

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

Assemblymember Hector De La Torre, Chair

THURSDAY, MAY 19, 2005
STATE CAPITOL, ROOM 4202

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ITEMS TO BE HEARD

ITEM 2400 DEPARTMENT OF MANAGED CARE

ISSUE 1: AGENCY SUPPORT

It is requested that Item 2400-001-0933 be decreased by \$37,000 to reflect the elimination of the Clinical Advisory Panel (CAP) and the Managed Care Advisory Committee (MCAC). The statutory changes required to eliminate these entities are also attached. The CAP has provided assistance to the Director of the Department of Managed Health Care to ensure that the external independent review system meets the quality standards necessary to protect the public's interest. The MCAC's duty has been to provide advice and assistance to the Director in the implementation of the Knox-Keene Managed Care Act. Since these advisory functions were intended primarily to assist in the development of the new department's programs, advice from the field can be provided on an as-needed basis, now that the department is several years old.

ITEM 4260 DEPARTMENT OF HEALTH SERVICES – MEDI-CAL

ISSUE 1: ADULT DAY HEALTH CARE

The Administration's budget proposal for the 2005-2006 fiscal year budget proposes changes to the Adult Day Health Care (ADHC) Program. An April Finance Letter to develop a State Plan Amendment (SPA) for the program was also submitted to the Legislature. At the time the Finance Letter was submitted it was not clear whether the state would have to develop a waiver or SPA for the program. Recently it became obvious that the state would have to submit a waiver to the Federal Government for the program.

ADHC is a community-based day program that provides nursing, physical therapy, occupational therapy, speech therapy, meals, transportation, social services, personal care, activities and supervision designed for low-income elders and younger disabled adults who are at risk for being placed in a nursing home.

ADHC Services are provided to delay or defer individuals from going into nursing homes or other more costly forms of care. The net result to the state is a saving of Medi-Cal expenditures. The Medi-Cal monthly cost of a nursing home is approximately \$3,400 per month. Adult Day Healthcare costs between one-fourth to one-third of the Medi-Cal cost. There are approximately 43,000 Medi-Cal recipients enrolled for ADHC services.

ADHC has been a successful model for elderly individuals to obtain many services in one location. For these individuals, particularly those with mobility challenges, going to one place for health care results in better compliance with therapy, medication, nutrition, and exercise regimens. Under Medi-Cal, individuals can participate in ADHC from one to five days per week, but usually averages about three days a week.

The 2005-2006 budget projects that the state will achieve \$45.3 million in program savings from: redesigning the rate system for the Adult Day Care Program providers; and extending the moratorium that was adopted as part of the 2004 -2005 budget (\$45.3 million from extending the moratorium six more months, until December 2005 and \$13.3 million from the rate redesign).

There are about 300 ADHC facilities in the state that are certified in the Medi-Cal Program. Typically, each ADHC has the capacity to serve between 40 and 100 clients per day. According to the LAO, about 56 percent of the total number of ADHCs were located in Los Angeles County.

The ADHC program began to expand rapidly in 1999. For several years prior to 1999 the growth of the program was modest. Some of the reasons for the rapid growth spurt include: the changing demographics of California; and a lifting of the prohibition on for-profit providers.

The Association that represents the Adult Day Healthcare providers has requested that the state modify the moratorium. The Association requests the following modifications:

- Address a specific need in the San Francisco area regarding the Laguna Honda nursing facility and a need to utilize community-based resources;
- Allow ADHC provider expansion in Imperial County due to the number of low-income seniors residing in the county;
- Address a specific need in Napa County
- Address a specific need in Humboldt County and;
- Enable 25 older adults with developmental disabilities to be phased-in for services.

The language the Association proposes is as follows:

ADHC MORATORIUM MODIFICATION PROPOSAL

GOAL: To modify the existing statewide moratorium on adult day health care Medi-Cal certification in order to provide additional limited exemptions in areas of the state that have a high proportion of low income elders. This is consistent with the state's goal of providing adult day health care as a lower cost alternative to nursing home placement to eligible individuals. An examination of the counties identified for these exemptions indicate that few alternative services are available, quality providers exist; waiting lists and increased demands on existing programs to increase capacity or expand are present.

