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DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

DATE: March 20, 2019

MHSUDS INFORMATION NOTICE NO.: 19-017

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS
CALIFORNIA STATE ASSOCIATION OF COUNTIES

SUBJECT: MENTAL HEALTH SERVICES ACT: IMPLEMENTATION OF WELFARE AND INSTITUTIONS CODE (W&I) SECTIONS 5892 and 5892.1.

The purpose of this Information Notice (IN) is to inform counties of the following requirements pursuant to [Senate Bill \(SB\) 192 \(Chapter 328, Statutes 2018\)](#). This bill makes substantive changes to previous guidance provided by the Department of Health Care Services (DHCS) in MHSUDS INs [17-059](#) and [18-033](#). Each county is now required to:

- Establish a Prudent Reserve that does not exceed 33 percent of the average Community Services and Supports (CSS) revenue received for the Local Mental Health Services Fund (LMHSF) in the preceding five years. Each county must reassess this amount every five years.
- Each fiscal year (FY), allocate interest accrued on LMHSF monies to the component that earned the interest.
- Submit to the Mental Health Services Oversight and Accountability Commission (MHSOAC) by January 1, 2019, the plan counties were previously required per W&I section 5892.1 to spend the reallocated funds. A county that does not submit the plan to MHSOAC by that date must remit the reallocated funds to the State by July 1, 2019.

Background

SB 192 amended W&I sections 5892.1 and 5892(h), and added section 5892(b)(2). Specifically, this bill requires counties to submit a plan to spend reverted and reallocated funds, pursuant to W&I section 5892.1(a), to MHSOAC by January 1, 2019. A county that does not submit the plan to spend the funds to MHSOAC by January 1, 2019, must remit the funds to the State by July 1, 2019. The bill also adds a subsection to W&I section 5892(b) to require counties to maintain a prudent reserve that does not exceed 33 percent of the average CSS revenue received for the LMHSF in the preceding five years, and to reassess and certify the maximum amount every five years. The bill creates a Reversion Account within the MHSF and provides for interest to accrue on funds for the Capital Facilities and Technological Needs (CF/TN) component and the Workforce, Education, and Training (WET) component.

Revisions to MHSUDS Information Notice No. 17-059

Plan to Spend the Funds

Pursuant to bulletin authority provided through Assembly Bill 114 (Chapter 38, Statutes of 2017), DHCS previously released guidance to counties regarding the provisions of W&I section 5892.1 through [MHSUDS IN 17-059](#). This notice, in part, required each county to prepare and post to its website, a plan to spend its reverted and reallocated funds and required each county to submit to DHCS, by July 1, 2018, a link to its posted plan. (Page 5, IN: 17-059). Any county that did not submit a link to DHCS by July 1, 2018, of its posted plan to spend the funds, was subject to a 25 percent withhold of their monthly Mental Health Services Fund (MHSF) allocation until the county submitted to DHCS a link to the posted plan. SB 192 amended W&I section 5892.1. As a result of those amendments, DHCS is no longer requiring counties to submit links to their posted plan by July 1, 2018, and are no longer subjecting counties to a 25 percent withhold until they submit a link to their posted plan.

W&I section 5892.1 (c) currently requires counties to submit the plan to spend the funds deemed reverted and reallocated to MHSOAC by January 1, 2019. The plan must address how the county intends to spend funds for each of the components with funds deemed reverted and reallocated. Counties must use a stakeholder process to prepare the plan and obtain Board of Supervisor's approval prior to submitting the plan to MHSOAC. Counties must submit the plan to MHSOAC via e-mail at MHSOAC@mhsoc.ca.gov. When submitting the plan to MHSOAC, the county must identify the plan as an AB 114 plan and include evidence that the county board of supervisors approved the plan.

