

ITEM 12

Paula Higashi

From: Fong, Lorna (CHHS) [lfong@chhs.ca.gov]
Sent: Thursday, January 18, 2007 11:47 AM
To: Paula Higashi
Cc: Borunda, Michael@DMH; Mayberg, Stephen@DMH; Appel, Steve@DMH; Guzman, Jaime@DMH
Subject: DMH Report Summary
Attachments: CSM overview of AB 3632.doc

Executive Director Higashi: Attached please find a summary of the requirements in AB 3632, which should provide an appropriate context to the county data you already have. If you have additional questions or need further explanations, please feel free to contact me or Jaime Guzman, Chief of Legislation, Department of Mental Health at 654-2448 or Jaime.Guzman@dmh.ca.gov

Thank you.

Lorna M. Fong
Assistant Secretary
California Health and Human Services Agency
(916) 651-8058 Voice
(916) 440-5004 Fax
lfong@chhs.ca.gov

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1/22/2007

Summary of Special Education Program- AB 3632

BACKGROUND

The Special Education Pupils Program (Chapter 1747, Statutes of 1984, Assemblyman Brown), implements the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et. seq.) that entitles disabled pupils to a free and appropriate public education. The original state legislation (AB 3632) was passed in 1985; however the final state regulations were not adopted until 1999. The program is codified in Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and Division 9 of Title 2 of the California Code of Regulations. On December 3, 2004, the President signed the reauthorized Individuals with Disabilities Education Act of 2004 (IDEA 2004) into law. Most provisions in the new law took effect on July 1, 2005.

The Department of Mental Health and county mental health department programs began formal involvement with the services to special education pupils in 1985. This program provides special education pupils with mental health services to enable them to benefit from special education. Special education pupils aged 3 to 22 who need mental health services to attain educational benefit are eligible for this program or until they graduate from high school with a regular diploma, whichever comes first. All services must be provided free of charge regardless of family income or resources.

Chapter 26.5 requires county mental health departments to provide services to special education pupils (within any of 13 qualifying disability categories) who require those services to benefit from their education. A mental health treatment plan is developed for each pupil created within the Individualized Education Program (IEP) by a team composed of school personnel, the child's parent, the child when appropriate, and a mental health representative. The program encourages collaboration between parents, education and mental health to maximize the benefit of interventions to these pupils, and requires both local and state level memorandums of understandings between mental health and education. County mental health (CMH), local education, and county social services each have programmatic and fiscal responsibilities.

County mental health departments now provide eligible pupils with mental health assessments, mental health service recommendations, and "mental health services," including individual, group, and collateral services, medication monitoring, day rehabilitation, and/or intensive day treatment. Case management is provided when residential treatment is required. Services may be provided at schools, clinics, or other locations. Approximately 29,000 pupils received mental health services under Chapter 26.5 in 2003 according to DMH data sources.

Under current California law, the IEP is a legally binding contract upon the county mental health department. Mental health services, pursuant to state and federal requirements, must be provided free of charge to eligible special education pupils. This program is subject to litigation in fair hearings and mediations, compliance complaints

and interagency disputes, which are part of the educational due process rights of pupils and agencies.

Funding the Chapter 26.5 Services

From 1985 to Fiscal Year (FY) 2002/03 Chapter 26.5 services were funded by as many as five sources: 1) an annual allocation (\$12.3 million in 2001/02) from the Department of Mental Health (DMH) to the counties, 2) reimbursements from the State Mandates Commission Claims fund, 3) use of county "Children's System of Care" dollars (discretionary funds that included this target population of children and youth), 4) reimbursements from Medi-Cal for services provided to full scope beneficiaries and 5) county realignment funds (Vehicle License Fees and sales tax). The amount that was estimated to be claimable through the Commission on State Mandates Claims fund was approximately \$105 million in FY 01/02.

With the passage of the Budget Act of FY 02/03 two important funding decisions were made: 1) the DMH appropriation for the Chapter 26.5 services (\$12.3 million) was moved into the Commission on State Mandates appropriation and the payments for county claims submitted through the Mandates Claims were deferred, and 2) the Children's System of Care allocations were reduced further (\$20 million, down from \$40 million in FY 1999/00). The deferral on Mandates Claim's reimbursements was continued in FY 03/04.

In FY 03/04 the Budget directed \$69 million in federal IDEA funds to county offices of education for use by county mental health for Chapter 26.5 services, and required county offices of education to contract for these services with county mental health. In FY 03/04 counties claimed \$67 million in Mandates Claims for this program; however no funds were included in the Budget for this purpose. The Budget also directed \$31 million in IDEA funds to local education agencies (LEA) to perform short-term, school-based services before referring a child to their local CMH for Chapter 26.5 services (also known to DMH as "pre-referral" services).

The FY 04/05 and 05/06 Budgets included new appropriations of \$60 million in State General Funds (SGF) for Mandates Claims, as well as the \$69 in federal IDEA funds begun in FY 03/04. Counties filed approximately \$82.5 million in Mandate Claims in FY 04/05 and \$84.5 million in FY 05/06. Proposition 1A, passed in November 2004, requires the Legislature to fund local government mandates, or their operation can be suspended. While this ensures funding for current and future years, the proposition does not address funds owed from past years.

The Budget Act of FY 06/07 added another \$60 million for the Mandate Claims: \$30 million each for FY 04/05 and 05/06, which covers the shortfalls for those years. A new DMH appropriation of \$52 million in SGF was also included in the FY 2006/07 Budget, for distribution to county mental health. The \$69 million in federal IDEA funds was continued. No funds were appropriated for Mandates Claims; however, the mandate remains in place with the SGF appropriation as an offset. AB 1807 (Chapter 74,

Statutes of 2006) requires CMH and COE to adopt a MOU for FY 07/08 in order for CMH to receive their portion of the \$52 million SGF in FY 07/08.

LOCAL RESPONSE TO FISCAL ISSUES:

The fiscal climate at the county level has reduced the capacity of county mental health departments to meet the requirements of Chapter 26.5. The loss of revenues mentioned above, along with increasing demands upon their systems by uninsured consumers has taken out any "excess" capacity. The lack of adequate funding or timely reimbursements of counties for these mandated services impacts the county level interagency service delivery system.

ESTIMATED COST:

The provision of Chapter 26.5 mental health services is estimated to cost in the range of \$150 to 160 million per year in addition to the Medi-Cal state share of costs payments (total Medi-Cal expenditure was \$93 million in 2004/05). An estimated total of \$85 to \$90 million of SGF, excluding the state share of Medi-Cal, supports these activities. The clarification and consolidation of the Mandates Claims Parameters and Guidelines may increase the actual program costs in future years. This estimate for Chapter 26.5 services does not include the payment for residential placements authorized by IEP's: approximately 1,500 special education pupils are placed out of home as part of their special education plan. County social services departments pay for the residential costs, utilizing AFDC-IV E dollars for children who are federally eligible, otherwise the state SED fund.

[Note: Health services (DHS - Children's Medical Services Division) pays for any occupational or physical therapy that a child may need in this program.]