

EL DORADO COUNTY
GRAND JURY 2020-2021
REPORT



**FOLLOWING UP ON MENTAL HEALTH
SERVICES ACT FUND SPENDING**

CASE 20-04

Public Release

JUNE 30, 2021

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SUMMARY

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. Its purpose is to provide funding, personnel, and other resources to support county mental health programs.

The 2018-2019 El Dorado County Grand Jury investigated the County's Mental Health Services Act fund spending. Their investigation revealed that El Dorado County had \$3.6 million in MHSA funds that had not been spent in the required time frame and were subject to being reverted (returned back) to the State for redistribution. Given the ongoing need for mental health services in the County, the Grand Jury questioned why funds allocated to El Dorado County specifically for those services were not being spent in a timely manner. Further investigation identified the following factors were contributing to the County's difficulty in meeting their MHSA plan goals and objectives.

- Difficulty in determining appropriate programs and obtaining State approval
- County MHSA Plan approval and contracting is a time-consuming process that can hinder the timely expenditure of funds
- High staff turnover and a shortage of qualified applicants
- Contractor availability and performance

Given the importance of the issue and the challenges of the Covid-19 pandemic, the current Grand Jury determined that it was time to investigate if the County had improved their processes to ensure that program goals and objectives were being met and that the expenditure of MHSA funds was being done on a timely basis.

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 MHSA established the Mental Health Services Fund (MHSF). Revenue for the MHSF is generated from a one percent tax on personal income in excess of one million dollars, which is deposited into the Fund annually. The 2020-21 Governor's budget shows the personal income tax revenue for MHSF Statewide at \$2.376 billion.

These funds are then allocated to counties using a formula that weighs each county's needs for mental health services by using factors including the size of its population that is most likely to apply for services, and the prevalence for mental illness in the county. Adjustments are made for the cost of living and other funding resources. The California Department of Health Services distributes funds monthly to all 58 California counties.

The MHSA established and requires the following five components in each county's mental health plan to address specific priority populations and key community mental health needs:

Community Services and Support (CSS) focuses on the development of recovery-oriented services for children, youth, adults and older adults with serious mental illness. Included in CSS is permanent and supportive housing.

Prevention and Early Intervention (PEI) focuses on education, supports, early interventions, and a reduction in disparities for underserved groups seeking access to mental health services.

The remaining components, *Innovation (INN)*, *Workforce Education and Training (WET)*, and *Capital Facilities and Technological Needs (CFTN)* serve to introduce new and creative ways of addressing community mental health needs, support the development of well trained, qualified and diverse workforce, and strengthen the foundation of the mental health system.

Each component is assigned a percentage of the total funding allocation the county receives and a specified timeframe is established for each component, during which the funds must be spent. If the county is unable to spend the allocated funds in the time required, those funds are subject to being reverted back to the State for redistribution.

Funding is no longer provided by the State for two of the MHSA program components: *Capital Facilities and Technological Needs* and *Workforce Education and Training*. Counties may still maintain balances in those components until that money is either spent or has been reverted back to the State.

In addition, counties are required to maintain a prudent reserve account, used to compensate for unanticipated costs or when monthly MHSF revenues fall below projections. The prudent reserve is funded with monies allocated to the *Community Services and Support* component and cannot exceed 33% of a county's average distribution for the previous five years. It allows counties funding flexibility for existing programs in the *Community Services and Support* and *Prevention and Early Intervention* components.

The MHSA also established the Mental Health Services Oversight and Accountability Commission (MHSOAC) to oversee the implementation of the Mental Health Services Act.

METHODOLOGY

DOCUMENTS REVIEWED:

- 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.
<https://www.auditor.ca.gov/pdfs/reports/2017-117.pdf>
- 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.
https://www.dhcs.ca.gov/services/MH/Documents/Statewide_Reversion_Report_Final_Wordver.pdf
- *Mental Health Services Act (Revised January 27, 2020)*.
https://mhsoac.ca.gov/sites/default/files/MHSA%20Jan2020_0.pdf
- *El Dorado County Mental Health Services Act Three-Year Program and Expenditure Plan, Fiscal Years 2020-21 – 2022-23*
<https://www.edcgov.us/Government/MentalHealth/mhsa/Documents/FY%2020-21%20MHSA%20Three-Year%20Plan-APPROVED.pdf>
- *El Dorado County Mental Health Services Act Annual Update, Fiscal Year 2019–20*
<https://www.edcgov.us/Government/MentalHealth/mhsa%20plans/Documents/FY%202019-20%20Annual%20Update%20Final.pdf>
- State Mental Health Services Oversight and Accountability Commission’s Draft Report Mental Health Services Act Fiscal Reversion Policy Reconsidered: Challenges and Opportunities, dated March 2017
https://mhsoac.ca.gov/sites/default/files/documents/2018-01/MHSA_Fiscal_Reversion_Final_Report%20v4.0.pdf
- Department of Health Care Services Behavioral Health Information Notice Number 20-040, dated July 1, 2020
<https://www.dhcs.ca.gov/Documents/COVID-19/BHIN-20-040-MHSA-flexibilities-due-to-the-COVID-19-PHE.pdf>
- California Department of Health Care Services Website for information pertinent to the Mental Health Services Act.
<https://www.dhcs.ca.gov/>
- El Dorado County Mental Health Services Act (MHSA) Proposition 63 Website
https://www.dhcs.ca.gov/services/MH/Pages/MH_Prop63.aspx

