

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 1
ON HEALTH AND HUMAN SERVICES

PART II

Assemblymember Mervyn Dymally, Chair

WEDNESDAY, MAY 19, 2004
STATE CAPITOL, ROOM 4202
2:00 P.M.

VOTE ONLY CALENDAR

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ITEM #4200 DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

VOTE ONLY 1: DRUG MEDI-CAL CASELOAD ADJUSTMENTS**BACKGROUND:**

The Governor's May Revise includes adjustments to caseload estimates based on updated information. The overall changes to the Drug Medi-Cal (DMC) caseload as compared to the fall estimates for the budget year are a decrease of \$450,000 in General Fund and an increase of \$392,000 in reimbursements from the Department of Health Services for matching federal funds.

The two components of the caseload changes are the Regular Drug Medi-Cal and Perinatal Drug Medi-Cal.

The Regular DMC population is projected to be 147,644 by June 30, 2004, an increase of 5,846, or 4.1 percent, above the Governor's Budget. This net change includes a decrease of 1,665 in the Narcotic Treatment Program, the highest-cost modality in Regular DMC. A declining Narcotic Treatment Program caseload, combined with lower dosing and counseling rates in 2004-05, contributes to a reduction of \$414,000 in General Fund costs for Regular Drug Medi-Cal.

The Perinatal Drug Medi-Cal caseload is projected to be 6,779 by June 30, 2004, an increase of 202, or 3.1 percent, above the Governor's Budget. This net change reflects an increase of 324 clients in the Outpatient Drug Free Program, the second lowest-cost modality in Perinatal DMC, and caseload decreases in the other three modalities. The combined effect is a \$36,000, or 1.6 percent reduction, in costs from the Governor's Budget.

ACTION:

Approve May Revise caseload estimates for Drug Medi-Cal.

VOTE ONLY 2: DRUG MEDI-CAL STUDY ON QUALITY IMPROVEMENT FEE**BACKGROUND:**

Federal Medicaid law and regulations permit states to impose fees, sometimes called quality improvement fees, on classes of providers which can generate revenue to their General Funds. These states are then in a position to increase Medicaid reimbursements for the class of medical providers affected by the fee. Because half of the cost of the fee increases are eligible for Medicaid reimbursement, a state and its Medicaid providers can gain financially in these transactions. California is now in the process of establishing such arrangements both for nursing homes for the developmentally disabled and for Medi-Cal managed care plans.

The Legislative Analyst's Office (LAO) has proposed the adoption of Budget Bill language directing the DADP to examine and report back to the Legislature in January on the potential for imposing a quality improvement fee for licensed narcotics treatment program (NTP) providers as a means of obtaining additional federal funds for the support of treatment services, enhancing departmental quality assurance activities and antifraud efforts, and increasing reimbursements to NTP providers.

For illustrative purposes only, the LAO has estimated that an annual fee of about \$250 per licensed narcotics treatment program "slot" could generate as much as \$10.9 million in fee revenue annually each year for the state General Fund. The state, in turn, could use part of these resources to increase reimbursement rates for narcotic treatment providers via the Drug Medi-Cal Program and to strengthen DADP antifraud efforts, utilization review, and quality assurance activities. Under this example, the state would enjoy a net financial gain of about \$3.9 million while providers could experience about a \$2.7 million net financial gain.

The LAO's preliminary analysis indicates that almost all narcotics treatment providers would stand to benefit under its proposal, because nearly all of them are certified and actively participating in Drug Medi-Cal. However, the LAO indicates that further study of the proposal is necessary to more closely review that and other implementation issues. Accordingly, the LAO recommends that the Legislature adopt the following Budget Bill language for Item 4200-001-0001: *Provision X. By January 10, 2005, the department shall report to the chairperson of the Joint Legislative Budget Committee and the chairs of the fiscal committees of both houses of the Legislature regarding the feasibility and advisability of establishing a quality improvement fee for licensed narcotic treatment providers as a means of obtaining additional federal funds for the support of treatment services, enhancing departmental quality assurance activities and antifraud efforts, and increasing reimbursements to NTP providers. At its discretion, the department may also report on any other alternatives it determines are feasible and advisable for increasing federal financial support of the Drug Medi-Cal Program or other state substance abuse treatment programs. It is the intent of the Legislature that the Department of Health Services assist the Department of Alcohol and Drug Programs in its analysis in matters pertaining to this report and relating to compliance with applicable federal Medicaid law and regulations.*

ACTION:

Adopt the Budget Bill language proposed by the LAO.

VOTE ONLY 2: ADDITIONAL STAFF FOR PROPOSITION 36 AUDITS**BACKGROUND:**

The Department requests five auditor positions, one audit supervisor position, and one half-time clerical support staff position to complete and process audits of Substance Abuse and Crime Prevention Act of 2000 (SACPA) expenditures. The Finance Letter proposes to redirect \$428,000 from Prop 36 local assistance to state operations.

The Department believes that the complexity of the audit work and the number of issues that arise are significant enough to preclude compliance with the auditing mandate of SACPA without additional resources.

The Department was initially given five positions for auditing Prop 36 county expenditures. However, two of those positions were abolished on June 30, 2003. With three auditor positions filled, the DADP estimates that it will have the annual pace of 21 county audits, rather than the 58 per year required by the Proposition.

DADP reports that nineteen audits have identified approximately \$6.5 million in reported and proposed audit disallowances.

