

M.A. Bernard



July 19, 2021

Dear Tiffany and Dylan,

This is an “FYI” memo intended to convey information you may not know. (I hope your offices are talking to each other—your call, obviously. At least each of you will know what I do.)

First, the Budget bill passed in June, AB 134, contained language¹ postponing the deadline for MHS 3 year plans until next June, and authorizing counties to use their prudent reserve of PEI money for

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(2) For purposes of this subdivision, “COVID-19 Public Health Emergency” means the federal Public Health Emergency declaration made pursuant to Section 247d of Title 42 of the United States Code on January 30, 2020, entitled “Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus,” and any renewal of that declaration.

(i) Notwithstanding paragraph (7) of subdivision (b) and subdivision (f), a county may, during the 2020–21 and 2021–22 fiscal years, use funds from its prudent reserve for prevention and early intervention programs created in accordance with Part 3.6 (commencing with Section 5840) and for services to persons with severe mental illnesses pursuant to Part 4 (commencing with Section 5850) for the children’s system of care and Part 3 (commencing with Section 5800) for the adult and older adult system of care. These services may include housing assistance, as defined in Section 5892.5, to the target population specified in Section 5600.3.

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services including housing for the severely mentally ill. I gave the Sac County Behavioral Health staff this language at the 7/15 MHSA Steering Committee meeting—but they are still inclined to submit their Three Year Plan to the Board of Supervisors in August or early September, according to Jane Ann Zakhary, the cheerful and cooperative staff budget person with whom I spoke this morning. She says that any changes to the present 3 year plan would have to go to the county MHSA Steering Committee for approval and then through a notice and comment procedure before going to the BOS for final approval. The BOS will reconsider and update the county budget in September, she says. It seemed very clear that the Behavioral Health staff does not welcome any changes in the Three Year Plan at this point, though Ms. Zakhary indicated that it can be changed mid-cycle, using the same procedure and

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approval by the BOS. (She did not seem to know whether new and unanticipated information was required for such a change.)

The ACLU may therefore wish to consider having their counsel contact county counsel (or whoever represents Sac County in the pending litigation) to ask that consideration of the Three Year Plan be postponed as permitted by the Legislature so that any existing surplus can be used as promptly as possible for the diversion programs necessitated by the pending litigation.

Ms. Zakhary was unaware of the MHSA mandate for jail diversion and re-entry programs, though it has been in the MHSA since the beginning. (I sent her the language.)² She also seemed surprised by the idea that if the statute requires certain programs, the Steering Committee has to approve them whether they want to or not. Again, the ACLU may wish to ask county counsel to make sure the Steering Committee follows the law in this regard. (In the Steering Committee meetings I have attended, I witnessed considerable ignorance and indifference to what MHSA actually provides, sometimes even on the part of staff.)

Ms. Zakhary was understandably extremely cautious about predicting the amount of any surplus in the MHSA budget, but she hopes to have solid figures derived from actual April through June budget receipts from DHCS and the Controller later this month. She already admitted on the record in an earlier Steering Committee meeting that the combined CSS and PEI surplus for 2020-2021 that I came up with--**\$66,592,613.00 surplus** for CSS for 2021-2022 and a **\$8,724,316.00 surplus** for PEI--was accurate "at a point in time." She told me this morning that revenues have greatly outstripped predictions, that CSS is not currently being overspent (contrary to what was said publicly earlier), and that PEI is a "closer question." She promised to send me the latest documentation when it is available.

The hurry to finalize the Three Year Plan seems senseless to me, given the possibility of a huge surplus and the tremendous current need for diversion and re-entry services, as well as other programs. Obviously, I have no control over this. (I actually got myself on the Steering Committee, but was pushed off again as soon as I started asking questions, allegedly because letting me on was a "mistake" as there were no vacancies.) I'd be happy to write a letter to the BOS recommending postponement. But it would get far more attention if it came from the Public Defender and/or the ACLU.

Good luck to both of you in getting some of these funds for desperately-needed diversion programs.

² Welf.& Inst. Code Secton 5815.3(f) provides, in relevant part:

Each county plan and annual update pursuant to §5847 **shall** consider ways to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison. *Funds may be used to provide services to persons who are participating in a presentencing or postsentencing diversion program or who are on parole, probation, postrelease community supervision, or mandatory supervision....(Italicized language added by Stats. 2019, Ch. 209, Sec. 1. (SB 389) Effective January 1, 2020.)*(Emphasis added.)