



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

DATE: December 28, 2017

MHSUDS INFORMATION NOTICE NO.: 17-059

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES

SUBJECT: MENTAL HEALTH SERVICES ACT: IMPLEMENTATION OF WELFARE AND INSTITUTIONS CODE SECTION 5892.1.

The purpose of this Information Notice is to inform counties of the following:

- The process the Department of Health Care Services (DHCS) will use to determine the amount of unspent Mental Health Services Act (MHSA) funds subject to reversion as of July 1, 2017;
- The appeal process available to a county regarding that determination; and
- The requirement that by July 1, 2018, counties have a plan to expend the reverted funds by July 1, 2020.

Background

Assembly Bill (AB) 114 (Chapter 38, Statutes of 2017) became effective July 10, 2017. The bill amended certain Welfare and Institutions Code (WIC) Sections related to the reversion of MHSA funds.

AB 114 implemented provisions concerning funds subject to reversion as of July 1, 2017. Funds subject to reversion as of July 1, 2017, are deemed to have been reverted and reallocated to the county of origin for the purposes for which they were originally allocated (WIC Section 5892.1 (a)). Funds that could be subject to reversion as of July 1, 2017, were distributed to counties from Fiscal Year (FY) 2005-06 through FY 2014-15. By July 1, 2018, DHCS is required to prepare a report to the Legislature identifying the amounts of funds subject to reversion by county. Prior to releasing the report, DHCS is required to provide each county with the amount DHCS determined is

subject to reversion and a process for counties to appeal that determination (WIC Section 5892.1 (b)). Additionally, by July 1, 2018, counties are required to have a plan to spend those funds by July 1, 2020 (WIC Section 5892.1 (c)). Pursuant to WIC Section 5892.1, subdivision (e),¹ DHCS is providing counties with this Information Notice to implement these requirements.

Some of the changes in statute also pertain to funds subject to reversion after July 1, 2017. DHCS will issue a separate Information Notice regarding the requirements to implement those provisions.

This Information Notice supersedes all other reversion policies contained in Information Notices developed by the former Department of Mental Health and DHCS.

Process to determine the amount of funds subject to reversion as of July 1, 2017

Counties must spend funds allocated to Community Services and Supports (CSS), Prevention and Early Intervention (PEI) and Innovation (INN) components, including interest earned on the MHSA funds, within three fiscal years, including the FY when the funding was made available. For example, CSS funds made available in FY 2005-06 are available for expenditure in FY 2005-06, FY 2006-07, and FY 2007-08. Any funds distributed to a county for FYs 2005-06 through FY 2014-15 for CSS, PEI, and INN that were not spent within three years will be deemed to have been reverted and reallocated to the county of origin for the purpose it was originally allocated.

Counties must spend funds allocated to Capital Facilities and Technological Needs (CFTN) and Workforce Education and Training (WET) components, including interest earned, within ten fiscal years, including the fiscal year when the funding was made available. For example, WET funds made available in FY 2006-07 are available for expenditures in FY 2006-07, FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, and FY 2015-16. Any funds distributed to the county for FYs 2006-07 through FY 2007-08 for CFTN or WET that were not spent within ten years will be deemed to have been reverted and reallocated to the county of origin for the purpose it was originally allocated.

¹ WIC 5892.1 (e) provides, "(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department, without taking any further regulatory action, may implement, interpret, or make specific this section, Section 5899.1, and subdivision (h) of Section 5892, by means of all-county letters or other similar instructions, until applicable regulations are adopted in accordance with Section 5898, or until July 1, 2019, whichever occurs first. The all-county letters or other similar instructions shall be issued only after the department provides the opportunity for public participation and comments."

MHSA component revenue includes planning estimates or State Controller's Office (SCO) distributions for a fiscal year plus any interest earned by the Local Mental Health Services (MHS) Fund during that fiscal year.

