Department of Mental Health who helped develop the original fiscal reversion policies; a fiscal policy expert from the Legislative Analyst's Office; Mr. Mike Geiss, a consultant on mental health fiscal data issues; fiscal experts from Humboldt and Napa Counties, and the assistant deputy director for Mental Health and Substance Use Disorder Services at DHCS. Members of the public also provided testimony.

Additional meetings were convened to discuss progress on this work, including the design and development of a web-based tool to publicly present and display the information included in county ARERs.

Lastly, the subcommittee directed staff to gather and develop background materials to contribute to this draft report.

Key Challenges

As part of its review, the Commission heard a range of concerns from counties and mental health stakeholders about the ARER reporting process and fiscal reversion policies, including:

- The ARER reporting process does not allow the counties to accurately report on their MHSA expenditures.
- ARER reports do not permit the public to adequately monitor how MHSA and related mental health funds are used and whether the State's reversion policies are being followed, and
- MHSA funds held by counties for longer than three fiscal years have not reverted back to the state, despite statutory requirements.
- Despite the statutory reporting requirements, many counties are not submitting their ARERs by the annual deadline.

In short, the State's reversion policies are not being implemented.

The Commission found that many counties had not met the statutory reporting deadlines for submitting certified ARERs. In some cases, counties were two or three years in arrears in submitting the required reports to DHCS and the Commission. In response to these concerns, the Commission asked the counties to explain the rationale for not submitting ARERs according to statutory deadlines and the extent that counties may owe funds under reversion.

Finding 1: DHCS's Annual Revenue and Expenditure Report forms restrict county reporting.

California county behavioral health departments are not submitting their Annual Revenue and Expenditure Report under the timelines required in statute. As of February, 2017, the Commission had received only 27 of 59 ARERs for the FY 2014-15 reporting period, due no later than December 31, 2015. Further, the Commission had received only 46 of 59 ARERs for the FY 2013-14 reporting period and was still missing four reports for the FY 2012-13 period.

Counties asserted that the forms required by DHCS limit their ability to accurately report expenditures, and thus they are unable to obtain the required validation from their independent Auditor/Controllers, or they are forced to submit inaccurate information.

Counties further report that the information they provide on their ARERs may not be consistent with other audited fiscal reports, because of the limitations built into the forms required by DHCS. For instance, the 2012-13 ARER form required the counties to report spending for each fiscal year and to itemize from which fiscal year those funds originated. However, the form provided by the Department prevents the counties from reporting expenditures from fiscal years prior to FY 2010-11. It also prevents the counties from reporting unspent funds remaining at the end of the reporting period for fiscal years prior to FY 2007-08, regardless of whether the counties had unspent funds from those years.

Counties reported that this feature of the required form results in inaccurate reporting. The counties suggest they are caught between certifying a form that is inaccurate and not submitting the form at all. As a result, many counties elect not to submit the mandatory reports.

Similarly, counties have expressed confusion over how to report interest earned on MHSA funding. Welfare and Institutions Code 5892(f) states that counties are required to invest unspent MHSA balances and capture interest in their local MHSA fund for expenditure in future years. Yet the Department has not clarified how interest income should be treated with respect to the reversion standard. Nor are county practices consistent in their treatment of interest income. Some counties report spending all of their interest income within the year in which it is earned; others do not. Of those who do not, some counties fold interest income into the unspent funds for the current fiscal year, while others carry unspent interest income as a separate reporting line item for unspent funds, which then appears to accumulate without regard to any reversion timeline.

In April 2016, the California Behavioral Health Directors Association sent a letter to the Department of Health Care Services asking the Department to revise its Annual Revenue and Expenditure Report reporting forms. In its response, the Department reports that it is actively drafting regulations regarding reversion (Department of Health Care Services. Letter to Kirsten Barlow, CBHDA. June 16, 2016).

County Behavioral Health Directors also report uncertainty over whether the Department will allow counties to submit updated ARERs for prior years. Counties report the need to periodically revise their expenditure reporting, based on audits, updated revenues, errors or other unanticipated challenges. In the interest of accurate reporting, county leaders suggest it would be

Mental Health Estimated Funding
(Dollars in Millions)

	13/14	14/15	15/16	16/17
1991 MH Realignment	$1,185.7	$1,230.7	$1,242.0	$1,266.3
2011 MH Realignment[a/]	$852.5	$947.6	$1,002.4	$1,051.3
MHSA	$1,235.8	$1,729.8	$1,418.8	$1,847.5
FFP	$1,777.5	$2,153.4	$2,403.7	$3,042.1
Other	$200.0	$200.0	$200.0	$200.0
Total	$5,251.5	$6,261.5	$6,266.9	$7,407.1

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a/ Assuming proportionate growth by program.

Key Points

- Majority of funding driven by on economic conditions and is not based on need for services
  - Need for services is often countercyclical to health of the economy
- There is a desire to integrate mental health and substance abuse services, but funding remains independent
- Individual county allocations often determined through political process making it difficult for counties to budget
- Significant growth in mental health funding since passage of MHSA created increased expectations
  - $3.0 billion in FY03/04 to estimated $7.4 billion in FY16/17
- Much of funding is categorical
  - Counties sometimes given flexibility, but monitored at more discrete level

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Strategic Considerations

- County MHPs under increasing fiscal pressure for various state initiatives and performance outcomes
- County MHPs focus on managing their risk
  - Determine the role you currently play, and could play in the future, in addressing purchaser/payer risk from a fiscal, access and quality perspective
- 1991 Realignment is the most flexible funding, followed by 2011 Behavioral Health Subaccount and MHSA

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Information

- Information on County MHPs
  - State Controller's Office allocation schedules
    - http://www.sco.ca.gov/ard_local_apportionments.html
  - Department of Health Care Services MHP information
    - http://www.dhcs.ca.gov/services/Pages/Medi-cal_SMHS.aspx
  - Department of Health Care Services MHSA information
    - http://www.dhcs.ca.gov/services/MH/Pages/Annual-Revenue-and-Expenditure-Reports-by-County.aspx
  - Local County budgets

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Questions?

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Thank You

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