ACTION:

Approve Spring Finance Letter to use Prop 36 funding for 6.5 positions.

VOTE ONLY 3: OFFICE OF PROBLEM GAMBLING**BACKGROUND:**

The DADP requests an increase of \$3 million in funding from the Indian Gaming Special Distribution Fund and an increase of 3 positions to establish the Office of Problem Gaming (OPG). Chapter 210, Statutes of 2003 (AB 673—Horton) required the DADP to plan, create and operate the OPG.

AB 673 revises designated components of the gambling prevention program, requires the office to develop a program to support treatment services for described gamblers, and requires that implementation of these programs be based upon allocation priorities established by the Department of Alcohol and Drug Programs.

The 2003 Budget Act provided \$3.0 million to the DADP to implement the program. The 2004-05 Governor's Budget proposed to eliminate base funding for the program pending a more thorough review of new functions. This request would restore funding so that implementation of the program may continue.

ACTION:

Approve Spring Finance Letter to restore funding to Office of Problem Gambling.

VOTE ONLY 4: INDIAN HEALTH CLINICS**BACKGROUND:**

The Mental Health and Substance Abuse Services in Indian Health Clinics (IHC) program was implemented to mitigate the lack of alcohol and other drug (AOD) treatment access faced by Native Americans. The program ensures the availability of culturally competent traditional AOD services for Native American CalWORKs and Tribal TANF recipients. The program also includes screening and referrals for domestic violence and mental health services, and 36 IHCs are funded throughout California. Fiscal Year 2002-03 saw the implementation of a data collection tool.

The Department of Social Services has been responsible for disbursement of \$2.7 million in TANF funds to the IHCs.

Estimates indicate that 30% of persons needing AOD treatment are also compulsive gamblers and possibly 50% of compulsive gamblers abuse alcohol/drugs. In addition, the two addictions may be interchangeable, meaning an AOD-recovering person may take up gambling and vice-versa. Consequently, it may be possible to fund the IHCs with funds from the Indian Gaming Special Distribution Fund.

COMMENTS:

According to the California Rural Indian Health Board, each IHC receives a grant of \$64,500 per year. The CRIHB states that, in total, the 36 clinics conduct alcohol and drug abuse outreach and preparation-to-work services for 2,000 clients per month. Similarly, the clinics serve 20 clients per month for alcohol and drug treatment and welfare-to-work services. However, the CRIHB cites that the rate of alcohol and other drug use is over 50% on some reservations/*rancherias*. The CRIHB argue that these statistics show that the penetration level is still very low and much work is left to do.

The CRIHB contends that the Governor's funding and program redirection plan for this program will not meet the cultural and other needs of most Indian clients in the state and that the best approach is to maintain the funding and services within their existing Indian health clinics.

ACTION:

- 1) **Rescind the Prior Action of funding with TANF.**
- 2) **Restore funding with Indian Gaming Special Distribution Funding.**

VOTE ONLY 5: REVENUE ADJUSTMENT

BACKGROUND:

The May Revise proposes to capture \$86,000 General Fund in revenue adjustments. As reported by DADP, revenue in the current year for "Other Regulatory Licenses and Permits" increased from \$54,000 to \$86,000 and for "Renewal Fees" from \$69,000 to \$123,000. The total increase for DADP revenues in the current year was \$86,000. There are no projected increases in the budget year.

ACTION:

Approve May Revise revenue adjustment.

**VOTE ONLY 7: SUBSTANCE ABUSE PREVENTION AND TREATMENT
BLOCK GRANT****BACKGROUND:**

The DADP received a \$1.1 million increase in federal Substance Abuse Prevention and Treatment (SAPT) Block Grant for the current 2003-04 Budget Year. This increase will be continued into the budget year.

The Administration proposes to allocate the federal funds as follows:

- \$563,000 for staff retirement and other State Support adjustments;
- \$260,000 for staffing of the federal Performance Partnership Grants;
- \$222,000 for the required 20% "set-aside" allocation for prevention activities;
- \$55,000 for the required 5% "set-aside" allocation for HIV activities.

The ongoing SAPT grant award for Federal Fiscal Year 2004 is \$253.0 million.

ACTIONS:

- 1) **Direct \$145,000 one-time SAPT unscheduled savings to county pilot programs to provide services to adolescents with substance abuse problems.**
- 2) **Approve the May Revise proposed expenditures for the SAPT increase.**

ITEM #4440 DEPARTMENT OF MENTAL HEALTH**VOTE ONLY 1: AB 3632 SPECIAL EDUCATION PUPILS****BACKGROUND:**

The Governor's Budget plan from January appropriates \$69 million federal Individuals with Disabilities Education Act within the Department of Education for County Mental Health Plans' AB 3632 programs. This continues the appropriation from last year's Budget Act of 2003. **The May Revision sets aside an additional \$31 million in IDEA funds to provide mental health services for children with exceptional needs, as required by the IDEA.** The Administration states that it plans to work with the Legislature and interested parties to develop legislation that will ensure the provision of these services and do the following:

- Encourage cost containment;
- Outline clear responsibilities among local agencies and other service providers for the provision of Individualized Education Plan (IEP)-related mental health services;
- Provide clarification as to what distinguishes "educationally necessary" treatment from "medically necessary" treatment;
- Address quality control issues, perhaps through the formation of a special entity to hear appeals;
- Allow for reasonable flexibility from IEP specifications. There should be allowances for providers, in accordance with professional standards, to alter the frequency and duration of treatments based on the pupil's response.

