ATTACHMENT XI-A

COUNTY OF SACRAMENTO
CALIFORNIA

For the Agenda of:
May 11, 2005

To: Board of Supervisors

From: Countywide Services Agency

Subject: Mental Health Realignment Trust Fund Expenditures

Contact: Linda Foster-Hall, Senior Administrative Analyst, 874-2453

Overview
Your Board requested an analysis of the various issues surrounding the Mental Health Realignment Trust.

Recommendations
1. The request from the Mental Health Advisory Board that prior year transfers from the Realignment Trust be repaid is not recommended.
2. Approve the spending plan as recommended to draw down the current balance of the Mental Health Realignment Trust Fund.

Measures/Evaluation
Not applicable.

Fiscal Impact
The recommendations presented above will not have any impact on the County General Fund.

BACKGROUND:

Your Board requested a report back regarding the repayment to the Mental Health Realignment Trust Fund of transfers as requested by the Mental Health Advisory Board. Additionally the Mental Health Advisory Board has raised questions regarding the application of interest earnings attributable to the Mental Health Realignment Trust Fund.

DISCUSSION:

1. Your Board requested a report back regarding the legality of the transfers from the Mental Health Realignment Trust Fund to the Health or Social Services Trust Funds.

At the end of FY 2003-04, $4,780,000 was transferred from the Mental Health Realignment Trust Fund to the Health Realignment Trust Fund to finance mandated medically indigent health services. This transfer was 10% of the Mental Health Realignment Fund total actual receipts for

Fiscal Year 2003-04. This transaction was in compliance with Section 17600.20(a) of Assembly Bill 1491 which states: "Any county or city may reallocate money among accounts in the Local Health and Welfare Trust Fund, not to exceed 10% of the amount deposited in the account from which the funds are reallocated for that fiscal year." In addition the legislation requires that the Board of Supervisors hold a regularly scheduled public hearing to document the reallocation of Realignment revenue. The Board must also make a finding that the reallocation is the "most cost effective use of available resources to maximize client outcome." On May 11, 2004, the Board of Supervisors held a regular meeting and approved Resolution No. 2004-0571 authorizing the transfer of these funds from the Mental Health Trust Fund to the Public Health Trust Fund. This transfer did not jeopardize the maintenance of effort for existing mental health programs.

The Mental Health Advisory Board has requested that your Board replenish the Mental Health Realignment Trust Fund in the amount of this transfer and transfers made in prior years to other Realignment Trust Funds. We do not recommend that your Board take this action. These transfers were legal and no Mental Health programs were reduced as a result of these actions. The funding that was transferred was unused dollars.

While state law clearly allows for transfers like the one delineated above, such transfers are not planned to take place on an annual basis. However, there may be situations in the future where transfers between Realignment Trust Funds are prudent to fund programs that serve the same client base in another program area. Furthermore, these transfers are not considered a loan between the various Realignment Trust Funds therefore no repayment is necessary.

At this time, no Realignment transfers are anticipated as part of the Fiscal Year 2005-06 budget process.

2. The Mental Health Advisory Board has also questioned the use of interest earning attributable to the Realignment Trust Fund.

When Fund 070A was originally established it was set up as a mechanism to receive and account for the Realignment Sales Tax and Vehicle License Fee revenue from the State. The revenue would be deposited into the fund and then immediately transferred to the General Fund to offset current expenditures in the Division of Mental Health. Currently any "balance" in realignment funding is booked in a General Fund ledger account and is only recognized as revenue when it is transferred to the Mental Health Division to offset expenditures. Therefore, any interest earnings are credited to the General Fund.

3. What is the sustainability of the additional on-going program costs to be funded by the balance in the Mental Health Realignment Trust Fund?

DHHS has presented to your Board a plan to fund a portion of the unmet needs identified by the Mental Health Advisory Board. This request will be funded on an ongoing basis by one-time revenue that has accumulated in the Mental Health Realignment Trust Fund. The Trust fund balance as of June 30, 2005 is projected to be $16.2 million (See Attachment I). DHHS has already committed to transfer $3.53 million from the Trust to offset the FY 2005-06 Mental Health Division Proposed Budget ($0.77 million in one-time funding for Prop. 63 Planning staff and $2.76 million to increase contract services for the Regional Support Teams). If your board approves the additional staffing request as presented, the projected transfer from the Mental Health Realignment Trust will be increased by an additional $123,541 for a total transfer of $3.7 million in FY 2005-06.

The County Executive's Office is concerned that any on-going program expansions to the Mental Health budget from this one-time funding source be sustainable in the long-term. Given the current projected balance of $16.2 million, the modest expansion in staffing and the annual funding allocation, the Mental Health Trust fund could sustain this level of transfers (approximately $2.88 million) for approximately 5 years. To the extent that in future fiscal years an additional operational transfer is made from the Mental Health Realignment Trust Fund carryover balance to either the Health or Social Services Realignment Trust as allowed by Welfare and Institutions Code Section 17600.20(a) then the sustainability will diminish.