INTERVIEWED

- Appointed County officials knowledgeable of El Dorado County Mental Health Services Act funding.

- Individuals from the Health and Human Services Mental Health Services Act Team knowledgeable in County Mental Health Services Act funding.
- Individuals from the Health and Human Services Fiscal Office knowledgeable in the Mental Health Services Act accounting for the County.

DISCUSSION

The MHSAs funds distributed to El Dorado County vary from year to year, but average about \$8 million annually. It is estimated that the County will receive close to \$7.5 million in MHSAs funds this fiscal year (2020-21). This is in addition to the remaining fund balance of over \$27 million unspent from prior years' allocations.

Each year, the County is required to submit an Annual Revenue and Expense Report and Certification to the Department of Health Care Services (DHCS). From that information, DHCS reports the County's unspent funds and determines the reversion amount (if any). The most recent report from DHCS shows that \$3.5 million that had been allocated to El Dorado County for fiscal years 2005 through 2015 was subject to reversion. That reversion of funds did not occur due to the passage of Assembly Bill 114 which, among other things, set up the reallocation of those funds back to the county of origin. The report also revealed that unspent MHSAs funds for FY 2017-18 totaled over \$2.4 million and over \$1.9 million for FY 2018-19. According to the County's MHSAs Annual Update for fiscal year 2019-20, the total amount subject to reversion in El Dorado County for this past fiscal year was just over \$3.5 million.

The possibility of having to return unspent funds to the State is a common concern for most California counties. Santa Cruz, Sonoma, and Tuolumne counties are among the few counties that expended all funds apportioned to them prior to the reversion deadline. In response to the Grand Jury's 2018-19 report, members of the County's MHSAs team contacted these counties to learn what El Dorado County could be doing to help improve their fund utilization. These staff reported that other counties responded that, while they had gotten good at spending the money that was distributed to them by MHSAs, they were not sure that they were getting good results from the money spent. El Dorado County MHSAs managers indicated that good planning and assuring community involvement and input are significant parts of their strategy to ensure that any MHSAs money spent by the program is spent wisely.

The next several paragraphs of this report outline the changes that the State has implemented to give Counties better opportunities to spend allotted MHSAs funds prior to the reversion of these funds back to the State for reallocation. This Grand Jury is pleased to see that attention is being given to optimizing legitimate spending opportunities. It is important to note, however, that, from everything that we have learned, no funding has been reverted back to the State in any category since the last Grand Jury report was released in June, 2019.

Assembly Bill (AB) 114, which became effective July 10, 2017, amended certain sections of the Welfare and Institutions Code related to the reversion of MHSAs funds. In particular, it required that any MHSAs funds subject to reversion as of July 1, 2017, be redistributed to the county of origin for the purposes for which they were originally allocated. Subsequent to its approval, DHCS provided each county with an MHSAs Reversion Schedule which included the reallocated

fund amounts. AB114 reallocated funds totaling nearly \$3.5 million to El Dorado County. The bill also required counties with unspent funds subject to reversion to prepare a plan to expend these funds on or before July 1, 2020. Use of these AB114 funds by the County are discussed throughout the County's FY 2019-20 MHSAs Plan Annual Update, with the full Expenditure Plan captured in the Appendix.

The MHSAs originally specified that counties had three years to expend funds assigned to the *Community Services and Support (CSS)*, *Prevention and Early Intervention (PEI)*, and *Innovation (INN)* components and ten years to expend funds allocated to *Capital Facilities and Technological Needs (CFTN)*, as well as *Workforce Education and Training (WET)* components before those funds would be eligible for reversion. AB114 clarified those time frames and extended some of the timeframes for counties with a population of less than 200,000 (which includes El Dorado County). The new timeframes, effective 7/1/2017, for El Dorado County are: five years after allocation for CSS and PEI components, five years after date of plan approval from the MHSOAC for the INN component, and ten years after allocation for the CFTN and WET components. There is no reversion for Prudent Reserve funds, although there is a limit as to how much funding can be held in the Reserve account.

