

## Senate Bill No. 1392

### CHAPTER 706

An act to amend Sections 5713, 5778, and 5891 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 30, 2010. Filed with  
Secretary of State September 30, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1392, Steinberg. Mental health: community mental health services.

Existing law, the Bronzan-McCorquodale Act, contains provisions governing the operation and financing of community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs.

Under existing law, the State Department of Mental Health is allowed to advance, in equal monthly increments, up to 95% of the annual funds due to community mental health programs.

This bill would remove the restriction to 12 monthly installments and a maximum of 95% for advances.

Existing law provides for administration of the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) by the State Department of Mental Health.

Existing law separately establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services, including mental health services are provided to qualified low-income persons. The Medi-Cal program is partially governed and funded under federal Medicaid provisions.

Under existing law, the State Department of Mental Health is required to implement managed mental health care for Medi-Cal recipients through fee-for-service or capitated contracts with counties, counties acting jointly, qualified individuals or organizations, or nongovernmental entities. Existing law requires the department to allocate the contracted amount to the mental health plan (MHP) at the beginning of the contract period.

This bill would require the State Department of Mental Health to allocate and distribute annually the full appropriated amount to the MHP for the managed mental health program, exclusive of the EPSDT component.

Existing law requires MHPs to have sufficient matching funds on deposit with the department as matching funds necessary for federal financial participation, as specified.

This bill would eliminate this requirement.

Existing law, the Mental Health Services Act, an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, establishes the Mental Health Services Fund (MHSF) to

fund various county mental health programs. The act may be amended by the Legislature only by a  $\frac{2}{3}$  vote of both houses and only so long as the amendment is consistent with and furthers the intent of the act. The Legislature may clarify procedures and terms of the act by majority vote. Under existing law, funding for the Mental Health Services Act is required to be used to expand mental health services, but may be loaned to the General Fund, as provided.

This bill would, instead, subject to the availability of funding in the MHSF, require the State Department of Mental Health to distribute in a single lump sum the total approved funding, as defined, to the counties for the provision of programs and other activities, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) In recent years, community mental health services, which are administered by the counties, have experienced sharp budget reductions.

(b) These reductions have exacerbated emergency room overcrowding, with mental health clients in crisis showing up in emergency rooms instead of at mental health programs.

(c) Numerous recent audits of the state's administration of mental health funds by the federal Centers for Medicare and Medicaid Services, conducted in 2008 and 2010, revealed state noncompliance with federal cost reporting requirements.

(d) Moreover, in 2007, a state audit by the Department of Finance, Office of State Audits and Evaluations unearthed deficiencies in the claims processing process for federal Medicaid funds for mental health.

(e) This act is necessary to facilitate the efficiency and cost effectiveness of community mental health services and to prevent avoidable future county budget cuts to mental health.

SEC. 2. Section 5713 of the Welfare and Institutions Code is amended to read:

5713. Advances for funding mental health services may be made by the Director of Mental Health from funds appropriated to the department for local mental health programs and services specified in the annual Budget Act. Advances made pursuant to this section shall be made in the form and manner the Director of Mental Health shall determine. When certified by the Director of Mental Health, advances shall be presented to the Controller for payment. Each advance shall be payable from the appropriation made for the fiscal year in which the expenses upon which the advance is based are incurred.

SEC. 3. Section 5778 of the Welfare and Institutions Code is amended to read:

5778. (a) This section shall be limited to specialty mental health services reimbursed through a fee-for-service payment system.

(b) The following provisions shall apply to matters related to specialty mental health services provided under the Medi-Cal specialty mental health services waiver, including, but not limited to, reimbursement and claiming procedures, reviews and oversight, and appeal processes for mental health plans (MHPs) and MHP subcontractors.

(1) During the initial phases of the implementation of this part, as determined by the department, the MHP contractor and subcontractors shall submit claims under the Medi-Cal program for eligible services on a fee-for-service basis.

(2) A qualifying county may elect, with the approval of the department, to operate under the requirements of a capitated, integrated service system field test pursuant to Section 5719.5 rather than this part, in the event the requirements of the two programs conflict. A county that elects to operate under that section shall comply with all other provisions of this part that do not conflict with that section.

