

SUBCOMMITTEE #3: Health & Human Services

Chair, Senator Mark DeSaulnier

**Senator Elaine K. Alquist
Senator Bill Emmerson**



May 25th, 2011

9:30 AM

**Room 4203
(John L. Burton Hearing Room)**

(Diane Van Maren)

AGENDA I

<u>Item</u>	<u>Department</u>
4440	Department of Mental Health—State Hospitals

PLEASE NOTE:

Only those items in this agenda will be discussed at this hearing. Please see the Senate File for dates and times of subsequent hearings. Issues will be discussed in order as shown in the Agenda unless otherwise directed by the Chair. Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible. Thank you.

A. Vote Only for Department of Mental Health: State Hospitals

1. Request for Coleman Bed Expansion Restoration (DOF Issue 551).

Legislative Actions Contained in SB 69 Budget Bill. The Legislature appropriated a total of \$5.7 million (General Fund) to support a phase-in of 80 positions to increase the capacity of the Vacaville Psychiatric Program (at Vacaville). The purpose of these positions is to accelerate the activation schedule for 64 beds in the Intermediate Treatment Program as desired by the *Coleman* Court.

The Legislature's appropriation is \$1.8 million (General Fund) *less* than requested in the Governor's January budget. This is because the Legislature adopted an LAO recommendation to reduce by the \$1.8 million (General Fund) to account for a phase-in of the positions.

The DMH had assumed that all 80 positions would be hired by July 1, 2011. The LAO recommendation assumed positions would be hired by September 2011, which results in a reduction of \$1.8 million (General Fund)

Governor's May Revision. The May Revision requests a restoration of the \$1.8 million (General Fund) which was reduced by the Legislature.

Background—Coleman Court Requires More Mental Health Beds. Pursuant to *Coleman v. Schwarzenegger* an order was issued in October 2004 pertaining to the unidentified needs of CDCR Mental Health Program Inpatient Services. The Coleman Special Master directed the Administration to submit short-term and long-term plans to address the mental health bed capacity need. One aspect of the CDCR plan is to have additional mental health beds at Vacaville.

According to the DMH, Vacaville has a total of 218 Inpatient Beds in the Acute Psychiatric Program and 114 beds in an Intermediate Treatment Program. *However*, an additional 64 beds for high custody Intermediate Treatment Program are to be constructed and activated by no later than September 2011.

The additional 64-beds are to be constructed on VDVR property adjacent to the CA Medical Facility in Vacaville. *The construction of these beds is to be completed by September 2011.* By adding these beds, CDCR will partially achieve the Court's directed increased in bed capacity and avoid a possible order by the federal Court.

Subcommittee Staff Recommendation—Deny the May Revision Request. It is recommended to deny the May Revision request to restore the \$1.8 million (General Fund) since the LAO's recommendation reflects a reasonable phase-in of personnel based upon State hiring practices.

Further, it should be noted that DMH received all of their requested positions (30 staff) to begin Phase I activation at Vacaville, and have received approval to proceed with hiring 80 staff in 2011-12, just at a more realistic rate.

Finally, there is presently a strict State hiring freeze, including for 24-hour facilities and the DMH presently has hundreds of vacancies.

2. Funding for Training Program (DOF Issue 556)

Governor’s May Revision. The May Revision requests an increase of \$250,000 (General Fund) for the DMH to sponsor and train employees in accordance with the Collective Bargaining Agreement for Unit 18 related to Psychiatric Technicians

The following Budget Bill Language is also proposed for this appropriation:

“Of the amount appropriated in this Item, \$250,000 is to be used for candidates participating in the Psychiatric Technician Assistant 20./20 training program subject to the terms and conditions agreed upon in the Memorandum of Understanding with Bargaining Unit 18 on June 16, 2010.”

DMH will be ramping up its training effort with the Stockton Health Care Facility activation in 2013 and the increased need for Psychiatric Technicians at the State Hospital.

Subcommittee Staff Recommendation—Approve May Revision. The \$250,000 is needed for sponsorships and training of Psychiatric Technicians at the State Hospitals as noted. It is recommended to approve the May Revision request, including the proposed Budget Bill Language.