The Covid-19 crisis has affected the ability of California counties to implement Mental Health-related programs and still maintain necessary safety protocols to prevent the spread of the disease. Assembly Bill (AB) 81, approved on June 29, 2020, authorized the State Department of Health Care Services (DHCS) to allow counties to determine the percentage of funds to allocate across specified mental health programs for the 2020-21 fiscal year. The bill also amended the MHSAs and extended the reversion dates, making funds previously subject to reversion as of July 1 2019 and July 1, 2020, subject to reversion on July 1, 2021. DHCS released Behavioral Health Information Notice Number 20-040 on July 1, 2020, announcing that the State of California had chaptered AB 81, which provided counties with what they called "flexibilities" in the MHSAs expenditure rules. Essentially, these changes to the MHSAs expenditure rules made it easier to retain funding that was unable to be expended due to Covid-19 limitations.

Prior to the adoption of AB 81, El Dorado County had over \$11 million subject to reversion across the five MHSAs categories. While the easing of reversion rules and regulations (and the decision not to revert funds during the last few years) is a welcomed respite, this Grand Jury maintains that the County should continue with every effort to effectively spend the available MHSAs funding as soon as it is reasonable to do so.

The Mental Health Services Act (MHSAs) requires the County to complete a new plan every three years and to update that plan annually. MHSAs plans 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 process for the change or update must be repeated.

El Dorado County's *MHSAs 3 Year Program & Expenditure Plan* for fiscal years 2020-21 through 2022-23 was approved and released in June of 2020. Readers who wish to know more about

the County's MHSAs-funded programs may want to follow the link provided in the *Documents Reviewed* section of this report

Several individuals knowledgeable in the development and execution of the El Dorado County MHSAs Plan 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 prior to the reversion of these funds**

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 funds subject to reversion by July 1st, 2017 were in the *Innovation* component.

Recently, the State has helped with one of the inherent difficulties in spending *Innovation* funds. Assembly Bill 114 made changes to the Mental Health Services Act, including:

- Extending the time limit for expending funds from three to five years for small counties (this includes El Dorado County).
- Restarting the clock on *Innovation* funding reversion when an *Innovation* project gets approved by the State's MHSAs Commission. This "restart" clause was reiterated in the subsequent Senate Bill 79, passed into law in June of 2019.

In addition, the Grand Jury learned through interviews with MHSAs staff that *Innovation* category requirements have been loosened by the State's program staff, including a redefining of what constitutes a "new" project. These changes should also assist the County in better utilizing the available *Innovation* category funds.

➤ **Lack of ability to fill vacant positions and retain current staff**

The *El Dorado County Mental Health Services Act Annual Update* for Fiscal Year 2019-20 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 significantly under budget in expenditures.

According to interviews with management staff, the current vacancy rate in the Behavioral Health Division is approximately 27%- substantially higher than the County's reported 14% overall vacancy rate. The two reasons reported for this high 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. Our recent interviews of MHSA staff indicate that these practices are continuing.

The Grand Jury believes that, considering the ongoing difficulty in hiring and retaining key MHSA staff, all options should be considered to change this dynamic. We have been told by several people familiar with the operation of El Dorado County's MHSA program that it is difficult to hire and retain qualified staff, especially clinicians. We believe that the County needs to strongly consider, and in some cases, reconsider, personnel strategies and options such as:

- Increased salaries for positions which have historically been the most difficult to hire and retain
- Retention bonuses for MHSA employees who have reached their required licensing hours
- Certification bonuses for professional staff who have gained certifications related to their job responsibilities
- Other retention-related strategies that might cause current employees to stay with El Dorado County

While we learned that some of these options have been looked at in the past, we strongly recommend that all options be considered, including alternate funding possibilities.

Additionally, while we understand that its use would not solve many of the vacancy issues within the program, we continue to believe that allowing some kind of over-budgeting in the Behavioral Health Division might assist in bringing the vacancy rate down. Budgeted staff in Behavioral Health is listed at 89.5. Because we know that the vacancy rate in that Division hovers around 27%, we can estimate that, at any given time, somewhere around 22 or 23 positions will be vacant. The idea of over-budgeting, or what some interviewees referred to as "Recruitment Allowance Positions", is that you are allowed to recruit and hire aggressively on an on-going basis. Because we know that historically, it has been difficult to hire and retain staff, a consistent push to hire qualified mental health professionals will create the best opportunity to have enough staff available to complete the necessary tasks. If, by some extremely unusual circumstance, you have someone you want to hire, but all budgeted positions are filled, your candidate could be placed in a recruitment allowance position and moved to an appropriate budgeted position when one is

available. Because of the high vacancy rate in Behavioral Health, it would be almost impossible for administrators to exceed their budgeted funding for staff.