COMMENTS:

County MHPs provide AB 3632 mental health services to about 27,000 special education pupils for a total annual cost of about \$120 million. Though the Governor's budget continues to provide the \$69 million in federal special education funds, the County Mental Health Directors Association states that this amount is insufficient to meet the existing and ongoing need. The LAO estimates that as of November 2003, the counties have expended \$226 million for this program without reimbursement. CMHDA is concerned about the \$150 million to \$175 million in unpaid SB 90 claims for this program. This situation has created significant budgeting problems for them and is forcing many counties to significantly reduce services to indigent children and adults in order to fund this education mandate.

ACTION:

Approve May Revise proposal for additional \$31 million IDEA funding for AB 3632.

**VOTE ONLY 2: SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
ADMINISTRATION (SAMHSA) BLOCK GRANT****BACKGROUND:**

The Administration requests a reduction of \$1,149,000 in the DMH's Federal Trust Fund local assistance appropriation to reflect the approved funding level from the SAMHSA Block Grant for Fiscal Year 2004-05.

In Fiscal Year 2003-04, these block grant funds support formula-based allocations to all counties and competitive awards to seven counties participating in the final year of the three-year Youth Development and Crime Prevention Demonstration Project. Most of the reduction will be applied to the \$1.1 million that currently funds the demonstration project. A small portion of the reduction that is not absorbed by the end of the demonstration project will be spread among the base allocations to the larger counties.

The total SAMHSA award is being reduced from \$55,596,604 to \$54,447,176 for Fiscal Year 2004-05.

ACTION:

Approve Spring Finance Letter to accept federal fund award reduction.

VOTE ONLY 3: ADDITIONAL FEDERAL FUNDING FOR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS (PATH)**BACKGROUND:**

The DMH requests an increase of \$1,037,000 in local assistance from the receipt of additional federal funds from the Projects for Assistance in Transition from Homelessness (PATH) formula grant. These additional funds will be allocated to the counties based on the Cigarette and Tobacco Surtax formula to support a variety of services to the homeless. The full amount of the increase will be allocated to the 37 counties participating in the program.

ACTION:

Approve Spring Finance Letter to increase local assistance funding for PATH.

VOTE ONLY 4: HEALTHY FAMILIES PROGRAM CASELOAD ADJUSTMENT**BACKGROUND:**

The May Revise requests a decrease in local assistance reimbursements of \$31,000 in the current year and an increase of \$275,000 in the budget year to reflect adjustments to the Healthy Families Program, based on updated paid claims data and county administration adjustments. The General Fund support for legal immigrants remains unchanged from the amount (\$98,000) included in the November estimate.

ACTION:

Approve May Revise caseload adjustment.

**VOTE ONLY 5: MENTAL HEALTH MANAGED CARE AND MEDI-CAL
SPECIALTY MENTAL HEALTH SERVICES CONSOLIDATION****BACKGROUND:****Managed Care Program.**

The May Revise requests a decrease of \$480,000 General Fund and a decrease of \$480,000 in Reimbursements to reflect the following adjustments to the Managed Care Program:

- A decrease of \$1,086,000 (\$543,000 General Fund) for an estimated reduction in the number of Medi-Cal beneficiaries;
- An increase of \$8,000 (\$4,000 General Fund) to reflect a 1-percent adjustment for the change in inpatient costs;
- An increase of \$4,000 (\$2,000 General Fund) for an increase in the number of Breast and Cervical Cancer eligibles;
- An increase of \$114,000 (\$57,000 General Fund) for costs of Solano County implementation of federal managed care regulations.

Medi-Cal Mental Health Waiver Requirements.

The May Revise requests an increase of \$87,000 General Fund and an increase of \$88,000 in Reimbursements. This funding is requested for a contract to develop performance improvement projects and to provide training and technical assistance to counties Mental Health Plans related to the implementation of new federal regulations governing the Medi-Cal Specialty Mental Health Services Consolidation/Managed Care requirements.

It also requests a reappropriation of \$500,000 (\$250,000 General Fund) from 2003-04 on a one-time basis for a contract to develop federally-required informing materials to Medi-Cal beneficiaries. The DMH has also included suggested reappropriation language.

The California Mental Health Directors Association, on behalf of the Mental Health Plans (MHPs), has strongly indicated to DMH that extensive technical assistance from DMH to the MHPs will be needed to ensure compliance with the new federal regulations.

ACTION:

Approve May Revise requests for Managed Care caseload and Medi-Cal Waiver for county technical assistance.

VOTE ONLY 6: SUPPLEMENTAL FUNDING FOR COUNTIES**BACKGROUND:**

The budget proposes a reduction of \$724,000 General Fund by eliminating (1) \$416,000 for supplemental funding to Sacramento County's Psychiatric Health Facility (as established in SB 840, Statutes of 1991), and (2) \$308,000 (General Fund) used by thirteen counties to match federal rehabilitation funds.

The funds for Sacramento were originally allocated to offset the financial burden imposed on it when the UC Davis Psychiatric unit closed in 1991. The Senate has noted that elimination of this supplemental funding requires trailer bill legislation.