(3) (A) No sooner than October 1, 1994, state matching funds for Medi-Cal fee-for-service acute psychiatric inpatient services, and associated administrative days, shall be transferred to the department. No later than July 1, 1997, upon agreement between the department and the State Department of Health Care Services, state matching funds for the remaining Medi-Cal fee-for-service mental health services and the state matching funds associated with field test counties under Section 5719.5 shall be transferred to the department.

(B) The department, in consultation with the State Department of Health Care Services, a statewide organization representing counties, and a statewide organization representing health maintenance organizations shall develop a timeline for the transfer of funding and responsibility for fee-for-service mental health services from Medi-Cal managed care plans to MHPs. In developing the timeline, the department shall develop screening, referral, and coordination guidelines to be used by Medi-Cal managed care plans and MHPs.

(4) (A) (i) A MHP subcontractor providing specialty mental health services shall be financially responsible for federal audit exceptions or disallowances to the extent that these exceptions or disallowances are based on the MHP subcontractor's conduct or determinations.

(ii) The state shall be financially responsible for federal audit exceptions or disallowances to the extent that these exceptions or disallowances are based on the state's conduct or determinations. The state shall not withhold payment from a MHP for exceptions or disallowances that the state is financially responsible for pursuant to this clause.

(iii) A MHP shall be financially responsible for state audit exceptions or disallowances to the extent that these exceptions or disallowances are based on the MHP's conduct or determinations. A MHP shall not withhold payment from a MHP subcontractor for exceptions or disallowances for which the MHP is financially responsible pursuant to this clause.

(B) For purposes of subparagraph (A), a “determination” shall be shown by a written document expressly stating the determination, while “conduct” shall be shown by any credible, legally admissible evidence.

(C) The department and the State Department of Health Care Services shall work jointly with MHPs in initiating any necessary appeals. The department may invoice or offset the amount of any federal disallowance or audit exception against subsequent claims from the MHP or MHP subcontractor. This offset may be done at any time, after the audit exception or disallowance has been withheld from the federal financial participation claim made by the State Department of Health Care Services. The maximum amount that may be withheld shall be 25 percent of each payment to the plan or subcontractor.

(5) (A) Oversight by the department of the MHPs and MHP subcontractors may include client record reviews of Early Periodic Screening Diagnosis and Treatment (EPSDT) specialty mental health services under the Medi-Cal specialty mental health services waiver in addition to other audits or reviews that are conducted.

(B) The department may contract with an independent, nongovernmental entity to conduct client record reviews. The contract awarded in connection with this section shall be on a competitive bid basis, pursuant to the Department of General Services contracting requirements, and shall meet both of the following additional requirements:

(i) Require the entity awarded the contract to comply with all federal and state privacy laws, including, but not limited to, the federal Health Insurance Portability and Accountability Act (HIPAA; 42 U.S.C. Sec. 1320d et seq.) and its implementing regulations, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and Section 1798.81.5 of the Civil Code. The entity shall be subject to existing penalties for violation of these laws.

(ii) Prohibit the entity awarded the contract from using, selling, or disclosing client records for a purpose other than the one for which the record was given.

(C) For purposes of this paragraph, the following terms shall have the following meanings:

(i) “Client record” means a medical record, chart, or similar file, as well as other documents containing information regarding an individual recipient of services, including, but not limited to, clinical information, dates and times of services, and other information relevant to the individual and services provided and that evidences compliance with legal requirements for Medi-Cal reimbursement.

(ii) “Client record review” means examination of the client record for a selected individual recipient for the purpose of confirming the existence of documents that verify compliance with legal requirements for claims submitted for Medi-Cal reimbursement.

(D) The department shall recover overpayments of federal financial participation from MHPs within the timeframes required by federal law and regulation and return those funds to the State Department of Health Care

Services for repayment to the federal Centers for Medicare and Medicaid Services. The department shall recover overpayments of General Fund moneys utilizing the recoupment methods and timeframes required by the State Administrative Manual.

(6) (A) The department, in consultation with mental health stakeholders, the California Mental Health Directors Association, and MHP subcontractor representatives, shall provide an appeals process that specifies a progressive process for resolution of disputes about claims or recoupments relating to specialty mental health services under the Medi-Cal specialty mental health services waiver.