In addition to the strict monetary issues surrounding the use of the Mental Health Trust Fund for expanded program use identified above, there is a concurrent issue of its use in relationship to the Mental Health Services Act (MHSA) funding approved by the voters on November 2, 2004. County Counsel has recently issued an opinion (See Attachment II) that "MHSA funding cannot be used to replace, or allow the re-allocation of, state or county funds currently used to fund mental health services". The opinion states further that "MHSA funds cannot be used to maintain existing programs and/or service levels". This is all the more reason why existing programs should be crafted to live within their existing resource base so as not initiate unsustainable funding for a program that would be subsequently ineligible for funding from the Mental Health Services Act.

FINANCIAL ANALYSIS:

The current estimated balance in the Mental Health Realignment Trust Fund as of June 30, 2005 is $16.2 million. On April 26, 2005 Board authorized a one-time transfer of $0.77 million in Fiscal Year 2005-06 to partially offset the costs of additional planning staff to support the Mental Health Services Act. If your Board also approves the additional staffing requested for unmet needs in the Division of Mental Health and the budgeted transfer reflected in the Fiscal Year 2005-06 Proposed Recommended Budget, the balance in the Mental Health Realignment Trust will be reduced to an estimated $12.6 million by June 30, 2006. However, this balance will be sufficient to fund the additional staffing for the unmet needs and an annual operating transfer to the Mental Health budget (totaling approximately $2.88 million) for approximately 5 years with no impact to the County General Fund.

Respectfully submitted,	CONCUR:
PENELOPE CLARKE, Administrator Countywide Services Agency	TERRY SCHUTTEN County Executive

ATTACHMENT I

County of Sacramento
Mental Health Trust Fund

BA	G/L Account	Allocation	FI Document	Posting Date	Dollar Amount	Item Text
001A	5500000	7202000	100045318	6/30/1998	(4,495,200.26)	Mental Health Realignment Carryover
Fiscal Year Ending 6/30/1998					**(4,495,200.26)**	
					(4,495,200.26)	FY 1998/99 Beginning Balance
001A	5500000	7202000	100375573	3/24/1999	(725,252.92)	VLF Growth General 97/98
001A	5500000	7202000	100375573	3/24/1999	(244,779.38)	VLF Growth-MH Equity 97/98
001A	5500000	7202000	100375573	3/24/1999	(442,380.92)	VLF Growth-St Hospital 97/98
001A	5500000	7202000	100644945	6/30/1999	(4,169,717.46)	To Adjust MH To Match MOE & Budget FY 98/99
001A	5500000	7202000	100648468	6/30/1999	16,042.12	Increase Realignment to match MOE FY 98/99
001A	5500000	7202000	1800297747	3/24/1999	(93,764.82)	Sales Tax Growth over AR
Fiscal Year Ending 6/30/1999					**(10,155,053.64)**	
					(10,155,053.64)	FY 1999/00 Beginning Balance
001A	5500000	7202000	101456494	6/30/2000	(729,831.00)	Transfer 99/00 Realignment to Carryover Trust
Fiscal Year Ending 6/30/2000				Actual	**(10,884,884.64)**	
001A	5500000	7202000	101481040	7/26/2000	(10,884,884.64)	FY 2000/2001 Beginning Balance
001A	5500000	7202000	102121061	6/27/2001	7,500,000.00	Move MH Realignment c/o to operations 00/01
001A	5500000	7202000	102158314	6/30/2001	(138,455.00)	Zero out MH at year-end
Fiscal Year Ending 6/30/2001				Actual	**(3,523,339.64)**	
001A	5500000	7202000	102214070	8/10/2001	(3,523,339.64)	FY 2001/2002 Beginning Balance
001A	5500000	7202000	102998415	6/30/2002	(8,300,000.00)	FY 01/02 - MH Realignment Carryover
Fiscal Year Ending 6/30/2002					**(11,823,339.64)**	
001A	5500000	7202000	103035051	7/29/2002	(11,823,339.64)	FY 2002/2003 Beginning Balance
001A	5500000	7202000	103800203	6/30/2003	(5,217,663.30)	FY 02/03 - MH Realignment Carryover
001A	5500000	7202000	103803636	6/30/2003	(213,113.11)	MH Carryover Adj. FY 2002-03
Fiscal Year Ending 6/30/2003				Actual	**(17,254,116.05)**	
001A	5500000	7202000	103841661	8/22/2003	(17,254,116.05)	FY 2003/2004 Beginning Balance
Fiscal Year Ending 6/30/2004				Actual	**(17,254,116.05)**	
001A	5500000	7202000	104330659	7/28/2004	(17,254,116.05)	FY 2004/2005 Beginning Balance
001A	5500000	7202000	Budget		(1,381,802.59)	Estimated Transfer to MH Realignment Carryover
001A	5500000	7202000	State Hospital		233,694.00	State hospital increased charges
001A	5500000	7202000			980,000.00	CALCIS Vendor Payments
001A	5500000	7202000			1,200,000.00	99-00 Short-Doyle Disallowances
Fiscal Year Ending 6/30/2005				Estimated	**(16,222,224.64)**	
001A	5500000	7202000	104330659	7/28/2004	(16,222,224.64)	FY 2005/2006 Beginning Balance
001A	5500000	7202000	Budget		2,757,800.00	Increase in RST contracts
001A	5500000	7202000	Unmet needs		123,541.00	Annualized amount
001A	5500000	7202000			777,047.00	One-Time MHSA costs
Fiscal Year Ending 6/30/2006				Estimated	**(12,563,836.64)**	