The thirteen counties include: Contra Costa, El Dorado, Fresno, Kern, Orange, Placer, Riverside, San Bernardino, San Diego, Sonoma, Stanislaus, Ventura, and Los Angeles. All of these counties receive a total of \$20,505 each, except for Los Angeles which receives \$61,515.

ACTION:

Reject Budget Proposal to reduce supplemental funding to counties.

VOTE ONLY 7: COUNTY SHARE OF COST FOR INCOMPETENT TO STAND TRIAL**BACKGROUND:**

The May Revise requests a decrease of \$360,000 General Fund and an increase in Reimbursements of \$360,000, to reflect the impact of enacting Trailer Bill language that will clarify existing statute and require that county mental health departments are financially responsible for any patients in the hospitals who are deemed Incompetent to Stand Trial (IST), committed pursuant to Penal Code Sections 1372(e) and for any patients committed pursuant to Penal Code Sections 1372 (a) who remain in the hospital more than 10 days after a certificate of restoration of competency has been received by the courts.

DMH originally made attempts to collect these costs from the superior courts. Some courts indicated that they did not intend to pay these charges, while some courts did pay in accordance with the requirements of PC 1372. DMH then attempted to collect from county mental health departments, which was unsuccessful. During the ensuing years, the superior courts and counties continued to argue that the existing statute did not require either of them to pay for PC 1372 patients. As a result, state hospitals absorbed the costs for the IST patients.

The Administration believes that by assigning responsibility to the counties for PC 1372 patients, the counties will have incentive to develop community-based options for patients restored to competency. However, due to the continuing stagnation of realignment revenues, it is unclear which funds counties are expected to use for this population.

ACTION:

Deny May Revise proposal.

VOTE ONLY 8: COALINGA STATE HOSPITAL**BACKGROUND:**

The **May Revise** requests a General Fund reduction of \$9,452,000 in the state hospitals to reflect a one-month delay in the activation activities for Coalinga State Hospital. It is requested that Item 4440-011-0001 be decreased by \$9,452,000 General Fund to delay activation of Coalinga State Hospital from August 2005 to September 2005 and reduce the number of beds activated from 575 to 200.

This delay will result in one-time savings of General Fund and is comprised of the following components:

- 1) All level-of-care staffing (601.4 positions (47.6 PYs) which would have been effective on June 1, 2005) would be eliminated from the Fiscal Year 2004-05 request for a General Fund savings of \$3,259,000.
- 2) Phase IV non level-of-care staffing, which would now be effective January 2005, would be reduced by 6.5 positions (5.4 PYs) for General savings of \$349,000.
- 3) Phase V non level-of-care staffing, which would now be effective June 2005, would be reduced by 33.7 positions (32.4 PYs) for General Fund savings of \$1,509,000.
- 4) Reducing the above staffing costs would result in a General Fund savings of 41,972,000 for costs associated with hiring above minimums and recruitment and retention (R&R) pay differential costs. This adjustment includes both salaries and wages and staff benefits.
- 5) Reducing the number of beds to be initially activated from 575 to 200 and reducing the above staffing costs would generate additional General Fund savings of \$2,363,000 in operating expense and equipment.

The **Governor's Budget from January included a \$27.7 million General Fund augmentation for the continued activation of the new Coalinga State Hospital (CSH)**. The original proposal added almost 146 new positions for CSH in the budget year. The plan also includes an augmentation of \$770,000 for about 20 staff positions to activate for the first time 147 of the 500 temporary beds at Atascadero and Patton State Hospitals. The Administration originally anticipated the opening of CSH in August 2005.

The adoption of the May Revise proposal would allow CSH to open 200 beds in September 2005 and immediately begin to ease the overbedding at Atascadero and Patton State Hospitals, alleviating any potential licensing or certification deficiencies, the DMH states.

ACTION:

Approve May Revise proposal to delay activation for one month.

VOTE ONLY 9: STATE HOSPITAL FUNDING**BACKGROUND:****State Hospital Population Adjustment**

The May Revise requests an increase of \$31,164,000 General Fund and amended by decreasing Reimbursements by \$933,000. The net change reflects the following adjustments:

- An increase of \$19,121,000 (\$15,542,000 General Fund) for employee compensation costs beginning in 2003-04 that were not previously budgeted. The current year costs are included in SB 1842, the Omnibus Deficiency Bill.
- A net increase of \$11,110,000 (\$15,622,000 General Fund) and 134.1 positions (127.4 personnel years) for staffing needs due to the projected increase in the state hospital population. The state hospital population is projected to be 4,580, an increase of 253, or 5.8 percent, above the Governor's Budget. The projection reflects 1) the rescission of the Governor's Budget proposal to cap the Not Guilty by Reason of Insanity and Incompetent to Stand Trial (IST) population; 2) a reduction of 25 beds to be purchased by the Department of Corrections; and 3) an increase of 222 additional judicially committed patients.

Lottery Education Revenues

The May Revise requests an increase in Reimbursements by \$24,000 to reflect additional funding available to the state hospitals for educational supplies.

Shift Proposition 99 Revenues to Fund State Hospital Growth

The May Revise requests a decrease of \$5,940,000 General Fund and an increase of \$5,940,000 to reflect a redirection in Proposition 99 funding for the costs of state hospital population growth.

ACTION:

Approve May Revise requests for hospital caseload adjustment, Lottery, and Prop 99 revenues.