A. Methodology

For each fiscal year from 2005-06 through 2014-15, DHCS will subtract component expenditures from component revenue, using the first-in-first-out method. The first-in-first-out method applies expenditures to the earliest fiscal year MHS fund distribution with a remaining balance. Once all revenue for a fiscal year has been spent or reverted, DHCS applies expenditures to the following year's revenue. For example, DHCS will apply FY 2012-13 component expenditures to funds received in FY 2012-13 until all FY 2012-13 funds have been spent or reverted before applying expenditures to FY 2013-14.

B. Sources of Data

DHCS will utilize the following sources of data in calculating reversion:

- Expenditures, as reported in the FY 2005-06 through FY 2016-17 MHSA Annual Revenue and Expenditure Reports (ARER). DHCS will use the sum of all expenditures funded with MHSA or interest, regardless of the fiscal year identified in the MHSA fund source;
- Planning Estimates and Component Allocations from FY 2005-06 through FY 2011-12 for CSS, PEI, INN, CFTN and WET components:
 - [DMH Letter: 05-02](#)
 - [DMH Letter: 06-03, 06-09](#)
 - [DMH Letter: 07-06, 07-17, 07-19, 07-21,](#)
 - [DMH IN: 08-02, 08-09, 08-10, 08-13, 08-19, 08-20, 08-21, 08-25, 08-27, 08-36, 08-37](#)
 - [DMH IN: 09-03, 09-19, 09-20](#)
 - [DMH IN: 10-21, 10-27](#)
 - [DMH IN: 11-13](#)
- Distributions made by the SCO beginning with FY 2012-13. DHCS will allocate total funding distributed each fiscal year as follows: 76% to the CSS component, 19% to the PEI component, and 5% to the INN component, which is consistent with Title 9, California Code of Regulations, Section 3930. Funds distributed by the SCO will include actual distributions to counties made from July through June of each FY. Distribution amounts are available in the [Monthly Mental Health Service Fund reports](#) on the SCO website; and

- Interest revenue, as reported in the FY 2005-06 through FY 2016-17 ARER.

Notice of Unspent Funds Subject to Reversion

DHCS will send each county mental health director, via certified mail, an official notice of unspent funds subject to reversion. The notice will include the amount of the county's unspent funds subject to reversion by FY and component, and a schedule with the revenue and expenditure data DHCS used to perform the calculation. The notice will also include instructions and forms for a county to appeal DHCS' determination.

Consequences for failure to timely submit ARERs

As noted above, to calculate the amount of a county's unspent funds subject to reversion as of July 1, 2017, DHCS needs all of that county's ARERs from FY 2005-06 through FY 2016-17. Counties are required to submit the FY 2016-17 ARER and any outstanding ARERs by December 31, 2017. If a County does not timely submit an ARER, the report DHCS submits to the Legislature, identifying the amount of funds subject to reversion as of July 1, 2017, will indicate where data for the applicable fiscal year is missing. In addition, counties' expenditure plans for unspent funds subject to reversion may only include funds from those fiscal years for which an ARER has been submitted to DHCS (see "Plan to Spend the Funds").

Process for Counties that Submit Late ARERs

Counties that fail to submit an ARER by the due date can subsequently submit it to DHCS, although the report DHCS submits to the Legislature will indicate the fiscal year for which data are missing. DHCS will provide the county with an updated official notice of unspent funds subject to reversion. A county may appeal the determination in the updated official notice of unspent funds subject to reversion (see "Appeal Process"). Once a final amount has been determined, the county must prepare an updated plan to spend its reallocated funds.

Appeal Process

Should a county disagree with the amount of unspent funds subject to reversion, as determined by DHCS and wish to appeal the revenue or expenditure amount used to make the determination, the county must submit an appeal to DHCS via email at MHSA@dhcs.ca.gov. Appeal forms and instructions will be included in the official notice of unspent funds subject to reversion. DHCS will immediately acknowledge receipt of the appeal. Appeals must be received within the timeframe specified below:

- FY 2005-06 – FY 2007-08: **no later than 30 calendar days** from the date the county received the official notice of unspent funds subject to reversion;
- FY 2008-09 – FY 2010-11: **no later than 45 calendar days** from the date the county received the official notice of unspent funds subject to reversion;
- FY 2011-12 – FY 2013-14: **no later than 60 calendar days** from the date the county received the official notice of unspent funds subject to reversion; and
- FY 2014-15: **no later than 30 calendar days** from the date the county received the official notice of unspent funds subject to reversion.