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COUNTY OF SACRAMENTO
OFFICE OF THE COUNTY COUNSEL
Inter-Department Correspondence

April 19, 2005

To: Penelope Clarke, Administrator
Countywide Services Agency

From: Michele Bach
Supervising Deputy

Subject: Non-Supplantation Requirement of the Mental Health Services Act

You have inquired as to the parameters of the non-supplantation requirement of the Mental Health Services Act (MHSA). It is this Office's opinion that MHSA funding cannot be used to replace, or allow the re-allocation of, state or county funds currently used to fund mental health services. This prohibition does not apply to federal funding received by the County. It is also this Office's opinion that if MHSA funds are spent on a program or service that the County was providing as of January 1, 2005 or thereafter, the use of MHSA funding in lieu of County General Fund and/or realignment revenues would constitute a prohibited supplantation of state or County funds.

Analysis

1. **Statutory Background**

Welfare and Institutions Code section 5891[1] provides in pertinent part as follows:

> 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. ... 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.

This requirement applies to the administrative costs as well as direct services. DMH Letter No. 05-01, Attachment B.

Section 5892(c) also provides that any allocation under the MHSA shall include funding for annual planning costs pursuant to Section 5848, provided that the total of

[1] Unless otherwise specified, all section references shall be to the Welfare and Institutions Code.

such costs shall not exceed five percent (5%) of the total of annual revenues received. Planning costs include funds for county mental health programs to pay for the costs of consumers, family members and other stakeholders to participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services.

By letter dated December 31, 2004, the California Department of Mental Health notified MHSA stakeholders that it was establishing an application process by which county mental health departments could request MHSA local planning funding. It further advised that local planning expenditures incurred beginning January 1, 2005 for the MHSA "will be allowable under the MHSA if such expenditures are consistent with the local planning request that is subsequently approved by DMH."

Pursuant to DMH Letter 05-01, allowable costs are the additional costs incurred by counties to plan for the MHSA. The MHSA-related costs for staff that have been redirected for at least 50 percent of their time to the MHSA planning effort are eligible for funding, as are increased overhead costs associated with the Community Program Planning process up to a maximum of 15 percent of the total MHSA set aside for each county for planning purposes.

2. Discussion

Section 5891 prohibits the supplantation of existing state or county funds with MHSA revenues. This prohibition applies only to state or county funds. Therefore, in this Office's opinion, MHSA funds may be used to replace federal funds.

However, with respect to existing state or county funds, the MHSA does not define the parameters of that prohibition. As defined in the Random House Webster's Unabridged Dictionary, 2d Edition, the term "supplant" means "to take the place of ... to replace by something else." Thus, the prohibition against supplantation means that the County may not utilize MHSA funds to displace either state or county funds currently used to fund mental health services. MHSA funds cannot be used to maintain existing programs and/or service levels. In other words, those funds cannot be used to replace, or allow the re-allocation of, state or county funds currently used to fund mental health services. See e.g. *State of Washington v. U.S. Dept. of Education* (9th Cir. 1990) 905 F.2d 274; *State of New York v. United States Dept. of Education* (2d Cir. 1990) 903 F.2d 930.

The Board of Supervisors is vested with discretion, within certain parameters, to allocate County General Fund revenues and/or realignment revenues to various service priorities. However, it is this Office's opinion that a decision by the Board of Supervisors to transfer or allocate such revenue from one County-operated or County-funded program to a different County-operated or County-funded program and then substitute MHSA funds for the transferred or re-allocated General Fund and/or realignment revenues violates the non-supplantation requirement. If MHSA funds are spent on a service that the County was providing, or would have provided, whether or not MHSA funding was received, the use of MHSA funds in lieu of county General Fund and/or realignment revenues would constitute a prohibited supplantation of state or county funds. See e.g. *Alexander v. Califano* (N.D.Cal. 1977) 432 F.Supp. 1182; *Hawaii v. Bell* (9th Cir. 1985) 770 F.2d 1409.

The MHSA was effective on January 1, 2005. Therefore, the prohibition against supplantation applies to state and County revenues as of that date. To the extent that the County was providing mental health services to specific programs and activities with state and County revenues as of January 1, 2005, or to the extent that such funds are used for such programs or activities commencing after that date, MHSA funding may not be utilized to replace such revenues.

If you have any questions, please feel free to contact me.

Michele Bach

MICHELE BACH

cc: Board of Supervisors
James Hunt
Kathleen Henry
Maryanne Treadaway

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