Testimony to the

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and Administrative Review

and the

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Toby Ewing
Executive Director

Mental Health Services Oversight
and Accountability Commission

Mental Health Services Act (Prop 63) Funds: Oversight and Accountability

Testimony of Toby Ewing, MHSOAC Executive Director, before the Assembly Committee on Accountability and Administrative Review and the Assembly Committee on Health, August 21, 2019

The Commission appreciates the opportunity to address the Committees today regarding utilization of Mental Health Services Act funds across the State and to reflect back on the State Auditor's February 2018 report, *Mental Health Services Act: The State Could Better Ensure the Effective Use of Mental Health Services Act Funding*.

The Commission is an independent agency charged with strengthening oversight and accountability for California's mental health system, and championing efforts to improve access to care, the quality of care, and the outcomes achieved for California and Californians.

MHSA Financing

The MHSA is financed through a personal income surtax on high income individuals. Funds from the surtax are deposited into a State special fund, the Mental Health Services Fund. Each year that fund receives some $2 billion dollars. Under the terms of the Act, up to five percent can be set aside for State uses, while the remaining 95 percent is distributed to the counties. The County distribution is based on a formula established by the Department of Health Care Services in consultation with the County Behavioral Health Directors Association. That formula is designed to reflect the proportionate populations of need across the State.

For the past four years, the Commission has worked to improve access to information on mental health funding, the programs funded with public dollars, and the outcomes achieved. See Figure 1 below.

In 2013, the Legislature enacted SB 82, the Mental Health Wellness Act, and directed the Commission to provide local assistance funds to the counties to support crisis services. Funding for SB 82 is set at $20 million per year. The Commission releases those funds through a competitive grant program. We also have engaged an independent evaluator. SB 82 funds are currently allocated in the following areas:

- Adult/Transition-Aged Youth crisis services
- Children's crisis services
- School mental health

Commission Transparency Efforts

In 2017, the Commission issued a report, *Mental Health Services Act Fiscal Reversion Policy Reconsidered: Challenges and Opportunities*, which identified significant gaps and shortcomings in County compliance with and State enforcement of the Mental Health Services Act's fiscal reporting requirements, as well as requirements for reversion from counties back to the State Mental Health Services Fund of MHSA allocations not spent in a timely manner. The Legislature enacted Assembly Bill 114 (Chapter 38, Statutes of 2017) to address some $250 million in MHSA revenue held in County accounts that were subject to reversion, unable to be spent by counties on needed mental health services.

Around the same time, the Commission published an interactive web application, the *Fiscal Reporting Tool*, that provided members of the public with easy-to-access information on MHSA finances by County and statewide for the period 2012-2016. This tool was based on County-submitted annual MHSA Revenue and Expenditure Reports (RERs). These are statutorily required, annual reports that summarize County revenue, expenditures, and unspent funds in MHSA programs. Each RER is required by law to be

certified by both the County behavioral health director and the County auditor-controller to be accurate representations of the County's MHSA-related finances.

The *Fiscal Reporting Tool* shows that counties reported spending $280 million less in MHSA funds than they received in FY 2016-17, and that the total cash reserve surplus had grown to $2.454 billion, 132 percent of 2016-17 revenue distributed to the counties. The counties also reported holding a further $547 million in their required MHSA "Prudent Reserve" accounts. These amounts are on top of a fund balance in the State Mental Health Services Fund of $882 million at the close of the 2016-17 fiscal year, as reported in the Governor's January 2018 budget.

Subsequently, in 2018, the Commission published two new web applications, integrated with the *Fiscal Reporting Tool*. The *Program Search Tool* allows the public to easily search for and explore descriptive information about over 2,000 individual MHSA-funded County programs. This tool also displays information about County *planned* expenditures versus *actual* expenditures in each program to help support local decision making and accountability. The third tool, the *Full-Service Partnership Dashboard*, displays high-level metrics on Full-Service Partnership programs, the "whatever it takes" approach to serving the most severely mentally ill individuals in our community mental health system.

Recently, the Commission shared preliminary findings that suggest that adult FSP participants see a roughly 50 percent reduction in their rates of arrest during FSP enrollment as compared to the 12 months prior to enrollment. Commission staff are continuing to review and validate those findings with the intention of publishing a final report before the end of the year. Additional, ongoing research projects are seeking to better understand the determinants of FSP program success in order to help develop the spread of best practices.

The Commission's transparency work continues, within the constraints of available funding, to update the data available in the full *Transparency Suite* and to expand the utility of the tool suite to allow the public to better understand and explore the programs and services being delivered across the State and the patterns of outcomes that result. For example, over the next two years, the Commission expects to add new dashboard applications that will track, statewide and by county, a variety of population-based measures of community wellness, such as measures of suicide and suicidal behaviors, chronic homelessness, out of home placements of children, employment and unemployment, school failure, involvement with law enforcement, and the duration of untreated mental illness.

