



State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

March 1, 2023

THIS LETTER SENT VIA EMAIL

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SACRAMENTO AND SOLANO COUNTIES' OBLIGATION TO PROVIDE SPECIALTY MENTAL HEALTH SERVICES

Dear Ms. Edwards and Mr. Emlen:

The Department of Health Care Services (DHCS) has attempted to coordinate with Sacramento County Behavioral Health Services (hereafter "Sacramento County") to facilitate the transition of coverage for Sacramento County residents currently receiving their Specialty Mental Health Services (SMHS) benefits from Kaiser Permanente (hereafter "Kaiser") to the county Mental Health Plan (MHP). DHCS has also attempted to coordinate with Solano County Behavioral Health (hereafter "Solano County"), where Kaiser covers SMHS pursuant to a subcontract with Partnership Health Plan of California (PHC), the Medi-Cal Managed Care Plan (MCP) in Solano County. Sacramento and Solano Counties' failure to engage in this process places Medi-Cal members at risk of losing access to critical Medi-Cal entitlement services.

Over the past several years, DHCS has engaged in extensive, good faith negotiations with Sacramento and Solano Counties to effectuate a transition of coverage for SMHS benefits from Kaiser to Sacramento and Solano Counties. The timeline for the transition has been delayed several times. In October 2019, DHCS publicly announced the CalAIM

proposals including benefit standardization, proposing to move SMHS carved into Kaiser back to Sacramento and Solano Counties. In March 2021, in the CalAIM proposal that was publicly posted for stakeholder feedback, DHCS updated the effective date for the transition to January 1, 2022.¹ Most recently, the proposed effective date for the transition of January 1, 2022, was delayed by more than one year to July 1, 2023, in response to requests by Sacramento and Solano Counties to align with payment reform. DHCS notified Sacramento and Solano Counties of the intended change in date via email on June 3, 2021. Based on feedback from Sacramento and Solano Counties, implementation was delayed in accordance with Assembly Bill (AB) 133, which conditions the transition on the implementation of behavioral health payment reform (Welfare & Institutions Code, §14184.201, subd. (f)(1)), which will be July 1, 2023). DHCS first met with the counties to preview estimates of the likely population for whom coverage of SMHS would be transitioned on September 9, 2021. Sacramento and Solano Counties have had two full years to engage in transition planning alongside DHCS and Kaiser. Throughout this period, Kaiser has participated and remained available to prepare for the transition. However, despite DHCS' efforts to address key policy concerns, Sacramento and Solano Counties have consistently declined to participate in transition planning.

DHCS has offered to provide technical assistance and has taken numerous actions to coordinate with and support Sacramento and Solano Counties in achieving a successful July 1, 2023 transition. DHCS has provided guidance to Sacramento and Solano Counties specific to care coordination, managed care operational deliverables, and implementation milestones. In addition, since July 2022, DHCS has convened monthly planning meetings with Sacramento County, Solano County, Kaiser, PHC, and DHCS. DHCS has facilitated these monthly meetings specifically to support Sacramento and Solano Counties and collaboratively plan for the successful transition of SMHS benefits coverage from Kaiser to the County MHPs. To date, Sacramento and Solano Counties have participated in two monthly transition meetings, on July 21, 2022 and on August 18, 2022 (meeting invitees included Ryan Quist and Alexandra Rechs of Sacramento County; and Emery Cowan, Debbie Vaughn, Gerald Huber, Tess Lapira, and Rob George of Solano County). However, the Counties have continuously declined to attend the monthly transition meetings since September 2022 and have not participated in any transition planning efforts other than separate efforts to procure funding. In this same timeframe, Kaiser and PHC have participated in every planning meeting since July 2022, even without county participation, in a good-faith effort to transfer the responsibility of providing SMHS to Sacramento and Solano Counties.

To further assist with the transition, on January 4, 2023, DHCS provided Sacramento and Solano Counties with a preliminary assessment of each County MHP's provider network for Fiscal Year (FY) 2023-24 based on data submitted by the counties for the FY 2022-23 network adequacy certification, which included the SMHS beneficiaries that would transition from Kaiser to the County MHP effective July 1, 2023. DHCS' review