In addition, the Department of Health Services should be instructed to approve the existing limited exceptions to the moratorium currently permitted under law.

ITEM 4260 DEPARTMENT OF HEALTH SERVICES – MEDI-CAL**ISSUE 2: ADULT DAY HEALTH CARE MORATORIUM AND RATE FREEZE
EXTENSION (ISSUE 186)**

The May Revision proposes that Items 4260-101-0001 and 4260-101-0890 each be increased by \$2,083,000 to reflect an extension of the rate freeze and moratorium on new ADHC centers. This change is necessary since conforming the program to federal law is taking longer than expected. It is also requested that the related trailer bill language be adopted

The Administration's budget denies a rate increase for ADHC programs contrary to legal settlement.

BACKGROUND

In 1993 the California State Department of Health Services (DHS) and the California Association of Adult Day Services (CAADS) entered into a binding settlement agreement establishing the ongoing basis for reimbursement rates and rate increases for ADHCs. The language of the settlement state: "Effective August 1, 1998 and each fiscal year thereafter, commencing with August 1st of the fiscal year in question, Medi-Cal reimbursement rates for all ADHC services will be increased by the same percentage that the statewide weighted average for the NF-A reimbursement rate increases." The language of the settlement agreement clearly establishes the authority, basis and reference point for Medi-Cal rate increase for ADHCs.

PROPOSED TRAILER BILL LANGUAGE

The proposed trailer bill language negates the settlement language, and, instead conditions any adjustment to the rate upon the approval of a SPA or federal waiver. CAADS and the Department have been working together for over a year to modify elements of the ADHC program in response to a request from CMS. The work products of those efforts currently exist in policy legislation, SB 571, SB 642, and AB 1258. SB 642 and AB 1258 specifically address rate methodology within the context of comprehensive modernization of the program. Issues relating to rate methodology and reimbursement for ADHCs as a consequence of the waiver or SPA should remain within the policy legislation and the terms of the settlement agreement should be honored until or unless the waiver or SPA is approved.

FINANCIAL HARDSHIP FOR ADULT DAY HEALTH CENTERS

If the May Revision is approved, ADHCs will have been without a rate increase for three years. Since that time, a number of centers have closed due to the challenge of continuing to operate a center without a rate increase while operating costs continue to climb. In addition, a moratorium has been imposed upon new adult day health centers limiting the number of centers available for the ever increasing population of frail elderly individuals. Through voluntary and involuntary closures and the moratorium, fewer options are available to the frail elderly, resulting in further default placement of this population to nursing homes instead of home and community based services.

The Department has complete control and authority over the growth of the ADHC program. It has used all tools available to ensure that available centers could accommodate actual need and provide appropriate services. In addition to the moratorium on new centers, the department has denied and deferred TARS, withheld Medi-Cal certification, and utilized the authority of Audits and Investigations to suspend certification and retrospectively recoup reimbursement.

The methods utilized by the department have had the desired result of achieving a declining rate of growth for ADHCs. Consequently, the state has realized a savings from the slowed growth. However, a decline in growth of centers does not translate into a decline in the cost of doing business for the many centers that are attempting to remain open and serve a very frail population.

MAINTAINING POLICY INTEGRITY

The integrity of both the settlement agreement between the state and CAADS and an integrated policy for modernization of the ADHC program must be maintained if the waiver or state plan amendment are to effectuate the change proposed. Therefore, the budget committee should maintain the terms of the settlement agreement and award an increase to ADHC if a rate increase is awarded to NF-A and defer any change in rate methodology or reimbursement for ADHC to those policy committees having jurisdiction for SB 642 and AB 1258.

ITEM 4260

DEPARTMENT OF HEALTH SERVICES – MEDI-CAL;

ISSUE 3: PROCEDURE CODES

The Centers for Medicare and Medicaid Services (CMS) requires its contractors to implement changes in medical codes on or after January 1 each year. Other codes must be implemented on a quarterly basis. In California Electronic Data Systems, Inc. (EDS) Medi-Cal does not allow providers to report the new codes for many months after the first year. Typically it is a 10-month delay, until November each year. During the 10-month delay, patients do not have access to approved, new treatments that have new codes for that year – even for cancer and other life threatening conditions. Providers who report services will be denied payment for Medi-Cal for the new service or drug, even if the codes for the services are accepted by Medicare.