Additionally, the Commission has begun to receive annual and triennial evaluation reports from the counties on their respective Prevention and Early Intervention (PEI) component programs and similar reports on Innovation component projects. Over the next 12 months, the Commission expects to incorporate information from these reports into the program-level displays in the *Program Search Tool* to better identify program goals, metrics, and performance over time.

These transparency efforts are focused on three goals:

1. Supporting robust community participation in the MHSA-mandated planning process for county programming;
2. Building awareness of best practices in programs and services to support a learning community in partnership with counties that will drive continuous quality improvement;

3. Data-driven discovery of widespread and difficult to solve problems in the community mental health system.

The Commission's transparency work depends on data, including financial data, provided by the Counties and by other State entities, including the Department of Health Care Services, the State Controller's Office, and the Department of Finance.

Financial Data Considerations

The Act states that the purposes of the RER are to (1) identify county MHSA expenditures; (2) quantify the *additional*, non-MHSA funds spent on the mental health system as a result of the MHSA; (3) identify unspent MHSA funds allocated to the counties and interest earned on MHSA funds; and (4) determine amounts subject to reversion back to the State fund from prior year allocations. Additionally, the reports were intended to support evaluation of the programming supported by the MHSA.

Further, the Act requires County behavioral health departments, in broad partnership with members of their communities, to plan for how to serve their respective counties' community mental health needs. These MHSA Three-Year Program and Expenditure Plans and Annual Updates are required to be based on unspent MHSA fund balances held at the local level and forecasts of future revenue from the State Mental Health Services Fund.

No MHSA dollar may be spent except according to a County MHSA Program and Expenditure Plan that has been approved by the local Board of Supervisors (or other responsible body, such as for the City of Berkeley and the Tri-City Mental Health Plan in Los Angeles County). In recent months, the Department of Health Care Services, as the State entity with regulatory and enforcement responsibility over County MHSA finances, has taken enforcement actions against some counties for failure to submit timely RERs or to demonstrate that they had spent MHSA funds consistent with an approved County plan.

Hence, it is vital that County directors, and the Boards of Supervisors to whom they are responsible, have accurate, timely information about available funds.

This accuracy requires knowledge of both the funds held in the local Mental Health Services Fund and the funds anticipated to be distributed by the State. Distributions are driven by a formula, determined annually by the Department of Health Care Services and based on defined factors related to the expected population of need in each county. The total resources available for distribution from the State Mental Health Services Fund are based on actual Personal Income Tax receipts from high-income individuals.

These State resources are volatile, which makes it difficult for counties to plan appropriately for future year expenditures, as required in each Three-Year Plan. Further, the Department of Finance's practice has been to not publish forecasts of Special Fund revenues beyond the budget year, in part because such forecasting is complex and the State maintains many Special Funds with differing revenue streams. As an apparent consequence (discussed in more detail below), many counties appear to have carried significant cash reserves in their local MHS funds beyond amounts typically necessary to avoid liquidity problems in meeting accounts payable. Many counties carry cash balances in excess of a full year of MHSA revenue. Inspection of the *Fiscal Reporting Tool* data indicates that the statewide MHSA cash

balance carried at the County level ranged between 12.8 months of MHSA revenue in FY 2012-13 to a high of 17.8 months in FY 2015-16. Some counties held unspent fund balances well below this statewide figure, whereas others were well above.

Counties could benefit from technical support from the State in forecasting future-year MHSA allocations and in better understanding prudent risk management strategies for managing their MHSA cash reserves.

Further, successful local planning requires a close integration between the program-level expenditures in prior years and the planned expenditures looking forward. County stakeholders depend on timely, accurate information about the costs of programs and the outcomes those programs have achieved in order to participate meaningfully in community planning efforts. The key sources of information about MHSA programs and planned expenditures are the County Three-Year Plans and Annual Updates, while the key source of information on MHSA actual expenditures and unspent funds historically has been the RERs. The Department of Health Care Services, to date, has not issues updated MHSA fiscal regulations nor updated MHSA program regulations relating to such issues as required data elements or formatting for those elements in the County plans. Ideally, the counties would use a common reporting format for key data elements in both the plans and the RERs to support public understanding of and accountability to the relationship between the planned expenditures and the consequent actual expenditures, by program, and the outcomes obtained from those expenditures.

County RER Considerations

The Department of Health Care Services assumed enforcement responsibility for all MHSA fiscal matters and most programmatic matters following the dissolution of the then-Department of Mental Health in 2011-12. Over the succeeding years, the Department has revised various data reporting requirements with respect to the Act's requirement that counties submit RERs annually.

For example, during the period from Fiscal Year 2012-13 through Fiscal Year 2015-16, the RER did not require counties to report expenditures by funding source at the program or project level, although it did require such a breakdown at the MHSA "component" level. This lack of transparency made it more difficult to understand or analyze patterns in how counties have "blended" funding sources in various program types to pursue the non-supplantation goal of increasing overall investment in mental health services. The Department revised the RER for the FY 2016-17 report to include this expanded detail.