DHCS will collaborate with MHSOAC to determine which counties, if any, did not submit their final plan to MHSOAC by January 1, 2019. Late submissions will not be considered. A county that did not submit the plan to spend the funds to MHSOAC by the due date must remit the funds reallocated to the county, as detailed in the “notice of unspent funds subject to reversion”, to DHCS. DHCS will accept remitted funds and transfer the remitted funds to the Reversion Account located in the MHSF. DHCS will reallocate funds in the Reversion Account to other counties for the purposes for which the remitted funds were initially allocated to the original county.

Notice of Failure to Submit the Final Plan to Spend the Funds

DHCS will send via email a notice informing the county of their failure to submit the final plan to spend the funds to MHSOAC. The notice will include a schedule that details the amount of funds subject to reversion and the process for a county to remit the funds to DHCS.

County Submission of Appeal

If a county disagrees with DHCS’s determination of non-submittal of the plan to MHSOAC, the county must submit an appeal to DHCS within five business days of receiving the notice of failure to submit the final plan to spend the funds. The appeal must contain proof that the county submitted the plan to MHSOAC prior to January 1, 2019. To appeal, a county must submit the documentation via email to DHCS at MHSA@dhcs.ca.gov.

DHCS will not consider late appeals. DHCS will notify the county, via email, of its determination within ten business days of receipt of the county’s appeal.

All other requirements issued in MHSUDS IN 17-059 continue to apply, including reversion of any reallocated MHSF funds that remain unspent as of July 1, 2020.

Prudent Reserve Funding Level

Pursuant to bulletin authority provided through Assembly Bill 114, DHCS previously released guidance to counties regarding Prudent Reserve Funding Levels through [MHSUDS IN 18-033](#). This notice required a county to maintain a Prudent Reserve balance that did not exceed 33 percent of the largest distribution of funds to the county from the MHSF in a fiscal year (page 12, IN: 18-033). In addition, a county that maintained an amount larger than the 33 percent level was not required to transfer money out of the prudent reserve, but could not transfer additional funds into the Prudent Reserve until its balance was below the 33 percent level. DHCS will no longer

enforce the maximum prudent reserve level requirements described above and in MHSUDS IN 18-033.

SB 192 requires each county to “calculate an amount it establishes as the prudent reserve for its LMHSF, not to exceed 33 percent of the average community services and support revenue received for the fund in the preceding five years.” In addition, each county is required to reassess the maximum amount of Prudent Reserve every five years and certify the reassessment as part of the Three-Year Program and Expenditure Plan required pursuant to section 5847. This section of this IN only changes the Prudent Reserve section of MHSUDS IN 18-033 (page 12), and the rest of the IN remains in place as-is. This section specifies the methodology a county must use to calculate the Prudent Reserve level, the requirement to decrease its Prudent Reserve amounts in excess of the 33 percent limit by June 30, 2020, and the reversion period for funds transferred from the Prudent Reserve to the CSS component.

Calculation of the Prudent Reserve

Each county must calculate an amount to establish its prudent reserve that does not exceed 33 percent of the average amount allocated to the CSS component in FY 2013-14, FY 2014-15, FY 2015-16, FY 2016-17, and FY 2017-18. To determine the average amount allocated to the CSS component over those five fiscal years a county must calculate the sum of all distributions from the MHSF from July 2013 through June 30, 2018, multiply that sum by 76 percent, and divide that product by five.

Each county must electronically submit its calculation of the maximum Prudent Reserve Level, as described above, and submit a completed Mental Health Services Act Prudent Reserve Assessment/Reassessment (DHCS 1819 (10/18)) (Enclosure 1) form and the calculation of the maximum Prudent Reserve Level to DHCS at MHSA@dhcs.ca.gov and MHSOAC at MHSOAC@mhsoc.ca.gov by June 30, 2019.

Each county must include the calculation of maximum Local Prudent Reserve Level and signed and the completed Mental Health Services Act Prudent Reserve Assessment/Reassessment form in its FY 2019-20 Annual Update.

