



October 24, 2011

TO: CMHDA Members

FROM: Kirsten Barlow
Associate Director, Legislation and Public Policy

SUBJECT: Legislation Signed into California State Law during the 2011-12 Session

This memorandum is to inform you about a number of bills that were signed into law this year by Governor Jerry Brown, which CMHDA was closely following and may be of interest to county mental health departments. The bills described in this memo include the following, which are organized by general topic area:

Bullying (starts on page 2)

- AB 9 (Ammiano) - *Pupils Rights: bullying*
- AB 1156 (Eng) - *Pupils: bullying*

Foster Care (starts on page 3)

- AB 212 (Beall) - *California Fostering Connections to Success Act*

Medi-Cal (starts on page 4)

- AB 396 (Mitchell) - *Medi-Cal: juvenile inmates*
- AB 1296 (Bonilla) - *Health Care Eligibility, Enrollment, and Retention Act*
- SB 695 (Hancock) - *Medi-Cal: county juvenile detention facilities*

Mental Health Services Act (starts on page 7)

- AB 989 (Mitchell) - *Mental health: children's services*

Inmates: Involuntary Psychotropic Medication (starts on page 7)

- AB 1114 (Lowenthal) - *Inmates: involuntary administration of psychotropic medications*

Healthy Families (starts on page 8)

- SB 36 (Simitian) - *County Health Initiative Matching Fund*

Please do not hesitate to contact me with any questions you may have. I can be reached at (916) 556-3477, ext. 112, or kbarlow@cmhda.org.

Bullying

AB 9 (Ammiano) Pupils Rights: bullying.

What Does the New Law Do? This legislation, also known as “Seth’s Law”, requires each school district to include in its non-discrimination policy an enumerated list of the bases on which discrimination, harassment, intimidation, and bullying are prohibited under existing law (i.e., actual or perceived sexual orientation, gender, gender identity expression, race or ethnicity, nationality, religion, disability, or association with a person or group with one or more of these actual or perceived characteristics). Additionally, the legislation:

- Requires schools to include in their complaint procedures a method for receiving and investigating discrimination and harassment complaints, as well as to act on discrimination and harassment complaints expeditiously so that investigation and resolution may be reached quickly;
- Requires school faculty and staff to intervene when they witness acts of bullying; and
- Requires the California Superintendent of Public Instruction to post and periodically update on the California Department of Education website a list of statewide resources, including community-based organizations that provide support to youth and their families who have been subjected to school-based discrimination, harassment, intimidation, and bullying.

Background: According to Equality California, the bill sponsor, in September 2010, 13-year-old Seth Walsh tragically took his own life after years of relentless harassment based on his sexual orientation and gender expression. Seth’s mother and close friends report that teachers and school administrators were aware that Seth was being harassed and, in some instances, participated in the harassment. School-based harassment, discrimination, intimidation and bullying can create a school climate of fear and disrespect that can result in conditions that negatively affect learning. According to Assemblyman Ammiano, “Research shows that students who are harassed at school frequently suffer long-term social, emotional, and psychological harm. The most effective way to reduce the harm is to create a school-wide culture of inclusion and respect for differences.”

Implications for Counties: This legislation may be of interest to county mental health departments, particularly as they plan, design, and implement Mental Health Services Act (MHSA) programs, including student mental health and anti-stigma/discrimination projects. CMHDA supported this bill.

AB 1156 (Eng) Pupils: bullying.

What Does the New Law Do? This legislation adds training in the prevention of bullying as a component in the workshops provided by the California Department of

Justice and the California Department of Education to school districts, county offices of education, and school-site personnel to assist them in the development of school safety and crisis response plans. Additionally, the legislation:

- Encourages school safety plans to include policies and procedures aimed at the prevention of bullying when those plans are updated and reviewed;
- Gives priority consideration for inter-district attendance agreements to pupils who have been determined by school personnel to have been the victim of an act of bullying by another pupil; and
- Specifies that "bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils engaging in sexual harassment, hate violence, harassment, threats, or intimidation directed toward one or more pupils that has or can be reasonably predicted to have specified effects of harm on a pupil.

Background: School-based harassment, discrimination, intimidation and bullying can create a school climate of fear and disrespect that can result in conditions that negatively affect learning.

The author states, "AB 1156 will address the issue of bullying in a comprehensive and effective manner by requiring the training of school site personnel in the prevention of bullying, providing a mechanism under which the option is available for the student who is the target of an act of bullying to be removed from an unhealthy setting, and expanding the definition of bullying by linking it to such impacts, as academic achievement and participation. The goal is to provide a safe environment designed to support a healthy learning experience for every child."