The Department also included in the FY 2016-17 RER the option for counties to report, by MHSA component, how much each had expended on the community planning process. The Act specifies that each County may spend up to five percent of its annual MHSA allocation on planning. It also requires each County to show in its approved plan how it supported the planning process with staff and achieved the intent of the planning process. To date, very few counties have reported any community planning expenditures on their RERs for 2016-17 or 2017-18.

Perhaps the most significant change the Department has made to the RER went into effect for the 2017-18 reports. The RER is organized as an Excel file with multiple pages, including one for each MHSA component, where program-level information is provided, and a summary page. Prior to 2017-18, the summary page included sections reporting

1. Unspent MHSA funds in each component for prior year allocations as of the beginning of the fiscal year, held in the local Mental Health Services (MHS) fund (i.e., an "opening balance," which should be identical to the "closing balance" from the prior year's report), including the balance on the local "Prudent Reserve," a "rainy day" set-aside of MHSA funds required of each County;
2. New MHSA revenue received and assigned to each component, including any interest earned on unspent balances by component;
3. Expenditures made during the year by component and source of funds, including expenditures attributed to specific MHSA allocations (prior- or current-year) and expenditures of non-MHSA funds;
4. Transfers by the County from Community Services and Supports (CSS) funds to the Prudent Reserve; the Workforce, Education and Training component; or the Capital Facilities and Technological Needs component;
5. Adjustments to MHSA funds, which may include restatements of prior-year expenditures or transfers, such as where an expenditure reported in a prior year's RER as paid for with Medi-Cal funds had to be reimbursed to Medi-Cal and assigned to another available source of funds.
6. Unspent MHSA funds in each component for the current and prior allocation years as of the close of the fiscal year (i.e., a "closing balance," which should then carry over to the subsequent year as an "opening balance").

The new RER format required by the Department for county reporting with the 2017-18 fiscal year eliminated many of these reporting requirements from the summary page.

- Rather than reporting component-by-component opening balances, counties now report only the opening balance on the local Prudent Reserve.
- Rather than reporting new MHSA revenue received, counties now report only the interest earned during the year on the local MHS funds.
- Rather than requiring each County to attribute MHSA expenditures to specific fiscal year allocations, counties now only report the total MHSA expenditure for each component (as well as expenditures from other funding sources, such as Medi-Cal).
- Rather than reporting component-by-component closing balances, counties now report only the closing balance on the local Prudent Reserve.

These changes mean that the general public can no longer rely on the RER to understand County MHSA balances or revenue received. Instead, the general public must rely on subsequent reporting by the Department of Health Care Services or other entities to fill in these reporting gaps.

These format changes appear to be a consequence of the Department's interpretation of its responsibilities under AB 114. That statute required the Department to report by October 1 annually the MHSA funds subject to reversion, based on the most recently submitted RERs, which are due at the end of each calendar year.

The Department's implementation of its discretion to redesign the RER to fulfill the RER's statutory goals and the Department's obligation to report annually on funds subject to reversion 15 months prior to the report deadline has had several significant, detrimental consequences for timely availability of MHSA fiscal information.

First, the new RER format has eliminated significant information that was useful for public accountability. There currently is no required public reporting that approximates the old RER's format of informing the public on a County's MHSA revenue, expenditures, and unspent funds.

Second, the Department, in fulfilling its obligations under AB 114 to report funds subject to reversion as of July 1, 2017, chose to reevaluate the full history of MHSA revenue and expenditures for each County. In doing so, the Department's determination of funds subject to reversion as of July 1, 2017 was based on the Department's assignment of annual expenditures to available funds according to a "first-in, first-out" logic. This approach, which has the advantage of optimizing County expenditures relative to the reversion periods allowed under the law for spending County MHSA funds, has resulted in Department fund balance statements for each reporting year that frequently differ from the certified County RERs.

This approach has thus created a divergence between the historical, certified County data and the new Department-determined statements. Because the Department additionally eliminated the fund balance statements from the County reports beginning with the 2017-18 reporting year, the public is now dependent on the Department's reporting and methodology for access to County MHSA balances.

Additionally, the Department's use of a more limited reporting structure for the RERs means that the Commission cannot update and reconcile its *Fiscal Reporting Tool* data displays with the Department's annual reports of unspent funds and funds subject to reversion.

Commission staff have discussed these issues with Department staff and we are seeking ways to reconcile the differences between the County-certified reports through 2016-17 with the Department's new methodology. It is important to provide a clear cross-walk between the original County-certified RERs and the Department's revised reporting of MHSA revenues, expenditures, and unspent funds.

We recognize that the Department faces a number of challenges in tackling these issues and in working to strengthen fiscal accountability. County reporting has improved dramatically because of their efforts. The Department has put into place processes to implement reversion and they are working with the Commission to address our concerns. We look forward to continuing our strong working relationship.

Additionally, we have made progress in strengthening our data sharing agreement with the Department to support efforts for better tracking of MHSA program outcomes.

Thank you very much for the opportunity to testify. Happy to answer any questions you may have.