The delay in updating codes in California results not only in delays or denial of treatment for Medi-Cal patients, but it can have serious consequences on providers as well. If a code is replaced by a new code, the provider must bill Medicare with the new code and bill Medi-Cal with the retired code that has not been updated by EDS. If a provider mistakenly bills Medicare with an old code, and payment is made as a result, the claim would be considered a false claim and any payment is subject to recovery. The provider would also be at risk for criminal investigation, prosecution and other penalties.

The Department of Health Services states it receives the medical codes in late October or the first part of November. It takes the staff about two to three weeks to review and sort the updates and distribute to appropriate program staff. Staff, have until the end of February to finalize all policies and rates, prepare an operating instruction letter (OIL), and secure all management approvals. Technically, the Department has until March 1st to submit this information to EDS, although EDS informed staff it can be submitted by April 1st. When EDS gets the policy information, they analyze the changes, determine what codes and tables are

impacted, and make the system changes. *Note, Departmental staff provides an advance copy of the OIL to EDS to begin their analysis. Then, EDS conducts unit testing, system testing and independent testing. It takes EDS between six to nine months to complete all of this.*

The Department states that it cannot give a definitive response to the question about the level of savings the state achieves because of the delay. If the update includes many new benefits and Medi-Cal approves these benefits, a delay may create a savings. On the other hand, if the update includes many specific codes for services/products now billed with miscellaneous codes, a delay in implementation may create additional costs (typically when a rate is set, the reimbursement is less than the reimbursement for the miscellaneous code). Unless the Department spent an inordinate amount of time analyzing each set of updates, the Department cannot determine if a delay creates a savings or cost to the program.

To address the issue the following placeholder trailer bill language has been proposed by advocates for a more timely implementation of the medical codes.

Proposed placeholder trailer bill language:

The Legislature finds that delays by the Medi-Cal fiscal intermediary in the implementation of procedure codes necessary for coverage and reimbursement for medically necessary therapies is placing Medi-Cal recipients at serious health risk, and is potentially costing the state millions of dollars due to lost rebates and potential fraud. The average amount of time taken by the fiscal intermediary to implement code changes, eight to 10 months, is as much as five times longer than is taken in most other states. The Legislature finds that the period of time taken by the fiscal intermediary is contrary to the terms of the fiscal intermediary's contract with the state.

The Legislature finds that action needs to be taken to hold accountable the fiscal intermediary in order to protect patient health and the state General Fund.

The Legislature further finds that failure of the fiscal intermediary to implement changes to the HCSPS codes within 90 days of receiving from the department all policies and rates, Operating Instructional Letters (OIL) and necessary departmental approvals applicable to each of the HCPCS code updates submitted to the fiscal intermediary shall be considered a breach of contract under the fiscal intermediary's contract with the state.

Therefore, the Legislature hereby instructs the department to consider the failure of the fiscal intermediary to implement changes to HCPCS codes within 90 days to be a breach of contract, and shall exercise all remedies attendant thereto.

On an annual basis, the department shall report to the chairs of the health and budget committees of each house whether the fiscal intermediary has complied with the requirements for implementing codes, and if not, what action the department has taken.

ITEM 4260 DEPARTMENT OF HEALTH SERVICES – MEDI-CAL**ISSUE 4: ALAMEDA ALLIANCE FOR HEALTH**

Alameda Alliance for Health, the Local Initiative for Alameda County is in a financial crisis. The crisis is driven by a growing deficit in its Medi-Cal program. The Alliance states that without immediate financial assistance from the state, it faces imminent threat of financial insolvency. The Alliance is requesting \$3 million General Fund to go along with \$3 million raised locally to be matched by \$6 million federal funds.

