

EL DORADO COUNTY GRAND JURY 2018-2019



MENTAL HEALTH SERVICES ACT FUND SPENDING

CASE 18-02 • MAY 23, 2019

Public Release

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The Mental Health Services Act (MHSA) was approved by California voters as Proposition 63 in 2004. It became effective January 1, 2005, establishing the Mental Health Services Fund (MHSF). Its purpose is to provide funding, personnel, and other resources to support county mental health programs. The Grand Jury became interested after reviewing the California State Auditor's Report 2017-117, *Mental Health Services Act-The State Could Better Ensure the Effective Use of Mental Health Services Act Funding* and the California State Department of Health Care Services Report, *Mental Health Services Funds-Amounts Subject to Reversion Before July 1, 2017*. These reports show El Dorado County having \$3.6 million that had not been spent in the required time frame and was subject to reversion back to the State as of July 1, 2017. Given the need for mental health funds in the County, the Grand Jury questioned why funds allocated to El Dorado County specifically for mental health services were not being spent in a timely manner.

BACKGROUND

The Mental Health Services Act provided the first opportunity in many years for the California Department of Mental Health (DMH) to make increased funding, personnel and other resources available for county mental health programs. It addressed a broad continuum of prevention, early intervention, and service needs, along with the necessary infrastructure, technology, and training elements to effectively support this system. The act established the Mental Health Services Fund. Revenue for the MHSF is generated from a one percent tax on personal income in excess of one million dollars that is deposited into the Fund annually. The Fund provides personnel and other resources to support county mental health programs that monitor progress towards state wide goals for children, transition age youth, adults and older adults, and families.

The Act was anticipated to generate \$254 million Statewide in Fiscal Year (FY) 2004-2005 and \$683 million in FY 2005-2006, with annual increases thereafter. The 2018-2019 Governor's Budget shows \$1.8 billion was deposited into the MHSF in FY 2016-2017 and projected that \$2.1 billion would be deposited in FY 2017-2018 and \$2.2 billion in FY 2018-2019.

Program Components

The California Department of Health Services distributes funds monthly to all 58 California counties. Originally, the MHSA specified that funds be distributed in five components:

- Community Services and Support (CSS)
- Capital Facilities and Technological Needs (CF/TN)
- Workplace Education and Training (WET)
- Prevention and Early Intervention (PEI)
- Innovation (INN)

Community Services and Support provides mental health treatment, health care treatment, and housing assistance. It includes full-service partnerships under which local mental health agencies plan for and provide a full spectrum of community services in collaboration with consumers and their families when appropriate. Services include mental health and support, such as peer support and crisis intervention, and others such as food, clothing, housing and medical treatment. Example: Alameda County contracted with a vendor to provide a full-service partnership for homeless adults. The partnership provides a range of services, with a focus on community service, peer support, and stable housing.

Capital Facilities and Technological Needs creates additional infrastructure, such as clinics and facilities, and develops technological infrastructure for the mental health system, such as electronic health records for mental health services. Example: Alameda County purchased and renovated a property to develop a behavioral health care support center.

Workforce Education and Training provides recruitment of new employees, training for existing employees, and financial incentives for recruitment and retention of employees within the public mental health system. Example: San Diego County contracted with a vendor to provide training and continuing education for county mental health services staff.

Prevention and Early Intervention provides services to help prevent individuals' mental illnesses from becoming severe and disabling, including efforts to reduce the stigma and discrimination associated with mental illness diagnoses and with seeking mental health services. It requires that projects emphasize strategies to reduce seven negative outcomes from untreated mental illness. They are suicide, incarceration, school failure or dropout, unemployment, prolonged suffering, homelessness, and removal of children from their homes. Example: San Diego County contracted with a vendor to conduct a media campaign to increase awareness and understanding of mental illness, prevent suicide, and reduce the stigma associated with mental illness.

Innovation develops either new mental health practices or approaches, or changes to existing practices or approaches. It requires that projects increase access to services, increase the quality of services, and promote interagency collaboration, among other things. Example: Riverside County created a new service model that provides mental health services within the context of a partnership involving consumers, their families, supportive individuals, and providers. The service is designed to empower family members to become the primary supports in facilitating the recoveries of individuals with mental illnesses.