Implications for Counties

This legislation may be of interest to county mental health departments, particularly as they plan, design, and implement MHSA programs, including student mental health and anti-stigma/discrimination projects. CMHDA had a "Watch" position on this bill.

Foster Care

AB 212 (Beall) California Fostering Connections to Success Act.

What Does the New Law Do? This bill makes various revisions to the provisions of law enacted by Chapter 569, Statutes of 2010 (AB 12, Beall), the California Fostering Connections to Success Act, which extended transitional foster care to eligible youth up to age 19 in 2012, age 20 in 2013, and upon appropriation by the Legislature, age 21 in 2014 as a voluntary program for youth who meet specified work and education participation criteria. This bill revises and expands the scope of various programs relating to the provision of cash assistance and other services to and for the benefit of certain foster and adopted children, and other children who have been placed in out-of-home care, including children who receive AFDC-Foster Care, Adoption Assistance

Program, CalWORKs, and Kinship Guardianship Assistance Payment (Kin-GAP) benefits. Some of the additional key provisions of the bill are summarized below:

- Pursuant to recent federal guidance, replaces the "trial independence" reentry provisions with "voluntary re-entry placement agreement," which provides former foster youth who opt out of extended foster care with the option of reentering foster care by signing a voluntary placement agreement as his or her own guardian;
- Adjusts the way wards can opt in to foster care beyond their 18th birthday without having to prolong their delinquent status;
- Clarifies that participation in activities meant to address a medical condition does not disqualify an individual from a group home placement after age 19 if that placement is warranted by the youth's condition; and
- Provides the authorization for counties to request, and the California Department of Justice to process and release, criminal background information needed to approve Transitional Housing Program (THP)-Plus Foster Care providers in compliance with state and federal law.

Background: This bill is intended as the clean-up to the California Fostering Connections to Success Act of 2010, also known as AB 12. According to the author, as AB 12 has been reviewed and assessed for implementation by stakeholders following enactment, requests for needed clarifying and technical changes have emerged. This bill also includes various changes to state law needed for compliance with federal law, unrelated to AB 12 of 2010.

Implications for Counties: As this and prior legislation provide for the extension of transitional foster care up to age 20, this bill may be of interest to county mental health departments which often work closely with county child welfare departments and provide Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) coverage for foster youth, up to age 21. This extension of eligibility under foster care may impact county mental health plans to the extent they are becoming financially responsible for EPSDT coverage beginning in FY 2012-13 under 2011 Realignment. CMHDA had a "watch" position on this bill.

Medi-Cal

AB 396 (Mitchell) Medi-Cal: juvenile inmates.

What Does the New Law Do? AB 396 requires the Department of Health Care Services (DHCS) to develop a process to allow counties and the Division of Juvenile Facilities of the Department of Corrections and Rehabilitation (CDCR) to obtain federal funds for inpatient hospital and psychiatric services provided to Medi-Cal eligible juveniles. The bill specifies that participating minors must be detained in either a juvenile detention facility or probation camp, whether it is state or county-run. While the measure would require DHCS to develop a process to allow counties to collect federal reimbursement for outpatient medical care, the author points out that current law

already authorizes DHCS to implement a similar reimbursement system for adult detainees. The bill specifies that its provisions shall be implemented only to the extent that any necessary federal approval is obtained and existing levels of federal financial participation are not jeopardized. DHCS is required to consult with counties in the development of the process required in the bill.

Background: Currently, when counties detain minors in a juvenile detention facility or probation camp, their Medi-Cal benefits are suspended. Most minors that are taken into custody are from low-income families and would generally be eligible for Medi-Cal benefits. Therefore, when a minor is in custody and is in need of medical services the counties are burdened with the total costs. Medical care is provided for these wards in juvenile detention facilities. However, many minors who are detained require medical care that is outside of the medical services available within the facility. Existing federal law, with certain exceptions, excludes federal financial participation for medical care provided to any individual who is an inmate in a public institution, and existing state law suspends Medi-Cal benefits, for a specified period of time, to an individual under 21 years of age who is an inmate of a public institution. Existing state law also provides that no person shall be denied benefits, for whom and for which federal financial participation is available, based solely on the individual's incarcerated status in a county or city jail or juvenile detention facility. This bill was sponsored by Los Angeles County.