(B) The department shall provide MHPs and MHP subcontractors the opportunity to directly appeal findings in accordance with procedures that are similar to those described in Article 1.5 (commencing with Section 51016) of Chapter 3 of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations, until new regulations for a progressive appeals process are promulgated. When an MHP subcontractor initiates an appeal, it shall give notice to the MHP. The department shall propose a rulemaking package by no later than the end of the 2008–09 fiscal year to amend the existing appeals process. The reference in this subparagraph to the procedures described in Article 1.5 (commencing with Section 51016) of Chapter 3 of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations, shall only apply to those appeals addressed in this subparagraph.

(C) The department shall develop regulations as necessary to implement this paragraph.

(7) The department shall assume the applicable program oversight authority formerly provided by the State Department of Health Care Services, including, but not limited to, the oversight of utilization controls as specified in Section 14133. The MHP shall include a requirement in any subcontracts that all inpatient subcontractors maintain necessary licensing and certification. MHPs shall require that services delivered by licensed staff are within their scope of practice. Nothing in this part shall prohibit the MHPs from establishing standards that are in addition to the minimum federal and state requirements, provided that these standards do not violate federal and state Medi-Cal requirements and guidelines.

(8) Subject to federal approval and consistent with state requirements, the MHP may negotiate rates with providers of mental health services.

(9) Under the fee-for-service payment system, any excess in the payment set forth in the contract over the expenditures for services by the plan shall be spent for the provision of specialty mental health services under the Medi-Cal specialty mental health service waiver and related administrative costs.

(10) Nothing in this part shall limit the MHP from being reimbursed appropriate federal financial participation for any qualified services even if the total expenditures for service exceeds the contract amount with the department. Matching nonfederal public funds shall be provided by the plan for the federal financial participation matching requirement.

(c) This subdivision shall apply to managed mental health care funding allocations and risk-sharing determinations and arrangements.

(1) The department shall allocate and distribute annually the full appropriated amount to each MHP for the managed mental health care program, exclusive of the EPSDT specialty mental health services program, provided under the mental health services waiver. The allocated funds shall be considered to be funds of the plan to be used as specified in this part.

(2) Each fiscal year the state matching funds for Medi-Cal specialty mental health services shall be included in the annual budget for the department. The amount included shall be based on historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors. The appropriation for funding the state share of the costs for EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver shall only be used for reimbursement payments of claims for those services.

(3) Initially, the MHP shall use the fiscal intermediary of the Medi-Cal program of the State Department of Health Care Services for the processing of claims for inpatient psychiatric hospital services and may be required to use that fiscal intermediary for the remaining mental health services. The providers for other Short-Doyle Medi-Cal services shall not be initially required to use the fiscal intermediary but may be required to do so on a date to be determined by the department. The department and its MHPs shall be responsible for the initial incremental increased matching costs of the fiscal intermediary for claims processing and information retrieval associated with the operation of the services funded by the transferred funds.

(4) The goal for funding of the future capitated system shall be to develop statewide rates for beneficiary, by aid category and with regional price differentiation, within a reasonable time period. The formula for distributing the state matching funds transferred to the department for acute inpatient psychiatric services to the participating counties shall be based on the following principles:

(A) Medi-Cal state General Fund matching dollars shall be distributed to counties based on historic Medi-Cal acute inpatient psychiatric costs for the county's beneficiaries and on the number of persons eligible for Medi-Cal in that county.

(B) All counties shall receive a baseline based on historic and projected expenditures up to October 1, 1994.

(C) Projected inpatient growth for the period October 1, 1994, to June 30, 1995, inclusive, shall be distributed to counties below the statewide average per eligible person on a proportional basis. The average shall be determined by the relative standing of the aggregate of each county's expenditures of mental health Medi-Cal dollars per beneficiary. Total Medi-Cal dollars shall include both fee-for-service Medi-Cal and Short-Doyle Medi-Cal dollars for both acute inpatient psychiatric services, outpatient mental health services, and psychiatric nursing facility services, both in facilities that are not designated as institutions for mental disease and for beneficiaries who are under 22 years of age and beneficiaries who

are over 64 years of age in facilities that are designated as institutions for mental disease.

(D) There shall be funds set aside for a self-insurance risk pool for small counties. The department may provide these funds directly to the administering entity designated in writing by all counties participating in the self-insurance risk pool. The small counties shall assume all responsibility and liability for appropriate administration of these funds. For purposes of this subdivision, "small counties" means counties with less than 200,000 population. Nothing in this paragraph shall in any way obligate the state or the department to provide or make available any additional funds beyond the amount initially appropriated and set aside for each particular fiscal year, unless otherwise authorized in statute or regulations, nor shall the state or the department be liable in any way for mismanagement of loss of funds by the entity designated by the counties under this paragraph.