In addition to the components listed above, counties may move MHSA funds into a reserve account, used to compensate for annual overspending or when monthly MHSF revenues fall below projections. It allows counties funding flexibility for existing programs in the Community Services and Support and Prevention and Early Intervention components.

MHSA Program Changes

Due to recent changes in the MHSA program, monies are no longer provided by the State for the *Capital Facilities and Technological Needs* and the *Workforce Education and Training* categories. Money is now distributed into the following components:

Community Services and Support -76%
Prevention and Early Intervention -19%
Innovation -5%

Counties may still maintain balances in the *Capital Facilities and Technological Needs* and *Workforce Education and Training* categories until that money is spent or has reverted to the State.

Counties can move provided funds from *Community Services and Support* to another component, when necessary.

In 2017, State law was amended to extend the time frame for local mental health agencies to spend *Community Support, Prevention, and Innovation* program funds from three years to five years.

METHODOLOGY

- Reviewed the California State Auditor Report 2017-117, *Mental Health Services Act-The State Could Better Ensure the Effective Use of Mental Health Service Act Funding*, dated February 2018. (Attachment A)
- Reviewed the California State Department of Health Care Services Report, *Mental Health Services Act Funds-Amounts Subject to Reversion Before July 1, 2017*, dated October 1, 2018. (Attachment B)
- Reviewed the *Mental Health Services Act (Revised January 04, 2018)*. (Attachment C)
- Reviewed the *El Dorado County Mental Health Services Act Three-Year Program and Expenditure Plan*, approved on June 20, 2017 (Attachment D)
- Reviewed the *El Dorado County Mental Health Services Act Annual Update, Fiscal Year 2018-2019*, approved on June 28, 2018 (Attachment E).
- Reviewed the California Department of Health Care Services Website for information pertinent to the Mental Health Services Act.
- Interviewed elected and appointed County officials knowledgeable in El Dorado County Mental Health Services Act funding.
- Interviewed individuals from the Health and Human Services Mental Health Services Act Project Team knowledgeable in County Mental Health Services Act funding.
- Interviewed individuals from the Health and Human Services Fiscal Office knowledgeable in the Mental Health Services Act accounting for the County.

DISCUSSION

MHSA funds distributed to El Dorado County vary from year to year, but average about \$8 million annually. In February 2008, the California State Auditor reported that El Dorado County had an MHSA fund balance of \$12,128,000.

By law, counties originally had three years to expend the funds distributed for Community Services and Support, Prevention and Early Intervention, and Innovation. Counties were given ten years to expend funds distributed in Capital Facilities and Technological Needs, and Workforce Education and Training components. Recent program changes have extended the timeframe in which Counties must expend funds for Community Services and Support, Prevention and Early Intervention and Innovation from three to five years. Funds not spent in the required timeframe will be recovered by the State for redistribution.

The Grand Jury began to investigate after reviewing the California State Auditor's Report 2017-117, *Mental Health Services Act-The State Could Better Ensure the Effective Use of Mental Health Services Act Funding* and the California State Department of Health Care Services Report, *Mental Health Services Funds-Amounts Subject to Reversion Before July 1, 2017*. Both reports showed that El Dorado County had approximately \$3.6 million that had not been spent in the required time frame and therefore was subject to reversion back to the State as of July 1, 2017. Fortunately for El Dorado County, the Legislature passed a one-time exemption which stopped the reversion of these funds. This exemption was not permanent; it just reset the clock on the expenditure of the funds, which are still subject to reversion if not spent within the newly required timeframe.