Implications for Counties: If federal approval is obtained, this bill will reduce fiscal strain on counties by allowing them to seek Medi-Cal reimbursement for inpatient hospital and psychiatric treatment of minors who are outside of the county detention facility for more than 24-hours. The bill makes it voluntary for counties that elect to provide the nonfederal share of expenditures for the services, as well as the state's administrative costs. CMHDA recommends that members consult with local probation departments related to the potential implementation of the bill. CMHDA supported this bill.

AB 1296 (Bonilla) Health Care Eligibility, Enrollment, and Retention Act.

What Does the New Law Do? This bill enacts the Health Care Reform Eligibility, Enrollment, and Retention Planning Act, which requires the California Health and Human Services Agency, in consultation with specified entities, to establish standardized single, accessible application forms and related renewal procedures for state health subsidy programs. The bill requires the agency to provide specified information to the Legislature by July 1, 2012 regarding policy changes needed to implement the bill. The application development requirements of the bill would otherwise be operative January 1, 2014.

Background: The Affordable Care Act (ACA) became law in 2009 and requires a coordinated approach for determining eligibility for and enrolling consumers in health care coverage, including Medi-Cal, Healthy Families, and the new California Health Care Exchange. Assembly Bill 1296 would ensure that California's health care enrollment system is well-positioned to implement the ACA requirements in 2014, while

also ensuring that the system works for individuals and families across the spectrum of income and needs.

As the entities that conduct Medi-Cal eligibility determinations and ongoing case work, as well as providers of needed services to our residents, counties supported numerous specific provisions of this bill, including:

- Creation of a “no wrong door” system;
- Streamlining eligibility rules among Medi-Cal, premium subsidies in the Exchange, and the Healthy Families Program;
- Requiring the creation of a single statewide application – paper and electronic – for all systems and entities accepting and processing applications and eligibility; and
- Maximizing coordination and enrollment in other public programs, such as CalWORKs and CalFresh.

Implications for Counties: County advocates believe this bill is an excellent start to creating a comprehensive health care enrollment system in California, and also recognize there will be numerous technical issues to work through in the coming year to create an integrated approach to enroll health care consumers. For example, the federal government will be issuing guidance that will impact how to incorporate county-based programs in the enrollment provisions. Until such guidance is issued, it will be difficult for California to fully design its enrollment system. Counties have indicated to the Administration that we want to assist in further developing these provisions in the coming year. CMHDA will work with other county affiliates, including the California Welfare Directors Association (CWDA), on implementation issues related to this bill. CMHDA supported this bill.

SB 695 (Hancock) Medi-Cal: county juvenile detention facilities.

What Does the New Law Do? This bill, subject to the receipt of federal financial participation, would, until January 1, 2014, provide that Medi-Cal benefits may be provided to an individual awaiting adjudication in a county juvenile detention facility if the individual is eligible to receive Medi-Cal benefits at the time he or she is admitted to the detention facility, or the individual is subsequently determined to be eligible for Medi-Cal benefits, and the county agrees to pay the state’s share of Medi-Cal expenditures and the state’s administrative costs for the above-described benefits and implementation of these provisions. This bill would provide for continuation of the Medi-Cal benefits until the date of the individual’s adjudication, after which benefits would be suspended as provided in specified existing law, if the individual is an inmate of a public institution.

Background: This bill was sponsored by Alameda County to establish a funding mechanism to provide relief to counties for providing health services to Medi-Cal beneficiaries at 100% county cost. This bill increases federal funding and reduces county funding spent providing primary care and mental health services to youth awaiting adjudication in juvenile hall. According to the author and sponsor, this bill was

based on a program established in New Mexico in 2000 that allows receipt of federal funding for health services for juveniles in temporary custody. Representatives of Alameda County indicate that the majority of the medical services provided to youth in the juvenile justice system are provided while they are awaiting adjudication, because most youth are not actually incarcerated.

Implications for Counties: If federal approval is obtained, this bill will reduce fiscal strain on counties by allowing them to draw down federal Medi-Cal reimbursement to help defray the cost of providing medical and mental health care to juveniles awaiting adjudication in county facilities. CMHDA had a “watch” position on this bill.

Mental Health Services Act

AB 989 (Mitchell) Mental health: children’s services.

What Does the New Law Do? This bill would require county mental health programs, in providing Mental Health Services (MHSA) services for transition age youth, to consider the needs of transition age *foster youth*.

Background: Currently, the Mental Health Services Act requires county MHSA services to include services to address the needs of transition age youth (TAY) ages 16 to 25. This bill requires that, as counties implement this current requirement, they consider the needs of transition age *foster youth*. The original version of the bill was more prescriptive because it required counties to provide MHSA services to transition age foster youth, rather than simply consider the needs of this population. CMHDA negotiated with the author and sponsors of the bill (Children’s Advocacy Institute) to make the bill less prescriptive than originally drafted.