3. Technical Scoring Issue—Unencumbered Balance to Revert

Budget Issue and Subcommittee Staff Recommendation. As noted above, the May Revision proposes an increase for the sponsorship and training of Psychiatric Technicians.

Funding in the amount of \$3 million (General Fund) was originally provided for this program in Chapter 322, Statutes of 2007. According to the DOF, about \$2.7 million (General Fund) was still available for this program in 2010-11. The unencumbered balance is scheduled to revert as of June 30, 2011 according to the enabling legislation, and as confirmed by the DOF.

Based on information obtained from the DOF, the expenditures to-date for this appropriation have been as follows:

2007-08	= \$0
2008-09	= \$156,699
2009-10	= \$137,563
2010-11	= not yet available

Since expenditures have been modest, and the May Revision is providing a new appropriation of \$250,000 (item 2, above), it is recommended to recognize \$2 million (GF) in savings for the anticipated reversion as of June 30, 2011.

Recognizing a \$2 million (GF) reversion still provides a more than adequate margin for expenditures in 2010-11 (\$i.e. \$700,000), and recognizes the State’s difficult fiscal situation.

B. Discussion of Department of Mental Health—State Hospitals

1. Safety and Security at the State Hospitals (DOF Issue 670)

Prior Subcommittee Hearing—February 1st. The Subcommittee discussed safety and security issues regarding the State Hospitals in its February 1st hearing due to a number of assaults on State Hospital staff and patients, including a tragic fatality.

The DMH provided an update regarding recent changes to improve safety and security and noted that further analysis and recommendations would be forthcoming at the Governor’s May Revision.

Governor’s May Revision. The May Revision proposes an increase of \$9.5 million (General Fund) and 78 positions to implement safety and security measures at three of the State Hospitals—Napa, Metropolitan and Patton. Each of these State Hospitals has an “open campus” and was originally designed for treating civilly committed patients (not Pena Code-related patients). As such, additional safety and security measures are needed as the patient population has considerably changed.

This proposal contains *four key components*, as displayed in the Table below:

Summary of Safety and Security Components

Component	Description	Positions	General Fund Expenditures
Grounds Presence Teams	A team will consist of 7 staff—six Psychiatric Technicians and one Senior Psychiatric Technician. Two teams will be deployed at Napa, and two teams at Metropolitan. These teams would cover the Secured Treatment Areas during the hours the patients have access to the grounds.	14	\$2.152 million
Grounds Safety Team	Grounds Safety Teams will consist of Hospital Peace Officer staff. Napa and Metropolitan will receive 13 staff each (10 Hospital Peace Officers, two Sergeants, and one Lieutenant). Patton will receive 24 staff (20 Hospital Peace Officers, three Sergeants, and one Lieutenant).	50	\$3.215 million
Personal Alarms	Napa will have an improved “personal alarm system” to provide coverage throughout the entire facility, including campus grounds. This is to be implemented as a pilot project and is to include a study/reporting component.	0	\$4.0 million
Patient Transfer (Section 7301, W&I Code)	DMH intends to transfer up to 100 individuals from the State Hospitals to the Department of Corrections and Rehabilitation (CDCR). DMH states this will be at no cost to the DMH and will increase the safety and security of patients and staff.	0	0
TOTAL		78 positions	\$9.5 million

Key duties of the “Grounds Presence Teams” are:

- Direct supervision of all patients as they move with and without staff throughout the Secure Treatment Area;
- Detect safety and security issues;
- Redirect inappropriate activities or behavior of patients;
- Provide crisis intervention as needed;
- Serve as supplement to the Hospital Police Officer during emergencies;
- Perform periodic searches throughout the grounds and individuals; and
- Implement and oversee all policies and procedures concerning health, safety and the protection of individuals and staff from physical or environmental hazards.

Psychiatric Technicians are used for these Teams since it is essential that these duties be conducted by staff that are licensed and trained to interact with the State Hospital patient populations.

