

AGENDA

SUBCOMMITTEE NO. 1 ON HEALTH AND HUMAN SERVICES

AND

SUBCOMMITTEE NO. 2 ON EDUCATION FINANCE

Assemblymember Holly Mitchell and Assemblymember Susan Bonilla, Chairs

TUESDAY, MAY 24, 2011

11:00 A.M. - STATE CAPITOL, ROOM 4202

ITEM TO BE HEARD

| ITEM | DESCRIPTION | |
|----------------|------------------------------------|----------|
| 6110 | DEPARTMENT OF EDUCATION | |
| 4440 | DEPARTMENT OF MENTAL HEALTH | |
| ISSUE 1 | AB 3632 | 2 |

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| ISSUE 1: AB 3632 SERVICES |
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The May Revision proposes to shift responsibility for AB 3632 Services to schools and provides \$221.7 million of Proposition 98 funding to pay for these services. The proposal would repeal the sections of AB 3632 that drive the existing mandate on county mental health agencies and instead rely on Special Education Local Plan Areas (SELPA) operating under existing federal mandates to meet the needs of these children. The May Revision also proposes to rebench Proposition 98 to reflect the new ongoing financial responsibility for schools.

This proposal diverges dramatically with the Governor's January approach, which envisioned that counties would continue to provide AB 3632 services. The Governor's January budget included AB 3632 services in the realignment proposal, which would have been redefined as a local program responsibility.

Both proposals follow a chaotic year for AB 3632 Services due to Schwarzenegger's veto of funding for the mandate in the 2010-11 budget.

The chart below captures the different funding approaches:

| | Federal Special Education | Local Funds | Proposition 63 | 2011 Realignment | Prop. 98 | | Total |
|-------------------------------------|---------------------------|-------------|----------------|------------------|----------|---|-------|
| 2010-11 | 76 | | | | 81 | a | 157 |
| 2011-12 Governor's January Proposal | 69 | 100 | 99 | 72 | | | 340 |
| 2011-12 Governor's May Proposal | 69 | | 99 | | 222 | | 390 |

(a) Legislature provided \$81 million in one-time Proposition 98 funds through SB 70 in the March 2011 budget package.

Rebenching Proposition 98 and Emergency Contingency. The proposal would rebench Proposition 98 by \$221.7 million in 2011-12, increasing to \$300.9 million in subsequent years. This amount would be adjusted for Proposition 98 growth.

The Department of Finance has stated a willingness to restrict this funding to Special Education purposes only.

The May Revision also includes a \$3 million extraordinary cost pool allocation to address unexpected and unusually high costs associated with mental health services provided by smaller districts.

Background on AB 3632. Under federal law, known as Individuals with Disabilities Education Act (IDEA), children with disabilities are guaranteed the right to receive a free appropriate public education (FAPE). This includes special education and related services, such as mental health care, necessary for the child to benefit from his or her education. These educationally related mental health services may include therapy and counseling, day treatment, medication management and, for the children with the most severe needs, 24-hour therapeutic residential programs with on-site schools.

Until 1984, California schools provided mental health services to special education pupils who needed the services in order to benefit from their Individualized Education Plans (IEP). The Legislature became aware of the school system's failure to adequately provide these services and in 1984 passed AB 3632 (W. Brown), Chapter 1747, Statutes of 1984, which assigned county mental health departments the responsibility for providing students these services [except students placed out of state]. In 1996, the Legislature expanded county responsibilities to include services to students placed in out-of-state schools [AB 2726 (Woods), Chapter 654, Statutes of 1995]. This program is generally known as the "AB 3632 Program." Approximately 20,000 special education pupils receive mental health services under the AB 3632 program.

While AB 3632 was written in response to federal IDEA requirements, state law is more specific than federal law in articulating all allowable mental health services. AB 3632 tasks mental health professionals, in consultation with educators, with deciding what services should be included in the student's IEP. Once a service is included in the IEP, it is deemed an "educationally necessary" service. Some argue this practice has led to an increasingly large grey area about which services are educationally necessary and which are medically necessary.

Rationale for Moving AB 3632 to Schools. The Administration believes that transferring the responsibility to schools is a better option on both a policy and fiscal basis. The Administration cites the fact that other states use this model for meeting these needs for children and families.

The Legislative Analyst's Office (LAO) believes that the current AB 3632 mandate structure is flawed. The mechanism lacks oversight for cost-control because county costs are not linked to the individual's assessment. In addition, the LAO points out that the Special Education programs operated by SELPA's are subject to robust outcome measures and reporting, while AB 3632 services are not tracked in this manner and are not necessarily linked to the IEP.

Additional CDE Request. CDE has requested \$800,000 federal funds for state operations to assist in transition activities that were not included in the May Revision.

STAFF COMMENT

Historically the Assembly has had concerns with proposals to shift the responsibility for these intensive mental health services to schools. This proposal is a substantial improvement over previous proposals to make this shift because the Governor recognizes that schools would need additional resources to assume this responsibility. However, this is a significant policy decision that assumes a very aggressive timeline to craft a complex system change to California's mental health and special education systems. Some questions to consider:

Will the schools do a better job?

While DOF and LAO make some good points about the mandate reimbursement mechanism for funding AB 3632, it is worth revisiting the factors that drove the Legislature to establish AB 3632 in the first place.

Will moving this responsibility to schools result in the problems faced by the State in 1984?

The key difference between the two different entities is that the federal special education mandate requires schools to provide **educationally necessary** services, while the mechanism used by counties to assess AB 3632 services are **medically necessary**.

This distinction could mean that children that receive different levels and types of services after this transition. However, this also means that going forward the services provided will be linked to the individual child's IEP and will be coordinated by one entity, which could be beneficial in some cases.

Moreover, it will be critical to craft a school-based system that does not incentivize cost-saving to such a degree that children do not get even the educationally necessary services that they need.

What is the transition plan?

The Administration's proposal envisions some transition, with mental health departments receiving \$98.9 Prop 63 funding in the budget year to help with the transition. How will families transition? Any transition plan is complicated by the fact that Governor Schwarzenegger's veto has caused disarray in the program in the current year.

What about Medi-Cal?

Currently the county mental health departments can provide access to federal Medicaid funding for eligible students. The Subcommittee may wish to explore if this proposal could result in the loss of these federal funds.

What about high cost cases?

The AB 3632 mandate reimburses for actual costs, so if a child has high cost needs, those needs can be met. However, under the new arrangement, districts will be provided an allocation of these costs and will have incentives to control costs. Will this lead to more efficiency or will this lead districts to ratchet down the services available to children and families?

What about oversight?

The Administration's proposed trailer bill deletes existing statute and relies upon the federal mandate to drive district behavior. If the Subcommittee were to agree to this proposal, is this sufficient or would more oversight over the delivery of services be necessary?

PANEL

Pat Ryan, Executive Director
County Mental Health Directors Association

Rusty Selix, Executive Director
California Council of Community Mental Health Agencies

Margaret Johnson, Advocacy Director
Disability Rights California

Carroll Schroeder, Executive Director
California Alliance of Child and Family Services

Shelton Yip, Napa County Office of Ed and SELPA

Staff Recommendation: Hold Open