Background

The Alliance provides coverage for 73% (approximately 80,000) of the Medi-Cal beneficiaries in Alameda County enrolled in Medi-Cal managed care. The Alliance will end fiscal year 2004-05 with a deficit of \$14.9 million for the Medi-Cal line of business. This follows three previous years of operating deficits. It is estimated that the plan will fail to meet its State-required Tangible Net Equity (TNE) provision in fiscal year 2005-06. The plan has taken several steps to contain costs and the Alliance Board of Governors has approved additional cost-cutting interventions. These steps are not enough to keep the Alliance's Medi-Cal line of business solvent and operational.

Factors Contributing to Financial Crisis

The crisis facing the Alliance is due to a number of factors, all of which arise from the continuing decline in the state's support of the infrastructure serving Medi-Cal patients and its failure to meaningfully address the problem of the uninsured: A number of years with no rate adjustments from Medi-Cal, followed by a legislatively authorized rate decrease; rising medical costs, particularly for the Aged, Blind, and Disabled Medi-Cal beneficiaries, and tremendous pressure from hospitals, physicians and clinics regarding rates, as those providers struggle with the inadequacies in the health care infrastructure; the decision of the Alliance to make grants to the public and private DSH hospitals (\$12.2 million), and to the county and community clinics serving Medi-Cal and indigent populations, and community based organizations in the county (\$5.3 million) in order to maintain the safety net in Alameda County.

The decision of the Alliance to fund "commercial" insurance products for the benefit of the uninsured in Alameda County that do not qualify for any other subsidized coverage (\$20 million over five years). While in hindsight, some of these decisions can be questioned from a strictly operational perspective, each of the decisions were faithful to the Alliance's core mission of serving those who cannot access traditional insurance and supporting the safety net. While the other local initiatives in the state are not facing the same financial crisis at this time, they do face a threat long term due to many of the same factors, and some are relying on reserves from previous years to offset operating losses.

Implications for Closure of the Alliance

If the Alliance falls below its TNE requirement, and does not receive financial assistance to recover, it will lead to receivership by the Department of Managed Health Care, and inevitably, dissolution of the Alliance. The consequences are as follows: Disruption to members' care as 80,000 Medi-Cal beneficiaries and 10,000 Healthy Families members would have to be reassigned; Diversion of significant assets to pay for closure costs which otherwise would be

available for patient care; Eliminating competition for Medi-Cal by leaving Alameda County with only one commercial plan, namely Blue Cross, hurting both patients and providers.

Solutions

The Alliance needs a Medi-Cal rate increase to address its \$14.9 million Medi-Cal deficit. A rate increase will allow the Alliance to maintain its state-required TNE in FY 2005-06 and help toward reaching break even operations in subsequent years. We need to begin a dialogue to assess all options available for increasing revenue.

Why the Local Initiative Should Be Helped

The Alliance is a community-based public plan that specializes in serving only the low-income populations.

It invests virtually all of its revenues in the local provider community, incurring very modest administrative expenses and accepting low profit margins for reserves.

It cannot cross-subsidize low-margin public sector lines of business with more lucrative private sector products.

Its commitment to supporting the local provider community and attracting more doctors to serve the Medi-Cal population has meant paying providers higher rates, where possible, than the Medi-Cal fee-for-service program.

As a governmental entity, the Alliance has limited access to capital, and must fund capital investments and meet reserve requirements from operations budgets.

ITEM 4300

DEPARTMENT OF DEVELOPMENTAL SERVICES

ISSUE 1: AGNEWS STAFFING

With the advent of the closure of Agnews Developmental Center, the relocation of the developmental center residents must take place in a manner so as to ensure continuity of services to these patients without compromising their safety. In a departmental letter dated January 10, 2005, the Department laid out the following policy goals regarding the closure of Agnews: the stability of living arrangements is assured; an appropriate array of service options is designed to meet the special needs of Agnews' residents; systems are in place to ensure continuity of services between the developmental center and the community; and the ongoing quality of care is assured.

In order to achieve the goals, the status of those providing services to these individuals must not be placed in jeopardy through use as temporary or transitional employees. Maintaining the state civil service status of these employees is important in meeting the specialized needs of former Agnews residents as opposed to care provided by minimum wage unlicensed and inexperienced caregivers. The developmentally disabled remaining in the developmental centers are the medically fragile or behaviorally challenging in the system making these centers the intensive care units of the DDS system. This population does not do well in the typical community homes that are successful in serving the needs of many of the less severely developmentally disabled.