¹DHCS, California Advancing & Innovating Medi-Cal (CalAIM) Proposal, January 2021, page 65. Available at: <https://www.dhcs.ca.gov/provgovpart/Documents/CalAIM-Proposal-03-23-2021.pdf>

determined that Sacramento and Solano Counties' current network and staffing would be able to absorb the SMHS beneficiaries presently served by Kaiser. However, the preliminary analysis showed a need for Sacramento County to increase its psychiatry provider network for the children and youth age group to meet the mandated minimum ratio.² To assist Sacramento County in addressing the findings in their network adequacy assessment, on February 1, 2023, DHCS offered to meet with Sacramento County to provide technical assistance and to discuss strategies to resolve the issues identified. Sacramento County declined this offer, informing DHCS that the County would reach out to DHCS when it was ready for that conversation. To date, DHCS has not received communication to begin the technical assistance process to address the network adequacy assessment. Further, on February 6, 2023, DHCS provided Sacramento and Solano Counties with guidance on the development of the SMHS transition plan, and extended the deadline for the counties to submit the plan to February 28, 2023. In addition, on February 7, 2023, DHCS notified Sacramento and Solano Counties, PHC, and Kaiser that DHCS would accept a joint transition plan from each county and the MCPs. Although the MCPs have expressed their willingness to work collaboratively with Sacramento and Solano Counties on a joint transition plan, the counties have not followed-up with DHCS or the MCPs regarding the development of a transition plan.

In addition, on January 13, 2023, the California Department of Finance provided 2022-23 Behavioral Health Subaccount Base and 2021-22 Behavioral Health Subaccount Growth letters to the State Controller's Office. These letters include modifications to Realignment allocations that result in increased allocations of \$11,638,627.40 annually for Sacramento County and \$7,733,152.20 annually for Solano County. This increase is in addition to other realignment growth funds distributed to the counties. This modification was made to address the counties' funding concerns and should be used to draw down additional federal funds to support this population. The realignment modification was made to reflect the impact the counties' beneficiaries currently receiving SMHS through Kaiser would have had on realignment if the counties had incurred costs for these services per their constitutional and statutory responsibilities. These modifications were based on the transitioning population estimates developed through iteration and collaboration with both Sacramento and Solano Counties.

The Department received a joint letter from Sacramento and Solano Counties on February 14, 2023. In the letter, the counties alleged that they are not responsible under 2011 Realignment for the populations currently served by Kaiser. The counties go on to state that they believe that the implementation date of the transition should be delayed until funding issues are resolved.

²DHCS, Behavioral Health Information Notice 22-003, 2022 Federal Network Certification Requirements for County Mental Health Plans (MHPs) and Drug Medi-Cal Organized Delivery Systems (DMC-ODS). Available at: <https://www.dhcs.ca.gov/Documents/BHIN-22-033-2022-Network-Adequacy-Certification-Requirements-for-MHPs-and-DMC-ODS.pdf>

DHCS disagrees with the Counties' assertions regarding realignment in the Counties' February 14, 2023 letter. Sacramento and Solano Counties' obligation to provide and finance SMHS is clear. California Constitution Article XIII, Section 36, assigns local agencies the responsibility for covering Public Safety Services, including the provision of mental health care services. (See subdivision (a)(1)(D) and (a)(2)). As such, the obligation to cover these services does not constitute a mandate of a new program or higher level of service on a local agency and is, therefore, not a reimbursable mandate requiring the State to provide a subvention of funds. Because SMHS were assigned to counties under 2011 Realignment, counties are financially responsible for those services. While Sacramento and Solano Counties chose to carve out a portion of their membership (10.9% and 23.6% respectively) to Kaiser, this does not alleviate each county's responsibility for delivery and payment for SMHS under Realignment.

With the deadline for the transition rapidly approaching, there are important milestones that need to be met in order to ensure Sacramento and Solano County Medi-Cal members continue to have access to SMHS. If by March 15, 2023, Sacramento and Solano Counties do not commit in writing to prepare for a July 1, 2023 transition of coverage for SMHS without any new funding beyond the \$11,638,627.40 annually for Sacramento County and \$7,733,152.20 annually for Solano County provided through Realignment adjustments as described above, DHCS will be forced to consider alternative options to ensure that these services are provided. DHCS will interpret a failure to respond by March 15, 2023 as confirmation that Sacramento and Solano Counties do not intend to prepare for a July 1, 2023 transition of coverage for SMHS. As part of these considerations, DHCS will assess whether Sacramento and Solano County actions constitute a failure, or risk of failure, to perform MHP functions or provide SMHS funded by the Behavioral Health Subaccount to such an extent that federal Medicaid funds are at risk. If such a determination is made, DHCS may issue notice to the State Controller's Office, Department of Finance, and Sacramento and Solano Counties in accordance with Government Code Section 30027.10. Similarly, DHCS will consider whether Sacramento and Solano Counties' actions constitute cause for MHP contract termination or sanctions in accordance with Welfare and Institutions Code Section 14197.7, or any other applicable law that authorizes the Department to impose sanctions or terminate the MHP contract.

If you have any questions or would like to reach out to discuss Sacramento or Solano Counties' obligations to provide SMHS, please feel free to contact me at Michelle.Baass@dhcs.ca.gov.

Sincerely,



Michelle Baass, Director
Department of Health Care Services

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