Currently, El Dorado County has the following dollar amounts subject to reversion in the following timeframes, by category:

Community Services and Support

- \$4,425,957 will be reverted if not spent by July 1, 2022

Prevention and Early Intervention

- \$1,435,140 will be reverted if not spent by July 1, 2020
- \$1,240,928 will be reverted if not spent by July 1, 2021
- \$1,575,342 will be reverted if not spent by July 1, 2022

Innovation

- \$1,783,832 will be reverted if not spent by July 1, 2020
- \$224,526 will be reverted if not spent by July 1, 2021
- \$410,287 will be reverted if not spent by July 1, 2022

Workforce Education and Training

- \$74,166 will be reverted if not spent by July 1, 2028

Capital Facilities and Technological Needs

- \$266,824 will be reverted if not spent by July 1, 2020
- \$500,000 will be reverted if not spent by July 1, 2027

The amounts listed above total over \$11 million in County MHSAs that could revert to the State, with millions more added each year. With the need for mental health services in the County, it is sensible that the County have a plan to properly and completely spend MHSAs in a timely manner. With approximately \$3.6 million the County recently almost lost to reversion, it is logical to assume the County's previous plan has not been completely executable or not adequately implemented.

The Mental Health Services Act (MHSA) requires the County to complete a new plan every three years and to update that plan every year. MHSAs and updates are posted for a 30-day comment period, after which the County Mental Health Commission holds public hearings to solicit additional input. The final part in the process is approval by the County Board of Supervisors. Planned spending for the Innovation component must also be approved by the State Mental Health Services Oversight and Accounting Commission (MHSOAC). If the plan or update is modified or changed during the year, the entire process for the change or update must be repeated.

Reversion of unspent funds to the State was a common issue for most California counties. Santa Cruz, Sonoma, and Tuolumne expended all funds allocated to them prior to the reversion deadline. This was a significant fact to the Grand Jury. In numerous interviews, we asked if those three counties had been contacted to determine how they were able to expend all funds. In all cases, the response from interviewees was that, to their knowledge, no such contact was made.

Several individuals knowledgeable in the development and execution of the El Dorado County MHSAs were interviewed. They reported four primary issues responsible for the inability of the County to spend allocated funds in a timely manner. They are:

Difficulty in determining appropriate programs for spending *Innovation category* funds and obtaining State approval

By MHSAs definition, *Innovation projects* must be new projects that have never been tried before. Identifying projects of this type is inherently challenging. There are extensive regulations, changes to regulations, and proposed amendments that make obtaining approval of Innovation programs by the MHSOAC problematic. When an Innovation program is not approved, funds may not be spent for that program, which often results in underspending in that component. The majority of County MHSAs subject to reversion by July 1, 2017 were in the Innovation component.

Lack of ability to fill vacant positions in a timely manner

The *El Dorado County Mental Health Services Act Annual Update* for Fiscal Year 2018-2019 reports:

El Dorado County Budget Philosophy

El Dorado County is a fiscally-conservative county. This means that 100% of expenditures are budgeted, even though the Behavioral Health Division historically comes in under budget in expenditures. For example, the staffing vacancy rate is approximately 7-8%, and therefore, staffing and benefits are regularly under budget estimates.

The two reasons reported for this vacancy rate are high staff turnover and a shortage of qualified applicants. Numerous interviewees advised the Grand Jury that it was common for individuals to accept a position in El Dorado County to gain job experience and obtain required work hours needed for certification. After those goals were achieved, many employees would leave El Dorado County for positions in neighboring counties where they were paid higher wages. In addition, we are hindered by a shortage of qualified applicants, due at least in part to the rural nature of El Dorado County.

Failure to meet plan's goals and objectives

There are many reasons that the County's Behavioral Health Division has not always met its MHSA plan's goals or targets. For example, the 2018-2019 plan update reports:

Another item that is out of the control of the Behavioral Health Division is the number of requests for services each year and the number of individuals hospitalized in an out-of-County psychiatric hospital. Annually, there may be fluctuation in the numbers of clients served, which results in the budgeted expenditures not matching actual expenditures.

Contractor performance has also been an issue in the past. In some cases, it was reported that contractors did not deliver services to the level required, or abandoned their contracts with the County, resulting in a budgetary mismatch between proposed and actual expenditures.