(5) The allocation method for state funds transferred for acute inpatient psychiatric services shall be as follows:

(A) For the 1994–95 fiscal year, an amount equal to 0.6965 percent of the total shall be transferred to a fund established by small counties. This fund shall be used to reimburse MHPs in small counties for the cost of acute inpatient psychiatric services in excess of the funding provided to the MHP for risk reinsurance, acute inpatient psychiatric services and associated administrative days, alternatives to hospital services as approved by participating small counties, or for costs associated with the administration of these moneys. The methodology for use of these moneys shall be determined by the small counties, through a statewide organization representing counties, in consultation with the department.

(B) The balance of the transfer amount for the 1994–95 fiscal year shall be allocated to counties based on the following formula:

County	Percentage
Alameda.....	3.5991
Alpine.....	.0050
Amador.....	.0490
Butte.....	.8724
Calaveras.....	.0683
Colusa.....	.0294
Contra Costa.....	1.5544
Del Norte.....	.1359
El Dorado.....	.2272
Fresno.....	2.5612
Glenn.....	.0597
Humboldt.....	.1987
Imperial.....	.6269
Inyo.....	.0802
Kern.....	2.6309
Kings.....	.4371
Lake.....	.2955

County	Percentage
Lassen.....	.1236
Los Angeles.....	31.3239
Madera.....	.3882
Marin.....	1.0290
Mariposa.....	.0501
Mendocino.....	.3038
Merced.....	.5077
Modoc.....	.0176
Mono.....	.0096
Monterey.....	.7351
Napa.....	.2909
Nevada.....	.1489
Orange.....	8.0627
Placer.....	.2366
Plumas.....	.0491
Riverside.....	4.4955
Sacramento.....	3.3506
San Benito.....	.1171
San Bernardino.....	6.4790
San Diego.....	12.3128
San Francisco.....	3.5473
San Joaquin.....	1.4813
San Luis Obispo.....	.2660
San Mateo.....	.0000
Santa Barbara.....	.0000
Santa Clara.....	1.9284
Santa Cruz.....	1.7571
Shasta.....	.3997
Sierra.....	.0105
Siskiyou.....	.1695
Solano.....	.0000
Sonoma.....	.5766
Stanislaus.....	1.7855
Sutter/Yuba.....	.7980
Tehama.....	.1842
Trinity.....	.0271
Tulare.....	2.1314
Tuolumne.....	.2646
Ventura.....	.8058
Yolo.....	.4043

(6) The allocation method for the state funds transferred for subsequent years for acute inpatient psychiatric and other specialty mental health services shall be determined by the department in consultation with a statewide organization representing counties.

(7) The allocation methodologies described in this section shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis. When federal funds are capitated, the department, in consultation with a statewide organization representing counties, shall determine the methodology for capitation consistent with federal requirements. The share of cost ratio arrangement for EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver between the state and the counties in existence during the 2007–08 fiscal year shall remain as the share of cost ratio arrangement for these services unless changed by statute.

(8) The formula that specifies the amount of state matching funds transferred for the remaining Medi-Cal fee-for-service mental health services shall be determined by the department in consultation with a statewide organization representing counties. This formula shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis.

(9) (A) For the managed mental health care program, exclusive of EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver, the department shall establish, by regulation, a risk-sharing arrangement between the department and counties that contract with the department as MHPs to provide an increase in the state General Fund allocation, subject to the availability of funds, to the MHP under this section, where there is a change in the obligations of the MHP required by federal or state law or regulation, or required by a change in the interpretation or implementation of any such law or regulation which significantly increases the cost to the MHP of performing under the terms of its contract.

(B) During the time period required to redetermine the allocation, payment to the MHP of the allocation in effect at the time the change occurred shall be considered an interim payment, and shall be subject to increase effective as of the date on which the change is effective.

(C) In order to be eligible to participate in the risk-sharing arrangement, the county shall demonstrate, to the satisfaction of the department, its commitment or plan of commitment of all annual funding identified in the total mental health resource base, from whatever source, but not including county funds beyond the required maintenance of effort, to be spent on specialty mental health services. This determination of eligibility shall be made annually. The department may limit the participation in a risk-sharing arrangement of any county that transfers funds from the mental health account to the social services account or the health services account, in accordance with Section 17600.20 during the year to which the transfers apply to MHP expenditures for the new obligation that exceed the total mental health resource base, as measured before the transfer of funds out of the mental health account and not including county funds beyond the required maintenance of effort. The State Department of Mental Health shall participate in a risk-sharing arrangement only after a county has expended its total annual mental health resource base.