VOTE ONLY 10: STATE HOSPITALS CAPITAL OUTLAY**BACKGROUND:**

The DMH proposes the following proposals for Capital Outlay for the state hospitals:

Name	Amount	Action	Purpose	Reason
Patton	\$228,000	Reappropriate	Phases II and II of the EB Buildings Project— Preliminary Plans, Working Drawings, and Construction.	Need to ensure sufficient time to fully expend funds for preliminary plans.
Metropolitan	\$6,657,000	Reappropriate	Construct School Buildings	Delay in starting the working drawings.
Metropolitan	\$3,873,000	Reversion	Construct New Kitchen and Remodel Satellite Serving Kitchens— Preliminary Plans, Working Drawings, and Construction Project.	Reversion reflects the costs of the satellite kitchens. This component is not compatible with lease-revenue financing.
Metropolitan	\$259,000 (General Fund)	Augmentation	Satellite Kitchen Working Drawings	Requires General Fund expenditures.
Atascadero	\$170,000	Augmentation	Provide Administration Building Security	Security consultant identified vulnerability in this area.

The DMH proposes the following budget bill language for Capital Outlay activities: "Notwithstanding any other provision of law, funds appropriated in Item 4440-301-0660, Schedule (3) of the 2003 Budget Act (Ch. 157, Stats. Of 2003) for the Patton: Renovate Admission Suite and Fire and Life Safety and Environmental Improvements Phases II and II, EB Building project may be expended for preliminary plans and working drawings until June 30, 2005, and may be expended for construction until June 30, 2008."

ACTION:

Approve all Capital Outlay Proposals and Budget Bill Language.

VOTE ONLY 11: DEPARTMENTAL STAFFING FOR HIPAA AND EMHI**BACKGROUND:**

The Governor's Budget includes a request for an augmentation of \$246,000 (General Fund) for support of three associate level positions and operating expense costs to absorb the workload required to successfully implement and maintain the Health Insurance Portability Act (HIPAA) regulation standards primarily in the state hospitals and inpatient psychiatric programs.

HIPAA's primary intent and purpose is to protect health insurance coverage for workers and their families when they change or lose their jobs. Although the DMH has been planning for HIPAA since August 1998, it has not completed the assessment or remedied identified gaps.

DMH has identified the need for three analyst staff in order to accelerate DMH's compliance efforts in three areas:

- 1) Remediation of policies in the State Hospitals;
- 2) Remediation of the existing policies and procedures for non hospital staff;
- 3) Preparation and planning for the HIPAA Security Rule scheduled for implementation on April 2005.

DMH has emphasized its HIPAA work in the Short-Doyle Medi-Cal Program. However, DMH's current risk now lies with the state hospital facilities. The majority of the requested resources are to address the HIPAA compliance needs for hospital operations and previously unapprised areas.

ACTION:

Approve two positions for HIPAA and redirect one PY to the Early Mental Health Initiative.

ITEM #4440 DEPARTMENT OF MENTAL HEALTH**ISSUE 1: EARLY & PERIODIC SCREENING DIAGNOSIS & TREATMENT****BACKGROUND:**

The **May Revise** includes the following budget change proposals for the Early and Periodic Screening Diagnosis and Treatment (EPSDT) Medi-Cal service for severely emotionally disturbed children:

1. A continuation of the proposal to use \$472,000 (\$236,000 General Fund) for two positions to apply for a federal 1115 demonstration project waiver for EPSDT.
2. An increase of \$4,483,000 in Reimbursements (\$2,572,000 General Fund and \$1,911,000 federal funds in the DHS budget) to reflect technical adjustments to the savings associated with the proposed EPSDT audits.
3. A decrease of \$98,408,000 in Reimbursements (\$42,831,000 General Fund and \$55,577,000 federal funds in the DHS budget) to reflect an updated caseload forecast.
4. Increases the county match for EPSDT for a savings of \$12,578,000 (General Fund in the DHS budget) to reflect an increased county share of nonfederal EPSDT costs from 10 to 20 percent.
5. A rescission of the proposal to Rebase the Schedule of Maximum Allowances.

1. FEDERAL DEMONSTRATION WAIVER

The DMH requests an augmentation of \$472,000 (\$236,000 from SGF and \$236,000 in FFP) from the DHS) to implement the Department's portion of a collaborative effort with the DHS to explore options to increase state flexibility regarding federal requirements for EPSDT specialty mental health benefit.

Thus far, the administration has not indicated specifically how it would use this more narrow definition of medical necessity to modify the existing EPSDT services to achieve state savings. The administration has proposed that the effort to reform EPSDT be part of a larger federal waiver request to achieve savings in the Medi-Cal Program.

2. AUDITS AND INCREASED ACCOUNTABILITY AND OVERSIGHT OF THE EPSDT PROGRAM

The Governor's Budget in January included an augmentation of \$1,688,000 (\$844,000 from SGF and \$944,000 in FFP from the DHS) to support contractual assistance for additional review and oversight of EPSDT expenditures. This auditing effort was estimated in January to recoup \$13 million annually (\$6.5 million General Fund) and is expected to further slow program growth.

The May Revise proposes an increase of \$4,483,000 in Reimbursements (\$2,572,000 General Fund and \$1,911,000 federal funds in the DHS budget) to reflect technical adjustments to the savings associated with the proposed EPSDT audits. These changes include: (1) an adjustment for accrual-to-cash accounting, (2) discounting the county share-of-cost, and (3) applying the 2003-04 federal/State-sharing ratio to 2003-04 data. With the May Revise, it is estimated that the audits will recoup \$3.928 million General Fund.