Prudent Reserve in Excess of the 33 Percent Maximum Level

If the amount of money in a county’s Prudent Reserve exceeds the 33 percent maximum level, the county must decrease its Prudent Reserve funding level to meet the 33 percent maximum level by June 30, 2020. To meet the 33 percent Prudent Reserve level a county must:

- Transfer funds in excess of the county's 33 percent maximum funding level into its CSS component and Prevention and Early Intervention (PEI) component prior to the end of FY 2019-20. The amount transferred into the CSS component and the PEI component shall be in proportion to the amount the county transferred from the CSS component to the prudent reserve through FY 2018-19 and PEI component to the prudent reserve in FY 2007-08.
- Include the transfer of funds from the Prudent Reserve to the CSS component and PEI component in its FY 2019-20 annual update or update to the Three-Year Program and Expenditure Plan.
- Report on the Annual MHSR Revenue and Expenditure Report each transfer of funds from the Prudent Reserve into the CSS component and PEI component. The transfer must be reported on the Annual Revenue and Expenditure Report (ARER) for the fiscal year when the funds were transferred.
- Maintain a Prudent Reserve balance that is not greater than the 33 percent average of the community services and support revenue received for the fund in the preceding five years as the county determined in its assessment.

Funds transferred from the Prudent Reserve to the CSS component and PEI component are subject to reversion. The applicable reversion period for these funds begins in the fiscal year when the county transferred the funds from the Prudent Reserve to the CSS component and PEI component. In this instance, the applicable fiscal year is FY 2019-20. Counties with populations over 200,000 will have three fiscal years to spend the funds before they are subject to reversion. The fiscal years are FY 2019-20, FY 2020-21 and FY 2021-22. Small counties (See page 2, IN: 18-033) will have five fiscal years to spend the funds before they are subject to reversion. The five fiscal years are FY 2019-20, FY 2020-21, FY 2021-22, FY 2022-23 and FY 2023-24.

Each county must reassess its maximum prudent reserve funding level every five years. To reassess the maximum prudent reserve funding level, counties must complete the Mental Health Services Act Prudent Reserve Assessment/Reassessment (DHCS 1819 (10/18)) (Enclosure 1) form and submit it to DHCS and MHSOAC by June 30, 2024, as part of the FY 2024-25 three-year program and expenditure plan, annual update or update.

Allocation of Interest to the CSS, PEI, INN, CF/TN, and WET Components.

On page 11 of MHSUDS Information Notice 18-033, DHCS implemented requirements for counties to follow when allocating interest earned in the LMHSF counties were

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required to allocate 76 percent of interest earned to the CSS component, 19 percent to the PEI component, and five percent to the Innovation (INN) component. SB 192 amended W&I section 5892(h)(1) to allow counties that transfer CSS funds to the CF/TN and WET components to accrue interest on the CF/TN and WET funds. As such, DHCS is revising the methodology for allocating interest. The county must invest funds deposited into its LMHSF consistent with other county funds. Each county must deposit the interest earned on these funds into the LMHSF in the same fiscal year the interest is earned. Counties must allocate the interest to the component fund containing the principal to which the investment accrued during the fiscal year in which the investment gain occurred. Counties must report interest earned as revenue on the ARER in the component to which the interest accrued. This new methodology must be applied to interest earned in FY 2018-19 and in all subsequent fiscal years.

Each county must spend any interest earned within the timeframes specified in W&I section 5892 (h). Counties must spend the interest earned and allocated to the CF/TN or WET component within ten fiscal years of the fiscal year in which the county deposited the interest into the county's LMHSF. In determining the ten fiscal year period, the fiscal year in which the county deposits the interest earned into its LMHSF is the first fiscal year. If a county fails to spend such funds within ten fiscal years, the funds will revert to the MHSF for deposit into the Reversion Account.

All other requirements issued in MHSUDS Information Notice 18-033 continue to apply. Please e-mail any questions regarding this IN to MHSA@dhcs.ca.gov.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services

Enclosures