Due to the timeframes specified in statute pursuant to AB 114, DHCS will not consider late appeals.

DHCS will review the appeal and notify the county, via email, of its determination within 30 days of receipt of the county's appeal.

Plan to Spend the Funds

Every county must develop a plan to spend its reallocated funds and post it to the county's website. The county must submit a link to the plan to DHCS via email at MHSA@dhcs.ca.gov by July 1, 2018. Each county's Board of Supervisors (BOS) must adopt a final plan within 90 days of the county posting the plan to the county's website. Each county must submit its final plan to DHCS and the MHSOAC within 30 days of adoption by the county's BOS. A county may not spend funds that are deemed reverted and reallocated to the county until the county's BOS has adopted a plan to spend those funds.

In addition, each county must comply with the following:

- The expenditure plan must account for the total amount of reverted and reallocated funds for all impacted FYs, as indicated in the applicable notice of unspent funds subject to reversion or in the final determination on an appeal;
- The county must include the plan in the County's Three-Year Program and Expenditure Plan or Annual Update, or as a separate update to the County's Three-Year Program and Expenditure Plan, and comply with WIC Section 5847(a);
- Reallocated funds must be expended on the component for which they were originally allocated to the county;

- If reallocated funds were originally allocated to the INN component, the funds are subject to the requirements of California Code of Regulations, Article 9, Sections 3900-3935;
- The county must follow the stakeholder process identified in WIC Section 5848 when determining the use of reallocated funds; and
- The county must report expenditures of reallocated funds, by component, on its Annual MHSA Revenue and Expenditure Report.

A county may expend reallocated funds for an already approved program/project or use the reallocated funds to expand an already approved program/project provided the program/project is in the same component as the component for which the funds were originally allocated to the county, which must be in compliance with applicable MHSA statutes and regulations.

Failure to Prepare a Spending Plan for Reallocated Funds

If a county fails to prepare a plan and submit a link to the plan by the required deadlines, the county will be substantially out of compliance with the MHSA. Per WIC Section 5899(e), DHCS will work with the SCO to develop a process to withhold 25% of the county's monthly allocations from the MHS Fund until the county submits a link to the plan. DHCS will work with the SCO to develop a process for the SCO to release withheld funds when the county submits the plan.

Prior to withholding funds, DHCS will email the county a written notice of non-compliance. If a county wishes to appeal the withholding of funds:

- **Within 5 calendar days of receiving the notice of non-compliance**, the county must advise DHCS that it wishes to appeal and whether it requests a hearing to present evidence and argument. If the county requests a hearing DHCS will schedule the hearing, providing the county at least 20 calendar-days' notice. All hearings will be conducted by phone; and
- **Within 20 calendar days of receiving the notice of non-compliance**, the county must either submit a link to a plan to spend the reallocated funds or provide an explanation of the county's failure to timely prepare a plan. If a county submits a link to a plan, DHCS will not withhold funds.

DHCS will decide whether administrative sanctions are necessary within 5 working days of receiving county's explanation for its failure to comply or within 5 working days of a hearing and email county its decision. **All county communications to DHCS during**

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the appeal process shall be via email at MHSA@dhcs.ca.gov, except for the hearing.

Any reallocated MHSA funds that are unexpended as of July 1, 2020, will be reverted to the State and reallocated to other counties.

If you have any questions, please contact Donna Ures at donna.ures@dhcs.ca.gov or (916) 324-0401.

Sincerely,

Original signed by

Karen Baylor, Ph.D., LMFT, Deputy Director
Mental Health & Substance Use Disorder Services