3. CASELOAD ADJUSTMENTS FOR EPSDT SERVICES

The Governor's Budget included an increase in the budget year of \$317,575,000 to reflect additional program costs. However, the May Revise requests a decrease of

\$98,408,000 in Reimbursements (\$42,831,000 General Fund and \$55,577,000 federal funds in the DHS budget) to reflect an updated caseload forecast. The new estimate is based on more current data which projects a 10 percent rate of growth over 2003-04, compared to the 16-percent rate projected in the Governor's Budget.

4. INCREASE THE COUNTY MATCH FOR EPSDT

The May Revise proposes to save \$12,578,000 (General Fund in the DHS budget) to reflect an increased county share of nonfederal EPSDT costs from 10 to 20 percent, for counties with a population in excess of 200,000.

Existing cost containment measures have curbed some of the EPSDT expenditure growth. The rate of growth of state expenditures for EPSDT peaked several years ago and has since begun to decline. This decline suggests that the state and counties are making some progress at containing EPSDT expenditures. However, the total cost of the program continues to grow. Under the Governor's 2004-05 budget proposal, total spending for EPSDT services would surpass \$1 billion from all funding sources.

Mental health advocates argue that this county share of cost will lead to a cap on spending and services for EPSDT. They recommend the adoption of trailer bill language that states that *there can be no shift of costs from the state to counties, or other changes, which restrict the access to EPSDT and mental health services unless they are contained in a specific statute approved by the Legislature.*

5. RE-BASING RATES FOR EPSDT SERVICES

In the Governor's Budget in January, the Administration proposed to re-base the Schedule of Maximum Allowance for EPSDT services, which would have lowered the rates that the state pays counties and providers for EPSDT services.

The May Revise requests rescission of the January proposal. This restoration includes \$60.0 million for EPSDT (\$40.0 million General Fund and \$20.0 million federal fund Reimbursements from the Department of Health Services [DHS]) and \$25.0 million for Short-Doyle/Medi-Cal (federal fund Reimbursements from the DHS).

ISSUE 2: SEXUALLY VIOLENT PREDATORS AND CONDITIONAL RELEASE**BACKGROUND:**

In short, the May Revise includes:

- (1) \$1.497 million General Fund reduction for the number of SVP evaluations to be performed in the budget year;
- (2) \$218,000 General Fund augmentation to support the costs associated with the release of additional Sexually Violent Predators into Conditional Release (CONREP).

And continues Governor's Budget proposals of:

- (3) \$10.7 million General Fund reduction of associated with proposed statutory changes that will require the transfer of 100 pre-commitment SVPs from the state hospitals back to local jurisdictions pending the final adjudication of their SVP commitment;
- (4) \$2 million General Fund reduction for Trailer Bill Language to set SVP commitments to an indeterminate period of time; and
- (5) \$823,000 General Fund savings to restructure State Hospital SVP Treatment.

BACKGROUND

Sexually Violent Predators (SVP) have committed two felony acts of sexually violent crimes, as defined in law: rape, child molestation, and variations therein. They also have a diagnosed mental illness that predisposes them to re-offend. There are currently nearly 500 individuals at Atascadero State Hospital who are SVPs.

There have been three SVPs released as of March 2004. Most recently, Brian DeVries has been on conditional release since August 2003, living on the grounds of Salinas Prison in a trailer. Cary Verse was released in February 2004 and is living in temporary housing.

DMH anticipates the release of 6 more SVP in the budget year and expects that there will be 5 SVPs released in the current year.

MAY REVISE BUDGET PROPOSALS**(1) Evaluations.**

The May Revise requests a reduction of \$1,497,000 General Fund to reflect a decrease in the number of SVP evaluations to be performed by private contractors and decreased costs for evaluator testimony. This estimate assumes adoption of the Governor's Budget proposal for the indeterminate commitment of SVPs.

In the subcommittee process, the LAO suggested that more updated caseload data on the number of referrals from the Board of Prison Terms (BPT) to the DMH for SVP evaluations did not justify the administration's January request. LAO cited that data available through the end of calendar year 2003 indicates that the number of BPT referrals, as well as the number of SVP cases being referred to evaluators, is declining, not increasing. If current trends continue, LAO argues, the number of SVP evaluations could stay level or even decrease in the budget year.

The DMH initially assumed the base funding level of \$5,895,000 for SVP evaluation activities will be continued into FY 2004-05, plus a \$1.1 million augmentation for caseload growth and increased costs for evaluators.

(2) Conditional Release.

May Revise Proposal.

The Governor's Budget includes a request to increase the funding for the Conditional Release Program by \$657,000 General Fund to support:

- 1) \$464,000 in increased costs for patient services;
- 2) \$105,000 in full-year costs for five additional patients; and
- 3) \$88,000 in additional costs for state hospital liaison visits.

In May Revise, the Administration requests an increase of \$218,000 General Fund to reflect the additional costs of serving additional SVPs released from state hospitals into community treatment programs. The total request for budget year reflects full-year funding for treatment, living, and monitoring expenses of six SVPs that have been or will be released by July 2004 and half-year funding for five SVPs to be released during the budget year.