(d) The following provisions govern the administrative responsibilities of the department and the State Department of Health Care Services:

(1) It is the intent of the Legislature that the department and the State Department of Health Care Services consult and collaborate closely regarding administrative functions related to and supporting the managed mental health care program in general, and the delivery and provision of EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver, in particular. To this end, the following provisions shall apply:

(A) Commencing in the 2009–10 fiscal year, and each fiscal year thereafter, the department shall consult with the State Department of Health Care Services and amend the interagency agreement between the two departments as necessary to include improvements or updates to procedures for the accurate and timely processing of Medi-Cal claims for specialty mental health services provided under the Medi-Cal specialty mental health services waiver. The interagency agreement shall ensure that there are consistent and adequate time limits, consistent with federal and state law, for claims submitted and the need to correct errors.

(B) Commencing in the 2009–10 fiscal year, and each fiscal year thereafter, upon a determination by the department and the State Department of Health Care Services that it is necessary to amend the interagency agreement, the department and the State Department of Health Care Services shall process the interagency agreement to ensure final approval by January 1, for the following fiscal year, and as adjusted by the budgetary process.

(C) The interagency agreement shall include, at a minimum, all of the following:

(i) A process for ensuring the completeness, validity, and timely processing of Medi-Cal claims as mandated by the federal Centers for Medicare and Medicaid Services.

(ii) Procedures and timeframes by which the department shall submit complete, valid, and timely invoices to the State Department of Health Care Services, which shall notify the department of inconsistencies in invoices that may delay payments.

(iii) Procedures and timeframes by which the department shall notify MHPs of inconsistencies that may delay payment.

(2) (A) The department shall consult with the State Department of Health Care Services and the California Mental Health Directors Association in February and September of each year to review the methodology used to forecast future trends in the provision of EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver, to estimate these yearly EPSDT specialty mental health services related costs, and to estimate the annual amount of funding required for reimbursements for EPSDT specialty mental health services to ensure relevant factors are incorporated in the methodology. The estimates of costs and reimbursements shall include both federal financial participation amounts and any state General Fund amounts for EPSDT specialty mental health services provided under the State Medi-Cal specialty mental health services

waiver. The department shall provide the State Department of Health Care Services the estimate adjusted to a cash basis.

(B) The estimate of annual funding described in subparagraph (A) shall, include, but not be limited to, the following factors:

(i) The impacts of interactions among caseload, type of services, amount or number of services provided, and billing unit cost of services provided.

(ii) A systematic review of federal and state policies, trends over time, and other causes of change.

(C) The forecasting and estimates performed under this paragraph are primarily for the purpose of providing the Legislature and the Department of Finance with projections that are as accurate as possible for the state budget process, but will also be informative and useful for other purposes. Therefore, it is the intent of the Legislature that the information produced under this paragraph shall be taken into consideration under paragraph (10) of subdivision (c).

SEC. 4. Section 5891 of the Welfare and Institutions Code is amended to read:

5891. (a) The funding established pursuant to this act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this act. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program. These funds may not be loaned to the state General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section 5892.

(b) Notwithstanding subdivision (a), the Controller may use the funds created pursuant to this part for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with interest commencing to accrue on the date the loan is made from the fund. This subdivision does not authorize any transfer that would interfere with the carrying out of the object for which these funds were created.

(c) Subject to the availability of funding in the Mental Health Services Fund as determined by the Department of Finance, the State Department of Mental Health shall distribute in a single lump sum the total approved funding to each county for the provision of programs and other related activities set forth in Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840),

and Part 4 (commencing with Section 5850). Funding distributions shall be based on the amount specified in the county mental health program's three-year plan or update, as required by Section 5847 and as approved by the State Department of Mental Health and the Mental Health Services Oversight and Accountability Commission pursuant to Section 5847. This subdivision shall in no way change the authority of the State Department of Mental Health or the Mental Health Services Oversight and Accountability Commission, as applicable, to approve, deny, or request further information regarding a county's three-year plan or update. Nothing in this subdivision shall affect subdivision (b).

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