➤ **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 2019-20 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 in other cases, stopped performing under their contracts with the County, resulting in a budgetary mismatch between proposed and actual expenditures. Interviews with current MHSA staff indicate that contracted staff might still be underperforming, but expressed more concern with the apparent lack of viable mental health contractors in some areas of the County, leading to unproductive attempts to contract for these services. Using outside contractors to supplement the work of County staff is a good idea, except when there are no interested contractors in the area to provide these services. It was reported to the Grand Jury that County program clients are routinely referred to services in neighboring counties, due to services being unavailable in El Dorado County.

➤ **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, as detailed below.**

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's Mental Health Services Oversight and Accountability Commission. In the Grand Jury's initial investigation in 2018, 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. According to MHSA staff interviewed for our current report, significant progress has been made to shorten the time necessary to get a contract in place. The current Grand Jury is pleased to hear of the improvements, as the original report in 2018-19 listed complex and time-consuming contract processes as a major finding, and strongly recommended that the County work to improve the process.

CONCLUSION

While there have been steps taken by the State's Department of Health Care Services to relax the codes and timeframes that control the reversion of funds, unexpended MHPA funds are still subject to be returned back 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 then redistributes unspent 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 County's new three year Program Plan (Fiscal Years 2020-21 to 2022-23) also includes a Reversion Reallocation Expenditure Plan. Additionally, the annual update (Fiscal Year 2019-20) calls for Community Services and Support funds identified during the fiscal year that are at risk of reversion be transferred to the Reserve account. As was the case with the previous Grand Jury, we interviewed individuals with the most knowledge of MHPA funds. This time around, however, these key County administrators indicated that there have been some recent changes that reduce the risk of the County having funds returned to the State. While the underlying budget philosophy in the County has not changed, we can see that progress has been made, including:

- Taking steps to start the contract process sooner, including earlier approval by the Board of Supervisors, so that the contracted services are available when they are needed.
- Assuring that funds are used in a "First In, First Out" sequence, so as to minimize the possibility of losing funds.

While we've noted these successes since our last MHPA report a few years ago, both County and Behavioral Health Division administrators need to strongly consider possible strategies to assist with the hiring and retention of MHPA staff, especially clinicians. One thing that has not changed since our last report is the extremely high vacancy rate in the program, and we don't see that improving without a significant change to how our County administrators deal with both the high turnover and the difficulty in recruiting.

Finally, it should be noted that the Grand Jury believes that the risk to the County by "over-hiring" staff for the MHPA program is minimal, as historically, the program has never been fully staffed, nor have they expended anywhere close to the amount budgeted for program personnel. This could be accomplished by the use of Recruitment Allowance Positions. In addition, according to high-level MHPA staff the Grand Jury interviewed, the Prudent Reserve from MHPA funding may be used to cover potential personnel cost overages, although such use would probably require the prior approval of the State's MHPAOC. It has also been reported to us that counties in our area-including Sacramento County, are already using this budgeting strategy.

FINDINGS

- F1. Underspending of MHSAs funds is still a State-wide issue, although the changes made by the State to extend the time given to expend funds have eased the immediate concern of losing funding earmarked for mental health programs.
- F2. The County's MHSAs Project Team is continuing their efforts to minimize the risk of reversion of MHSAs funds, recently assisted by Statewide changes to the reversion rules.
- F3. There are still systemic and persistent issues in hiring and retaining County mental health employees that impact the timely expenditure of MHSAs funds.
- F4. The El Dorado County budgeting philosophy puts County MHSAs funds at risk of reversion.
- F5. The County's contracting procedures, listed as one of the problems in the Grand Jury's previous MHSAs report, have been significantly improved.

RECOMMENDATIONS

- R1. The County should continue to contact counties who have been successful in spending MHSAs funds in a timely manner to determine if there are best practices that might be used here to better utilize MHSAs funds.
- R2. The Chief Administrative Officer, the Director of Health and Human Services, and the County Auditor-Controller should review County budgeting and personnel philosophies, strategies, and procedures to ensure that these administrative functions fully support a) the best available opportunities to hire and retain MHSAs program staff and b) the timely expenditure of MHSAs funds.
- R3. The Director of Health and Human Services and the County Auditor-Controller should use all available options to implement an over-budgeting strategy or the use of recruitment allowance positions to maximize staffing of the MHSAs program.

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.

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