The DMH is requesting a total of \$1.635 million to serve 11 SVP CONREP clients during Fiscal Year 2004-05. This reflects a General Fund increase of \$218,000 from the funding level of \$1,417,000 included in the 2004-05 Governor's Budget.

Total Costs for 11 SVP CONREP for FY 2004-05			
Type of Service	Number of SVPs	Cost per SVP	Total
Full Year Costs			
Treatment	6	\$29,064	\$174,000
Living Expenses	6	22,176	133,000
Misc. Contracts GPS/Voc	6	8,875	53,000
<i>Subtotal</i>			\$360,000
Half Year Costs			
Treatment	5	14,532	\$73,000
Living Expenses	5	11,088	55,000
Misc. Contracts GPS/Voc	5	4,438	22,000
<i>Subtotal</i>			\$150,000
Operating Costs			
Central Office Personnel and Overhead			\$529,000
Case Managers (3 FTE)			437,000
CDC Contract			159,000
<i>Subtotal</i>			\$1,125,000
Totals			\$1,635,000

Commitment and Conditional Release.

All SVPs first serve their sentence in a CDC prison. About six months prior to the end of their sentence, they are referred to DMH for treatment evaluation. DMH orders evaluations to determine whether the offender potentially qualifies for a sexually violent predator commitment. The Superior Courts are the arbiters of commitments. If a jury or judge find that it is likely that an individual would re-offend, then the individual is committed to the DMH for treatment and supervision.

The DMH has contracted with Liberty Health Care to conduct the Conditional Release program for SVPs. The Liberty Contract costs \$887,000 this year and includes the initial start up costs for the central office and staff; housing and housing searches; arranging for professional services for clients i.e. sex offender treatment, tests, medications, etc.; coordinating community safety teams; monitoring including the use of GPS, clients who are out; and interfacing with police and courts. The DMH states that these costs will decrease on a per client basis as more SVPs are released into CONREP due to the impact of economies of scale. In the budget year the average cost for an SVP in CONREP (full-year) will be an estimated \$174,000 for five patients and one costing \$333,000.

Liberty currently supervises two SVPs in the community. Liberty employees are attending court hearings, developing community safety plans and conducting housing searches for two additional SVPs that have court approved Welfare and Institutions Code 6608 petitions and they participate in hospital visits for all other committed SVPs.

The LAO has raised concerns with the staffing component of the Liberty Contract. All SVPs statewide are to be supervised and their ongoing treatment coordinated by these three contract staff, with the help of GPS tracking technology and liaison work with local law enforcement agencies. However, the LAO does have a policy concern about whether so many SVPs can effectively be supervised in a number of locales across the state by just three case managers, given the present policy of returning each SVP patient to the county from which they originated rather than any centralized location. Under this arrangement, if a major incident with an SVP were to arise, the assigned case manager would have to travel hours before they would be available to help address an issue, and the LAO thinks that the ability to conduct daily supervision of SVPs would be very limited.

Current SVPs on Conditional Release.

Brian DeVries and Cary Verse are the only SVPs to graduate from the Sex Offender Commitment Program at Atascadero State Hospital. DeVries has been on conditional release since August 2003, living on the grounds of Salinas Prison in a trailer. Verse, the most recent graduate, is living in temporary housing.

Police officers in the cities Verse has moved into recently have been frustrated by the Department of Mental Health because they were not given prior warning that a high-risk sex offender would be entering their communities. Verse is a four-time convicted sex offender, and has been chemically castrated, has completed treatment, and has his movements tracked electronically.

The uproar from Verse's release mirrors the reaction that DeVries received when he was released. DeVries was released by a judge to live in a downtown San Jose hotel. The

community reaction forced DMH officials to house DeVries, a child molester who voluntarily underwent surgical castration, in a trailer at Soledad State Prison.

The experience of these two graduates demonstrates that state policy is lacking in certain conditional release provisions for newly released offenders and that the public lacks understanding of the SVP process. These two offenders have been praised by officials for their commitment to treatment, yet have drawn unrelenting scrutiny from the public. In the meantime, 30 other sex offenders who were declared SVPs at one time who didn't complete treatment have left the state hospital with no fanfare.

Future SVPs in Conditional Release.

The DMH states that in February 2004, the courts approved two additional patients from Marin and San Diego counties to CONREP placement. DMH is required to prepare a Community Discharge Plan and Terms and Conditions for Outpatient Treatment for these two individuals. Further, one patient from Fresno County has filed a petition for outpatient treatment and should be approved for outpatient treatment before the end of the fiscal year. Therefore, five patients should be in CONREP at the end of the Fiscal Year 2003-04. In addition, a patient from Riverside County is likely to be placed in CONREP in July 2004.

Five additional patients are in Treatment Level IV at Atascadero State Hospital and are expected to be released into the community during Fiscal Year 2004-05. DMH is unable to determine the dates of release, but has requested half-year funding for these five patients. There are 18 SVPs in Phase III of the treatment program. At any time, any one of these SVPs could petition the courts for conditional release.

(3) Transfer of Pre-Commitment SVPs to Local Jails.

The DMH includes in their state hospital caseload projections consideration of the impact of requiring California Department of Corrections inmates who have not completed the SVP commitment process to be housed in county jails. The modification of the way the state manages its SVP population is estimated to obtain a \$10.7 million state savings in 2004-05. The Administration proposes amended language to be placed in the Welfare and Institutions Code 6602 directing that persons, for whom a petition has been filed and probable cause found, must be housed in local facilities.