Implications for Counties: As county mental health departments develop local MHSA implementation plans for serving TAY, they are now required to consider the needs of transition age foster youth. Once the bill was amended as requested by CMHDA, we took a “support” position on this bill.

Inmates: Involuntary Psychotropic Medication

AB 1114 (Lowenthal) Inmates: involuntary administration of psychotropic medications.

What Does the New Law Do? This bill defines the procedures under which the Department of Corrections and Rehabilitation (CDCR) may obtain an order from an administrative law judge to authorize involuntary administration of psychotropic medication to an inmate. AB 1114 codifies due process protections for inmates with serious mental illness that may benefit from administration of psychotropic medications, and strikes an appropriate balance in ensuring that inmates are provided with appropriate mental health treatment that is not inconsistent with their individual rights.

The bill ensures that a prisoner is provided with appropriate mental health treatment consistent with his or her rights, including the right to counsel and the evidentiary standard of clear and convincing evidence. The prisoner's mental health history will be considered on the issues of whether or not the prisoner is gravely disabled or a danger to self or others. AB 1114 continues to authorize emergency administration of medication, but requires CDCR to obtain an ex-parte order if the emergency extends five days beyond appointment of counsel. Perhaps most important, approval of involuntary medication will be shortened from 47 days to no more than 30 days, thereby improving outcomes for mentally ill inmates.

Background: In the 1986 Keyhea decision, the court issued an injunction directing that prisoners subject to involuntary administration of psychotropic medication be afforded the same rights as non-prisoners. At that time, no statutes defined the rights of non-prisoners concerning involuntary medication. Therefore, courts adopted the procedures used when a court civilly commits a person as gravely disabled or a danger to self or others. These procedures include increasingly stringent reviews and hearings depending on the length of the commitment. The Keyhea injunction also adopted statutes that define terms utilized to determine whether a person should be removed from society for commitment to a mental hospital. California Penal Code Section 2600 was amended in 1994 to place the Keyhea injunction in statute. AB 1114 codifies, and in some cases strengthens, the existing due process protections.

Implications for Counties: Particularly under Realignment 2011, wherein counties will take on increasing responsibilities for criminal justice populations, it is vital for psychotropic medications to be sustained during an individual's time spent in a prison setting so that, upon release, the individual's mental illness symptoms are being appropriately treated. CMHDA supported this bill.

Healthy Families

SB 36 (Simitian) County Health Initiative Matching Fund.

What Does the New Law Do? This bill allows local County Health Initiative Matching Fund (CHIMF) programs to draw down federal matching funds to provide health insurance coverage to eligible children with family incomes at or below 400% federal poverty level (FPL), instead of up to 300% of the FPL in existing law, and requires persons receiving this coverage be ineligible for no share of cost Medi-Cal coverage and either ineligible for the Healthy Families Program or unable to enroll in the program as a result of specified enrollment policies due to insufficient funds. The bill requires the Managed Risk Medical Insurance Board (MRMIB) to obtain necessary federal approvals prior to implementing the bill.

Background: AB 495 (Diaz), Chapter 648, Statutes of 2001, established the CHIMF to allow county entities to use county funds to draw down federal dollars from California's federal CHIP allotment. There are three counties that provide coverage drawing down federal funds through CHIMF to cover children who would be eligible for the Healthy

Families Program, but who do not qualify because of family income: San Mateo, San Francisco, and Santa Clara. San Francisco and Santa Clara cover children with incomes at or below 300% of FPL, while San Mateo covers children up to 400% of FPL. This bill is sponsored by San Mateo County, which stated that during the 2009-10 state budget deliberations, an enrollment cap in Healthy Families resulted in thousands of children statewide being placed on a waiting list for coverage while children in higher income brackets were able to enroll in locally funded programs. In addition, without the statutory authority to draw down federal funding for children between 300% and 400% FPL, hundreds of children in San Mateo County and others across the state could go without important health coverage.

Implications for Counties: If MRMIB obtains federal approval, this bill allows a county, a county agency, a local initiative, or a county organized health system that elects to use local funds to draw down federal funds through an intergovernmental transfer to MRMIB to provide health care and mental health coverage [including the expanded Healthy Families-Seriously Emotionally Disturbed (SED) benefit] to eligible children whose family income is at or below 400% of the federal poverty level. CMHDA had a “watch” position on this bill.