The “Grounds Safety Teams” would augment the existing compliment of Hospital Peace Officers at the State Hospitals. The DMH notes that the State Hospitals have not had an increase in their Hospital Peace Officer allotment since the late 1990’s. In that same time, there has been a dramatic shift in the patient demographic to a predominately Penal Code-related population which requires more security.

Key duties of the “Grounds Safety Teams” are:

- Serve as a greater security presence and actively look for contra band;
- Patrol the grounds, including the perimeter;
- Provide police interventions in an effective and efficient manner.

The May Revision request of \$4 million for a Personal Alarm System at Napa is vital. The existing alarm system does not allow for enhancement or modifications and the manufacturer no longer makes the alarm pens used for the system. Further, the existing alarm system is building specific and does not provide any coverage outside of the buildings. These system deficiencies have resulted in health and safety issues.

The proposed Personal Alarm System would be wireless and include all buildings and grounds within the designated perimeter at Napa. It would provide for personal safety of staff moving to and from buildings and grounds, and identify exactly where staff is located within the facility in case of an emergency. Each employee will be equipped with a personal alarm device attached to a lanyard that can be easily activated in an emergency. Activation of the device will cause audible and visual indicators to locate the problem. The wireless monitoring will enable the Hospital Police and medical staff to know exactly who and where the staff person is requiring assistance.

DMH is pursuing a third-party assessment and all business requirements will then be published for a “Request for Bid” (RFB) process. DMH has obtained demonstrations of available systems and refinement of business and technical requirements needed to solicit bids on the project.

Due to health and safety issues, *the DMH is seeking to expedite this project* and will be requesting the California Technology Agency (CTA) to exempt the project from having to submit a “Feasibility Study Report” which is normally required for these information technology projects. DMH will also be working with the Department of General Services (DGS) to employ an existing State contract in order to expedite and facilitate procurement of the proposed system. Both CALNET 2 and Western States Contracting Alliance (WSCA) contracts provide the vehicle for an RFB and Statement of Work to be processed for final contract approval.

If DMH is successful in expediting the project, they estimate that the installation and activation of the new Personal Alarm System *can be completed within four months of enactment of the 2011-12 Budget.*

Existing statute—Section 7301 of Welfare and Institutions Code—authorizes the transfer of patients from DMH to the CA Department of Corrections and Rehabilitation when specified individuals committed to DMH need care and treatment under conditions of “custodial security” that can be better provided by CDCR. DMH states their current Memorandum of Understanding (MOU) with the CDCR outlines the responsibilities of the respective departments when such transfers are authorized. The DMH states they are meeting with the CDCR to revise “entry” and “exit” criterion to address a more expedited and efficient transfer process (from DMH to CDCR) when “custodial security” is appropriate. DMH anticipates transitioning up to 100 patients within 2011-12 for safety and security reasons related to conditions of “custodial security”. This is an administrative function and no budgetary action is needed within the DMH item.

Legislative Analyst’s Office Recommendation—Adjust for Salary Savings. The LAO notes the DMH assumes that *all 78* positions to implement safety and security measures at Napa, Metropolitan and Patton would be filled by July 1, 2011, the start of the budget year. *However, the LAO analysis indicates that it would take the DMH several months to fill all of the new positions.*

Therefore, the LAO recommends a reduction of \$1.1 million (General Fund), or a 25 percent salary savings level, to more accurately reflect the rate at which the positions are likely to be filled by the State Hospitals over the course of the budget year. This reduction assumes that all of the positions are filled by no later than September 2011.

Subcommittee Staff Comment and Recommendation—Adopt the May Revision with Technical LAO Adjustment. Safety and security are an integral aspect of patient care and active treatment, and employees must have a safe work environment. Health and safety issues at the State Hospitals need to be significantly mitigated and the May Revision proposes positive steps in that direction.

The LAO’s adjustment represents a standard practice for reflecting a phase-in for salary savings purposes is reasonable given the number of new positions and the existing State hiring freeze. Therefore it is recommended to adopt the May Revision with the LAO adjustment.