The Administration argues that the proposal would not increase county government costs since the entire cost of the SVP population is the responsibility of the state. Counties could obtain reimbursement from the state to offset any additional costs they would incur for holding pre-commitment SVPs who had been diverted from the state hospital system to county jails.

Currently, 170 of the individuals who are awaiting court proceedings for an SVP commitment are being held in the state hospital system while their cases proceed. Some additional individuals are still being held in state prison as these proceedings occur, while still others who have been released from prison are held in county jails.

The goal of the administration's proposal is to shift a portion of the pre-commitment SVPs to persons willing to accept treatment. The DMH has indicated that individuals who are awaiting legal proceedings that could result in their commitment as SVPs are generally unwilling to engage in treatment activities. This is because standard therapy for sex offenders often involves efforts to get individuals to discuss and admit their

history of sex crimes. As a result, many individuals who are being held in the state hospitals while they await their SVP commitment hearings are not actively engaged in treatment.

LAO Analysis. The LAO indicates that the proposal could have a larger impact on caseloads and achieve a greater state savings than estimated by the administration. The Governor's budget plan assumes that the changes that it proposes would reduce the hospital population by 100 in 2004-05. However, up to 160 pre-commitment SVPs are presently in the state hospital system. Thus, it is possible that the savings from the Governor's proposed changes to the SVP statute could be greater than estimated in the budget plan.

The LAO recommends to shift a portion of the pre-commitment SVPs to the local jails while they await the verdict on their commitment hearing, and to expedite the commitment proceedings of others before their release from state prison. While the budget plan reflects \$10.7 million in savings to the General Fund from the shift of 100 SVPs, the LAO estimates that the state could eventually achieve as much as \$5 million in additional savings from the shift of all pre-commitment SVPs (currently at 160) to the local level.

Lastly, the LAO acknowledges that there could be some offsets to the savings because more persons would be held in local jails. However, the cost to the state of reimbursing counties for the use of their jail beds would be much lower than the cost of using an equivalent number of state hospital beds—perhaps as much as 20 percent lower.

(4) Implementation of an Indeterminate SVP Commitment Period.

May Revise Proposal.

The Governor has proposed **revised** trailer bill language to amend Sections 6604 and 6604.1 of the Welfare and Institutions Code, which would implement an indeterminate sentence length for all SVPs **who are currently and prospectively committed.**

Constitutional Issues.

The SVP statute has been in effect since January 1, 1996. The current length of commitment is two years. Almost all SVPs are recommitted every two years. But, the California and US Supreme Courts have said that there must be a light at the end of the tunnel—the mental health treatment is not allowed to be an extension of their sentence. Without this provision the constitutionality of the statute could be challenged.

The Court has found that the SVP statute is constitutional because treatment is the cornerstone for mentally ill offenders. It is believed to be unconstitutional to keep SVPs in the hospitals in perpetuity. The Courts have further found that if there is not a conditional release program available to the SVPs, then they must be released outright.

The DMH argues that in a review of 13 states with SVP commitment laws, California was the only state with a determinate commitment period. California has a period of two years, after which the entire commitment process must be repeated, including new evaluations, a new commitment petition and a new trial.

The Administration proposes, as under current law, that a person confined as an SVP would continue to have the right to petition the courts once each year for his/her release from a state hospital. The DMH states that the recommitment process results in

significant General Fund costs for the state and locals. The DMH believes that replacing the current two-year SVP commitment period with an indeterminate period is expected to save \$2,000,000 annually in the DMH budget and also capture savings in local mandate costs through eliminating the need to litigate every two years.

In addition, the DMH reasons that this reform would encourage persons committed as SVPs to more actively engage in treatment programs and reduce the possibility that courts will grant requests by SVPs for conditional release when clinical staff still consider the person dangerous.

The DMH argues that there are significant negative consequences to a two-year commitment period:

- Requires the local prosecutor to carry the burden of proof that the individual remains an SVP, leading to the release of persons still thought to be dangerous by DMH.
- Leads to more requests by SVPs for conditional release, and in a few cases, courts have granted such requests, sometimes resulting in persons being deemed safe to treat in the community, without the concurrence of DMH.
- Conflicts with the foundation of SVP treatment, which is considered long term.

LAO Analysis. The LAO recommends that the modification to extend the period of commitment for SVPs to an indeterminate length be considered as an important policy matter in the normal legislative process.

(5) Restructure State Hospital SVP Treatment.

The Administration proposes to restructure the supervision and treatment services provided to SVP patients in state hospitals, including the establishment of a new secure SVP residential licensing category. The DMH plans to improve the security and safety for patients, staff, and the public by treating patients in residential units that are organized to more efficiently and effectively provide for the varying custody and supervision needs of the SVP patient population. The reorganized treatment services are proposed to ensure that SVP patients receive the individualized treatment they need throughout the course of their commitment.

QUESTIONS:

Subcommittee Request and Questions. The Subcommittee has requested a response to the following questions:

- To DMH:
- 1) Please explain the paradox of high contract costs for the SVP Conditional Release Program and enormous problems placing SVPs in the community. What steps is the department taking to ameliorate this?
 - 2) What are the potential safety issues in transferring pre-commitment SVPs to the local county jails?
 - 3) Please address the constitutional concerns regarding the indeterminate commitment proposal.