County MHSa Plan approval and contracting is a time-consuming process that can hinder the timely expenditure of funds. It makes spending updates and priority changes difficult, if not impossible

After extensive development, MHSa plans and updates are posted for the required 30-day public comment period. The County Mental Health Commission then holds public hearings to solicit additional input before a possible recommendation for approval to the County Board of Supervisors. Spending for an Innovation component must also be approved by the State Mental Health Services Oversight and Accounting Commission. In addition, County managers interviewed often opined that the process of actually getting a contract in place was complex and did not happen in a timely manner, which gave program administrators less time with contractors who may have helped them to get new programs in place more quickly. All this takes months to complete before the County can contract with a provider of services. When a shortfall in expenditures is identified in the middle of the fiscal year, there it is not possible to modify the plan in time to impact fund expenditures.

CONCLUSION

Unexpended MHSa funds are subject to reversion to the State, unlike most other County programs, where funds not spent during a budget year are returned to the County's General Fund. The State will then redistribute reverted funds to all 58 counties. The County 2018-2019 annual plan update has a *Reversion Reallocation Expenditure Plan*, which calls for funds subject to reversion to be given priority for expenditure. The annual update also calls for Community Services and Support funds identified during the fiscal year that are at risk of reversion be transferred to the Reserve account. The Grand Jury interviewed individuals with the most knowledge of Mental Health Services Act funds. However, none of the key County administrators interviewed indicated there have been any changes to either MHSa budgeting philosophy or contracting procedures, that could reduce the risk of the County having funds reverted to the State.

FINDINGS

- F1. Underspending of MHSa funds is a State-wide issue, although a few counties have managed to fully utilize funds provided under this program.
- F2. The County's MHSa Project Team has taken some actions to minimize the risk of reversion of MHSa funds.
- F3. There are systemic and persistent issues in hiring and retaining County mental health employees that impact the timely expenditure of MHSa funds.
- F4. The El Dorado County budgeting philosophy puts County MHSa funds at risk of reversion.
- F5. The County's contracting procedures are complex and time-consuming. This allows less time for contractors to assist staff in developing and implementing programs, putting County MHSa funds at risk of reversion.

RECOMMENDATIONS

- R1. The County should contact Counties who have been successful in spending MHSA funds in a timely manner to determine if there are best practices that might be used to better utilize MHSA funds.
- R2. The Chief Administrative Officer, the Director of Health and Human Services the County Auditor-Controller and the Director of Human Resources should review County budgeting and personnel philosophies, strategies, and procedures to ensure that these administrative functions fully support the timely expenditure of MHSA funds.
- R3. The Chief Administrative Officer, the Director of Health and Human Services, the County Auditor-Controller, and the Procurement and Contracts Division Purchasing Agent should review County contracting strategies and procedures to ensure that these administrative functions fully support the timely expenditure of MHSA funds.

ATTACHMENTS

- A. *Mental Health Services Act-The State Could Better Ensure the Effective Use of Mental Health Service Act Funding*, dated February 2018
<https://www.auditor.ca.gov/pdfs/reports/2017-117.pdf>
- B. *Mental Health Services Act Funds-Amounts Subject to Reversion Before July 1, 2017*, dated October 1, 2018
https://www.dhcs.ca.gov/services/MH/Documents/Statewide_Reversion_Report_Final_Wordver.pdf
- C. Mental Health Services Act (Revised January 04, 2018)
<http://www.mhsoac.ca.gov/document/2019-01/mental-health-services-act-revised-January-20-2019>
- D. *El Dorado County Mental Health Services Act Three-Year Program and Expenditure Plan*, approved on June 20, 2017
<https://www.edcgov.us/Government/MentalHealth/mhsa%20plans/Documents/FY%2017-18%20MHSA%20Three-Year%20Plan%20-%20APPROVED.pdf>
- E. *El Dorado County Mental Health Services Act Annual Update, Fiscal Year 2018-2019*
<https://www.edcgov.us/government/mentalhealth/mhsa/documents/fy%2018-19%20mhsa%20annual%20update%20final.pdf>

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- Responses to all findings and recommendations are requested from The El Dorado County Board of Supervisors.

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for responses to each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# [*Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.*]

Response: [*Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation.*]

Response Times

The California Penal Code specifies response times.

PUBLIC AGENCIES

The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.

ELECTIVE OFFICERS OR AGENCY HEADS

All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.

Failure to Respond

Failure to respond as required to a grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to [*courtadmin@eldoradocourt.org*](mailto:courtadmin@eldoradocourt.org) is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.