Questions. The Subcommittee has requested the DMH to respond to the following questions:

1. DMH, Please provide a summary of the May Revision request and briefly describe each component noted in the Table.
2. DMH, What is presently being done to expedite the personal alarm system at Napa?
3. DMH, Please provide a brief update regarding safety and security efforts at Napa.
4. DMH, Are there any other aspects of the security and safety measures at the State Hospitals which should be noted please?

2. Stockton Health Care Facility: Pre-Activation Functions (DOF Issue 550)

Governor's May Revision. The May Revision proposes an increase of \$1.364 million (General Fund) and 8 positions to support the acute and intermediate in-patient mental health treatment services to CDCR inmate-patients and operate 480 inpatient beds in a *Plata* Receiver constructed hospital facility (to be constructed under a separate court ordered plan).

This facility will have an organizational structure that is similar to current State Hospitals and DMH operated Psychiatric programs.

These positions will assist the CDCR in establishing policies and procedures needed to activate this facility in 2013 and to accept patients by December 2013. The positions include the following:

- Executive Director
- Hospital Administrator
- Chief Psychiatrist
- Chief Psychologist
- Clinical Administrator
- Supervising Registered Nurse III
- Senior Information Systems Analyst
- Executive Assistant

Among other things, the *Plata* Receiver is authorized to address the need to construct health related facilities and housing for inmates with medical and/or mental health needs. In a court order filed in the *Coleman v. Schwarzenegger (Coleman)* class action lawsuit in January 2010, the court ordered that a Health Care Facility be activated and have patient admissions completed to full occupancy by December 2013. This is a compressed time frame, much shorter than a normal activation of a licensed hospital facility.

The schedule necessitates that resources and recruitment begin, and policies and procedures be developed immediately. The requested positions need to be brought on line to support the pre-activation workload that must be in place prior to activation, hiring and training of the Health Care Facility level-of-care staff.

DMH further states that the success of this Health Care Facility is highly dependent upon the DMH's ability to provide clear direction and oversight from its headquarters to ensure adequate planning and the timely delivery of quality of care required by the *Coleman* Court.

The *Coleman* Court will be tracking bed utilization, staffing and inmate-patient waitlists. Court orders require the *Coleman* Court and Special Master to continue to oversee the provision of mental health care services, assess the effective utilization of those services, and determine if the resulting outcomes effectively address the court's orders.

Subcommittee Staff Comment and Recommendation. The requested positions and funding are necessary to commence with pre-activation activities, particularly with the imminent activation timeline of December 2013. DMH has justified the positions and the funding request.

Questions. The Subcommittee has requested the DMH to respond to the following questions:

1. DMH, Please provide a brief overview of the May Revision request.

3. Proposed Restructure of the Department of Mental Health—State Hospitals

Governor’s May Revision--Informational. As part of the Governor’s realignment and restructuring, the May Revision proposes to create a Department of State Hospitals over the course of 2011-12.

At this time it appears that the Department of State Hospitals would not take effect until July 2012 and will therefore be addressed in the 2012-13 budget process.

The Administration states that a separate department is necessary in order to more comprehensively focus on mitigating significant health and safety issues, to centralize administrative functions, and address core patient population management and fiscal administration.

Background and Description of State Hospital Patient Population. The DMH directly administers the operation of five State Hospitals—Atascadero, Coalinga, Metropolitan, Napa and Patton--, and two acute psychiatric programs at the California Medical Facility in Vacaville and the Salinas Valley State Prison.

A total patient caseload of 6,342 patients is assumed for 2011-2012. This includes 5,558 patients at the State Hospitals and 766 patients at the two acute psychiatric programs. Of the total patient caseload, only 471 patients are civil commitments.

Patients admitted to State Hospitals are generally either **(1)** civil commitments; or **(2)** judicial commitments. These referrals come from County Mental Health departments, the courts, and the CA Department of Corrections and Rehabilitation (CDCR).

Judicially committed patients are treated *solely* using state General Fund support. The majority of the General Fund support for these judicially committed patients is appropriated through the Department of Mental Health (DMH), along with some reimbursement from the CDCR, primarily for services provided at the two acute psychiatric programs.