Placeholder Trailer Bill Language to provide the staff for continuity of care for Agnews clients. It is the intent of the Legislature to maintain the skills, training, and experience in medical, dental, podiatric, pharmacological, psychological, psychiatric, habilitation, rehabilitation, social work, case management, educational, vocational, quality assurance, and nursing staff in order to meet the specialized needs of former Agnews residents who have been transitioned into regional centers or other community based settings.

ITEM 4440 DEPARTMENT OF MENTAL HEALTH

ISSUE 1: EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM - FUNDING ADJUSTMENTS

The budget proposes a decrease of \$29.164 million in local assistance reimbursements from the Department of Health Services in the current year to reflect adjustments from updated paid claims information to the funding level for the Early and Periodic Screening, Diagnosis and Treatment Program. In addition, the budget proposes an increase in the budget year of \$47.487 million to reflect additional program costs. This includes a State General Fund (SGF) increase of \$27,232,000 and an increase of \$20,255,000 in Federal Financial Participation (FFP). The increase also reflects a slowdown in the rate of growth of the program, which reflects for a total savings for the General Fund of \$15.8 million, and a reduction in Federal Funds of \$13.35 million.

ISSUE 2: EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM CASELOAD – ISSUE 240

It is requested that Item 4440-101-0001 be amended by decreasing reimbursements by \$117,913,000 (\$55,671,000 General Fund and \$62,242,000 federal funds in the DHS budget) to reflect a lower projection of claimed costs for the Early and Periodic Screening Diagnosis and Treatment program (EPSDT).

Technical correction to action taken on May 17, 2005

Current Year

-\$4,227,000 reimbursements (\$-1,665,000 GF and -\$2,562,000 FFP)

Budget Year

-\$7,615,000 reimbursements (-\$3,331,000 GF and -\$4,284,000 FFP)

The combined total for both years is -\$11,842,000 reimbursements (-\$4,996,000 GF and -\$6,846,000 FFP), which are the amounts LAO had identified earlier.

ISSUE 3: SERVICES TO HANDICAPPED STUDENTS AND SERIOUSLY EMOTIONALLY DISTURBED PUPILS MANDATES (AB 3632) – ISSUES 500 & 501

It is requested that Item 4440-105-0001 be added with funding of \$90,000,000 for the State Controller (SCO) to reimburse counties for a portion of costs claimed during fiscal years 2002-03, 2003-04, and 2004-05 for the Services to Handicapped Students (Chapter 1747, Statutes of 1984) and Seriously Emotionally Disturbed Pupils (Chapter 654, Statutes of 1996) state-mandated local programs. Specifically, \$72.0 million is to reimburse auditable claims for the Services to Handicapped Students program, and \$18.0 million is for reimbursement of auditable claims for the Seriously Emotionally Disturbed Pupils program.

It is further requested that Item 0840-001-0001 be increased by \$468,000 to fund 5.0 two-year limited-term Associate Management Auditor positions at the SCO to conduct audits of county claims for these two state mandates. In addition, the SCO will redirect 3.0 positions within existing resources for this purpose. The audits are expected to occur over two to three years. Trailer bill language is also proposed to require the SCO to audit county claims and recover any invalid costs identified by the audits.

The Department of Education May Revision letter includes a trailer bill language request to repeal these two state mandates, which were proposed for suspension in the Governor's Budget. There is no proposal to remove the mandates from the schedule of programs listed in Item 4440-295-0001 or to remove the suspension language from that item until such time the repeal is adopted.

