



May 15, 2012

The Honorable Mark DeSaulnier
Chair, Senate Budget & Fiscal Review Subcommittee No. 3
State Capitol, Room
Sacramento, CA 95814

Re: Realignment Trailer Bill Language – Comments

Dear Senator DeSaulnier:

The California State Association of Counties (CSAC), the California Mental Health Directors Association (CMHDA), the County Alcohol and Drug Administrators Association of California (CADPAAC), and the County Welfare Directors Associations (CWDA) are writing to express our interest in ensuring consistency among each of the health and human services programmatic Realignment 2011 trailer bills that were released on April 27 (Issues 1004, 1005, and 1006).

Since the Department of Finance released the three health and human services programmatic trailer bills, we have endeavored to closely review each in order to understand relevant policy implications. However, during our review, it became clear that the three measures lacked a cohesive approach to the state-county relationship and the state's oversight role across the realigned programs, which we believe is critical to successfully implementing 2011 Realignment. Below is a description of the issues we believe the Administration and Legislature must address in the Realignment 2011 programmatic trailer bills for health and human services.

County Role in Federal Waivers and State Plan Amendments

Counties recommend that all three trailer bills include language requiring the administering state departments to consult with counties prior to submitting federal waivers or state plan amendments. Currently, the alcohol and drug trailer bill (#1005) requires prior consultation with counties on proposed federal waivers and state plan amendments pertaining to Drug Medi-Cal (Welfare and Institutions Code Section 14124.24 (b)). However, the other two trailer bills do not contain similar language.

Counties recommend that a similar provision be included in appropriate code sections in the other two trailer bills. Under Realignment 2011, where counties are responsible for 100% of the share of cost for federal programs, it is imperative that we are at the table when policy and/or fiscal changes to these programs are proposed. In fact, the Governor's May Revision indicates that the state is committed to *assisting counties* if federal state plan amendments, waivers, or other flexibilities are needed in assisting counties to meet their responsibilities for realigned programs.

Rule-Making Authority

With respect to the state departments abilities to implement regulations and administrative policies related to the realigned programs, we found significant inconsistencies across the three trailer bills on the proposed methods and timelines of that rule-making authority. In most cases, the trailer bills would give the state departments broad authority to implement realignment legislation via All County Letters (ACLs) or similar instructions, and then to adopt regulations thereafter. However, the three departments give themselves different timelines:

- The alcohol and drug trailer bill (#1005) allows the state to adopt regulations until July 1, 2014.
- The social services trailer bill (#1006) allows the state a 24-month timeline on rule-making authority, beginning the clock once an All County Letter is released.
- The mental health trailer bill (#1006) does not even specify a timeline for the implementation of pertinent regulation and policy.

DHCS provides itself sweeping authority to utilize non-regulatory methods to establish requirements and sanctions. Specifically, two of the Administration's mental health trailer bills (#1006 and #614) authorize DHCS to impose monetary sanctions – and to choose not to renew its contract – if a county Mental Health Plan fails to comply with statutes, regulations, or “similar instructions.” Additionally, the trailer bills would authorize DHCS to use regulations or “other similar instructions” in the establishment of a process for resolution of disputes about claims or recoupments of funds. We believe legislative and regulatory methods – not administrative directives – should be used to describe and authorize the imposition of administrative remedies that could result in the loss of counties' financial resources for realigned Medi-Cal Specialty Mental Health services. The state's legislative and regulatory rulemaking processes offer transparency and provide vital opportunities for public notice and participation. The rulemaking authority provided in the alcohol and drug trailer bill (#1005) is far preferable (Section 11798 subdivision I).

In the interest of efficiently implementing 2011 realignment with a consistent approach across the realigned health and human services programs, counties respectfully request clear parameters around the state's rule-making authority, including the mode and methods of rule-making, notification procedures, and a date certain for policy implementation. This will assist the state and counties by providing a clear roadmap for implementation of this ambitious shift of programs.

Financial Authorities

The state departments provide themselves authority to collect state-imposed penalties by siphoning funds out of 2011 realignment funds. This is completely inappropriate. The 1991 realignment structure does not provide the state with any authority to access realignment funds. The Governor's constitutional amendment clearly designates the realignment funds as local revenues. Counties object to providing mechanisms in statute for the state to access these local funds for fines, penalties or overpayments. Additionally, all references to penalty sharing or transference in the programmatic trailer bills should be deleted because penalties are addressed in the fiscal structure trailer bill.

Oversight of Programs

There appears to be interest in expanding the role and scope of state oversight of the realigned health and human services programs. While counties understand that the state must demonstrate to the federal government appropriate oversight mechanisms since the state is the single state agency, Realignment 2011 has changed very little about the programs – other than the source of funding. The state already maintains a comprehensive statutory framework for oversight mechanisms for each of the realigned health and human services programs. It is not clear what oversight authority the state currently lacks that would impede its appropriate oversight of county-run realignment programs.

The proposed trailer bill makes significant changes to the existing California Child and Family Services Review (C-CFSR), established under AB 636 (Steinberg, Statutes of 2001). Counties have several concerns with the use of performance thresholds as a device to judge county performance for a number of reasons. First, differences across counties make performance thresholds difficult to predict and plan for. Second, setting thresholds can be misleading and drive performance in undesired ways. Improvement in one measure may also have a negative impact on another measure. For example, improvements in the timeliness to reunification measure may have a negative impact on re-entries. Finally, achievement of performance targets can be undermined when other federal and state programs that support child welfare families are cut, such as CalWORKs, Medi-Cal, Developmental Services, housing supports, and mental health.

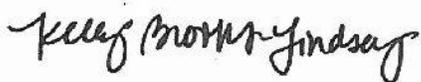
The C-CFSR system can and should continue to be used to facilitate state oversight. Counties currently set improvement targets and the state now monitors county outcome performance on a continuous basis. If a county persistently fails to implement the action steps it identifies in its System Improvement Plan (SIP), the state currently provides the county with technical assistance to help achieve its SIP plan. The AB 636 process should also be the mechanism where the state and counties identify any changes to the county's SIP to ultimately bring the county into compliance. The existing C-CFSR process must be the driver for the child welfare accountability system, with the county continuing to work with the state to establish targets for improvement.

Finally, all language that would expand the state's oversight and/or auditing authority related to non-realigned programs should be removed from all trailer bills. It is inappropriate for a department to be seeking to increase its authority with respect to non-realigned programs in the context of the realignment legislation.

CSAC and counties remain committed to ensuring successful implementation of 2011 Realignment, including securing the necessary constitutional protections for counties in this new landscape. In the meantime, we are working diligently to ensure that the implementing legislation and trailer bill language is intelligent, efficient, consistent, and implementable. To that end, we respectfully request that the Administration and Legislature consider making the above suggested changes to draft trailer bill language. These changes will reduce uncertainty, avoid complications, and increase efficiency for both the state and counties in the coming years.

We will continue to work with the Administration and the Legislature in a cooperative manner to address these and other critical issues as they arise. We look forward to crafting a permanent realignment structure that addresses outstanding county concerns and ensures the success of the 2011 Realignment.

Sincerely,



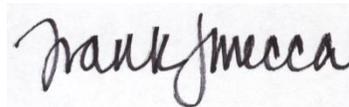
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