Penal Code-related patients include individuals who are classified as: **(1)** not guilty by reason of insanity (NGI); **(2)** incompetent to stand trial (IST); **(3)** mentally disordered offenders (MDO); **(4)** sexually violent predators (SVP); and **(5)** other miscellaneous categories as noted.

The DMH uses a protocol for establishing priorities for penal code placements. This priority is used because there are not enough secure beds at the State Hospitals to accommodate all patients. This is a complex issue and clearly crosses over to the correctional system administered by the CDCR. The DMH protocol is as follows:

1. Sexually Violent Predators have the utmost priority due to the public safety threat they pose.
2. Mentally Disordered Offenders have the next priority. These patients are former CDCR inmates who have completed their sentence but have been determined to be too violent to parole directly into the community without mental health treatment.
3. *Coleman v. Schwarzenegger* patients must be accepted by the DMH for treatment as required by the federal court. *Generally* under this arrangement, the DMH must have State Hospital beds available for these CDCR patients as required by the Special Master, J. Michael Keating Jr. If a DMH bed is not available the inmate remains with the CDCR and receives treatment by the CDCR.

4. Not Guilty by Reason of Insanity is the next priority.
5. Incompetent to Stand Trial is the last priority. It should be noted that there are about 250 to 300 individuals who are incompetent to stand trial who are presently residing in County jails due to the shortage of beds within the State Hospital system.

Background—Deficiencies at State Hospitals Lead to US DOJ Consent Judgment Regarding CRIPA. In July 2002, the U.S. DOJ completed an on-site review of conditions at Metropolitan State Hospital. Recommendations for improvements at Metropolitan in the areas of patient assessment, treatment, and medication were then provided to the DMH. Since this time, the U.S. DOJ identified similar conditions at Napa, Patton, and Atascadero (Coalinga was not involved). The Administration and US DOJ finally reached a Consent Judgment for an “Enhanced Plan” of operations on May 2, 2006.

The Consent Judgment also appointed a Court Monitor to review implementation of the Enhanced Plan and to ensure compliance. Failure to comply with the Enhanced Plan would result in legal proceedings against the DMH and possible Receivership.

Under the Consent Judgment, the DMH has until *November 2011* to fully comply with the “Enhanced Plan” to improve patient treatment and hospital conditions. At this time the Court Monitor will depart and the DMH is to assume full responsibility for compliance.

The Enhanced Plan provides a timeline for the Administration to address the CRIPA deficiencies and included agreements related to treatment planning, patient assessments, patient discharge planning, patient discipline, and documentation requirements. It also addresses issues regarding quality improvement, incident management and safety hazards in the facilities.

Expenditures for State Hospitals—Ever Increasing. Expenditures for the State Hospital system have increased exponentially in the past several years from \$775.1 million (\$624.4 million General Fund) in 2004 to over \$1.220 billion (\$1.140 billion General Fund) for 2010-11. *This represents an increase of about \$516 million in General Fund support, or an 83 percent General Fund increase in only six-years.*

The DMH contends these increased expenditures are attributable to: **(1)** compliance with implementation of a settlement agreement with the federal government regarding the Civil Rights for Institutionalized Persons Act (CRIPA); **(2)** employee compensation adjustments required by the Coleman Court; **(4)** increasing penal code-related commitments; **(4)** continued activation of Coalinga State Hospital; and **(5)** expansion of Salinas Valley Psychiatric Program.

Subcommittee Staff Comment. The patient population at the State Hospitals has evolved from primarily being a civilly committed population to now consisting of over 94 percent Penal-Code population. Significant issues need to be address and having a Department of State Hospitals would assist in focusing timely resolution to issues.

Questions. The Subcommittee has requested the Administration to respond to the following questions:

1. Administration, Please provide a framework as to the intent of this proposal.
2. Administration, Please provide a perspective on next steps please.
3. Administration, How may the Legislature be kept informed during 2011-12 as discussions on this topic occur?