



**LEGISLATION & PUBLIC
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California's protection and advocacy system

June 1, 2011

Honorable Robert Blumenfield, Chair
Assembly Budget Committee
State Capitol, Room 4202
Sacramento, CA 95814

Honorable Mark Leno, Chair
Senate Budget & Fiscal Review Committee
State Capitol, Room 4203
Sacramento, CA 95814

**Re: FY 2011-12 May Revise Budget - Item 4440 Department of Mental
Health**

Dear Assembly Member Blumenfield and Senator Leno:

Disability Rights California is a statewide nonprofit that has worked to advance the rights of Californians with disabilities for over thirty years, and is the designated protection and advocacy agency for people with disabilities under federal and state law.

Overall, the governor's budget helps people with disabilities stay in their own homes, with no new cuts to two of the most heavily used programs to support independence: In-Home Supportive Services and services for those with developmental disabilities.

It is concerning, however, that the governor's projections of keeping the cuts to those already approved by the legislature depend upon the legislature's agreement to extend the current tax increases, prior to placing that decision before voters in the fall. In other words, if tax increases are not extended, Californians will face an "all cuts budget."

This letter outlines our specific concerns about the governor's May Revise budget proposals related to mental health.

The Brown May revision mental health budget proposal

- The May Revise continues to divert \$861.2 million in MHSA¹ funds on a one time only basis to fund mental health managed care, EPSDT and children's mental health services. In future years, \$612 million will be realigned from the state general fund to the counties because responsibility for children's mental health is proposed to be realigned to schools. Otherwise, the 2011 realignment proposal remains the same.
- Remaining state level responsibilities associated with the Medicaid programs – mental health managed care and EPSDT- will transfer to Department of Health Care Services during 2011-12. Coupled with the creation of a Department of State Hospitals, Department of Mental Health will have few functions remaining.² The 2012-13 Governor's Budget will contain a proposal on where these remaining functions will be transferred or whether a new consolidated department is to be created.
- The Department of Alcohol and Drug Programs is slated for elimination. The Medicaid functions of it would be transferred to the Department of Health Care Services. The 2012-13 Governor's Budget will contain a proposal on where the remaining functions will be transferred or whether a new consolidated department is to be created.

¹ Mental Health Services Act (MSHA), also known as Proposition 63, passed by voters in 2004, authorized a 1% income tax surcharge on incomes over \$1 million. The purpose of the MHSA is to provide funding for innovative community mental health programs to offer support so that people with psychiatric disabilities do not end up institutionalized, in jails or homeless.

² Federal block grant administration, facility licensing, and Mental Health Services Act coordination and oversight are some functions that are up in the air.

- There is a \$50 million increase for state hospitals to make up for budget shortfalls.
- \$9.5 million would go to state hospitals for safety and security improvements.

Concerns about the mental health May Revise Budget proposal

We are concerned that realignment to the counties may result in quite different services from county to county for individuals with disabilities. While we believe counties should structure services to meet the needs of their communities, we recommend that the legislature establish minimum service standards and performance measures to ensure individuals with disabilities obtain continuity of quality services from county to county.³ Further there need to be assurances that the obligations under the *Emily Q* lawsuit will be met.

The governor's proposal to eliminate the Department of Mental Health (DMH) and create a new Department of State Hospitals could shift the focus of the state's mental health system from home and community services to hospital and institutional care and impact the state's ability to move patients from hospitals to the community. This could violate the "integration mandate" under the Americans with Disabilities Act⁴ as articulated by the Supreme Court in the *Olmstead*⁵ decision.

Further complete elimination of DMH is worrisome as other DMH functions such as federal grant block administration, facility licensing and MHPA coordination and oversight will be left without adequate monitoring unless DMH continues. We support forming a work group of stake holders, including clients of the mental health system, to discuss this proposal. Disability Rights California welcomes an opportunity to be part of the discussions to identify the best solution.

³ Some minimum standards to consider include the following: the continuum of care available in the county, the criteria for services, the process to seek and obtain services, and the appeal or grievance process.

⁴ 42 U.S.C § 12132; 28 C.F.R. § 35.130(d)

⁵ *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999)

Disability Rights California supports improved safety at state hospitals. However, the focus cannot just be on security but must also be on how to provide effective treatment to prevent safety concerns. Focusing on security alone could lead to lack of treatment and further criminalization of people with mental health disabilities. At the point that we equate mental health disabilities with criminal behavior - then the focus shifts to punishment and security rather than treatment.

Finally, AB 100 authorizes the use of MHSA funds for EPSDT, mental health managed care and student mental health services. If realignment does not occur, AB 100 may violate the non-supplantation and maintenance of effort provisions of the MHSA. Further, a reduction in community mental health services could occur as a result of the shift leading to homelessness and institutionalization, increased use of emergency rooms, and incarceration of people currently served by MHSA programs.

Please let me know if we can provide further information or you have questions about this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Margaret Johnson", with a stylized flourish at the end.

Margaret Johnson, Esq.
Advocacy Director
Disability Rights California

CC: Honorable Members of the Assembly Budget Committee
CC: Honorable Members of the Senate Budget & Fiscal Review Committee
CC: Diane Van Maren, Consultant, Senate Budget & Fiscal Review Committee
CC: Kim Connor, Consultant, Senate Budget & Fiscal Review Committee
CC: Misty Feusahrens, Consultant, Assembly Budget Subcommittee #2
CC: Andrea Margolis, Consultant, Assembly Budget Subcommittee #1