Services to Handicapped Students and Seriously Emotionally Disturbed Pupils Mandates (AB 3632)—Issue 500**4440-105-0001—For local assistance, Department of Mental Health, Services to Handicapped Students and Seriously Emotionally Disturbed Pupils Mandates (AB 3632)****Provisions:**

The funds appropriated in this item are for the State Controller to reimburse local government agencies for costs claimed for fiscal years 2002-03, 2003-04, and 2004-05 for the Services to Handicapped Students (Chapter 1747, Statutes of 1984) and Seriously Emotionally Disturbed Pupils (Chapter 654, Statutes of 1996) state-mandated local programs. Of the funds appropriated, \$72,000,000 shall be used to reimburse claims for the Services to Handicapped Students program, and \$18,000,000 shall be used to reimburse claims for the Seriously Emotionally Disturbed Pupils program. Reimbursement shall only be made for claims that are still subject to audit by the State Controller.

Services to Handicapped Students and Seriously Emotionally Disturbed Pupils Mandates (AB 3632)—Issue 501

The following is proposed uncodified trailer bill language:

SEC X. Subject to the availability of funds provided in the budget act for this purpose, beginning in the fiscal year 2005-06, the Controller shall audit and may conduct field reviews of reimbursable state mandate claims filed by local government entities for the following state-mandated local programs:

(1) *Services to Handicapped Students Program contained in Chapter 26.5 of the Government Code commencing with Section 7570; and*

(2) *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services Program contained in Government Code Section 7576.*

The audits and reviews shall be conducted consistent with the provisions of Government Code Section 17558.5. Consistent with Section 17558.5, the Controller shall adjust a claim for reimbursement on the basis of the audit and review findings. The Controller shall not provide reimbursement for any costs claimed that are found to be invalid by the audits and reviews. To the extent that the audits and reviews reveal invalid costs in claims that were already reimbursed, the Controller shall recover payment for those invalid costs.

ITEM 4440**DEPARTMENT OF MENTAL HEALTH****ISSUE 4: AB 3632**

The budget proposes continuation of the \$69 million in federal funds in the Individuals with Disabilities Education Act (IDEA) for counties, and \$31 million for Special Education Local Plan Areas (SELPAS). However, it proposes suspending (not repealing) the mandate on counties, which means that counties that provide services over and above their allocation of the \$69 million would not be eligible for SB 90 reimbursement.

Several years of inadequate funding by the state for providing state-mandated mental health services to special education students (pursuant to the federal law) has led to a fiscal crisis for county mental health programs, as well as chaos and confusion among schools, families and mental health providers.

The federal IDEA is intended to ensure that children with special needs receive special education instruction and related services necessary for them to benefit from a "free and appropriate public education (FAPE)". Related services include, but are not limited to, occupational and physical therapy, speech therapy, and mental health services. School districts are responsible for identifying children with special education needs, and for providing or ensuring educational and related services. The state of California through the Department of Education receives over \$1 billion annually for agreeing to comply with the requirements of the IDEA.

In California, prior to 1984, school districts were directly responsible for providing mental health related services to children with special needs. In 1984, with the enactment of AB 3632, responsibility for providing these services was transferred to county mental health departments. AB 3632 was the result of both lawsuits and advocacy to increase special education pupils' access to mental health services.

Under Chapter 26.5 (AB3632, and AB 2726) of the Government Code and Division 9 of Title 2 of the California Code of Regulations, county mental health systems are mandated to provide a range of mental health services as identified on a student's IEP. Under current California law, the IEP is a legally binding contract upon the county mental health department.

County mental health departments were initially allocated to state general fund dollars, approximately \$2-3 million statewide to finance these mental health services for special

education students. It was acknowledged even in 1984 that this allocation was insufficient to pay for AB 3632-linked services.

By 2001-02 fiscal year, categorical AB 3632 funding provided through an allocation by the state Department of Mental Health was only \$12 million, while the actual cost of the program exceeded \$100 million. Counties have historically been reimbursed for these additional costs through the SB 90 local mandate reimbursement process

The Fiscal Crisis for Counties:

- In the 2002-03 fiscal year state Budget, the \$12 million of categorical funding was eliminated entirely and counties were advised to seek compensation for AB 3632 services through the mandate reimbursement process. However, the budget also placed a moratorium on mandate reimbursements for local government that year and thus denied counties reimbursement for the services provided.
- In the 2003-04 state budget, the local mandate reimbursement moratorium was extended for an additional year. In the May Revision to the budget, the Governor acknowledged the federal IDEA mandate on the state, and proposed allocating \$69 million in federal IDEA funds to partially pay for the AB 3632 mental health program. The Legislature approved that funding. The total cost to counties for providing services that year was estimated to be over \$120 million.
- The local mandate reimbursement moratorium was continued in the 2004-05 fiscal year state budget, as was the \$69 million in federal IDEA funds.
- In 2004, one county (San Diego) sued the state, charging that it was violating the state constitution by failing to pay the county for the mandated costs of this program. Three other counties subsequently joined the suit (Orange, Contra Costa, and Sacramento). The counties asked the court to force the state to take back responsibility for the program if it continued to refuse to pay them for providing the services. The Superior Court decided in favor of the counties, and held that counties are relieved of the mandate to provide services if the funding is determined to be inadequate. The court decision recognized that school districts have the ultimate responsibility for providing related mental health services to special education students if counties fail to provide them due to lack of funding.
- The state declined to appeal the Superior Court decision, making the decision final. However, the decision only applies to the four litigant counties. All other counties are still legally required to comply with the mandate despite funding.
- San Diego County subsequently entered into an agreement with local schools to continue providing the mental health services, with the schools assuming responsibility for the cost of the program over and above the county's share of the \$69 million.
- The three other counties who were party to the lawsuit are at various stages in the process of turning the responsibility over to the schools as well.
- The Administration's 2005-06 fiscal year state budget proposes "suspending" the AB 3632 mandate on counties, but continuing the \$69 million in IDEA funds to reimburse

them for providing the AB 3632 services. This adds to the chaos and confusion because:

- Counties would not be eligible for SB 90 mandate reimbursement for their claims beyond the \$69 million.
- Since the mandate is suspended, not repealed, the law mandating counties to provide the services (AB 3632) would remain in place.
- Counties are being forced right now to make budget decisions about what they will do – either discontinue services and assume the schools will pay for the services similar to what has happened in San Diego County, continue to provide services hoping that the Legislature rejects the Administration's proposal, or continue providing the services and cut other mental health services for their target populations. (This last option is not a realistic option for counties given, in light of the \$300 million already owed by the state to counties).
- Parents and families are justifiably concerned about what will happen to their children who are entitled to mental health related special education services.

The County Mental Health Directors Association believes the state has two viable options regarding this program, in order to avoid disruption of services to special education students:

1. Fully fund counties for their costs of providing the state mandated services under AB 3632 this fiscal year, and develop a reasonable plan for repaying past due SB 90 claims;

Repeal the AB 3632 mandate on counties, recognizing that accountability for ensuring the provision of mental health related services under the IDEA rests with education – not local government. Restructure the program so that schools are legally responsible for ensuring that mental health-related services are provided to special education students pursuant to the federal IDEA. Under such a restructured system, county mental health departments would remain committed to maintaining and enhancing their effective collaborative partnerships with education, and to working with all interested stakeholders – including the Legislature, local education agencies, the state Departments of Mental Health and Education, private providers and, most importantly, special education students and their families, in developing a system that continues to meet the mental health needs of special education pupils. If the Governor's proposal to suspend the mandate is approved, ALL counties will be relieved of the mandate.

ITEM 4440 DEPARTMENT OF MENTAL HEALTH

ISSUE 5: EARLY MENTAL HEALTH INITIATIVE (EMHI)

The Governor's Budget proposes a \$5 million Proposition 98 General Fund appropriation for the program.

In the current fiscal year, EMHI has a total appropriation of \$10 million from Prop 98 General Fund. That includes \$5 million in General Fund and \$5 million that was re-appropriated from the Prop 98 Reversion Account. For the budget year, the EMHI appropriation is reduced to only the \$5,000,000 included in the Department's local assistance item. In the 2004-05 fiscal year, the Administration had proposed the elimination of the entire program in the Governor's Budget. Both houses of the Legislature restored the funding in the amount of \$10 million. The Department of Finance made the determination to fund a portion of the legislative augmentation by re-appropriating funds. Since re-appropriations are traditionally one year in duration, only \$5 million remains for the 2005-06 fiscal year.