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CHILDREN'S ADVOCACY INSTITUTE'S RESPONSE TO THE CALIFORNIA MENTAL HEALTH DIRECTORS ASSOCIATION'S REFUTATION OF CAI'S PROPOSITION 63 REPORT

Feb. 24, 2010

The Children's Advocacy Institute (CAI) has reviewed the California Mental Health Directors Association's (CMHDA) response to CAI's January 2010 report, *Proposition 63: Is the Mental Health Services Act Reaching California's Transition Age Foster Youth?* In its response, CMHDA points to several areas it alleges are errors and misrepresentations. CAI responds to each allegation as follows:

- 1) **The needs of Transition Age Foster Youth have not been met through Proposition 63. CMHDA labeled this conclusion "false."**

CAI's Response: The Mental Health Services Act (Proposition 63) promised the voters that it would fund new programs,¹ and that it would address the mental health needs of "transition age youth."² No one, including CMHDA, disputes that as a group, Transition Age Foster Youth — uniformly abused and neglected, traumatically removed from their parents, relatives, friends, and neighborhoods — have some of the most acute mental health needs of the broader transition age youth population.³

For these reasons, CAI's report examines whether, from the billions raised by Proposition 63, the counties have provided new mental health services to the group of transition age youth most in need of them — Transition Age Foster Youth. Phrased differently, the report looks at whether the initiative has kept its promise to the voters where these youth are concerned.

The report acknowledges that there are other, non-Proposition 63 services available to Transition Age Foster Youth, and includes a discussion of Medi-Cal services.⁴ But the purpose of the report is to review how this population has been impacted by Proposition 63, not by other programs. Certainly, in adjudging the efficacy of the initiative's impact on seniors, the existence of Medicare should not be counted as a vindication for Proposition 63.

If the efficacy of Proposition 63 could fairly be determined by looking at non-Proposition 63 services, then it begs the question as to why the initiative was needed. CAI's report makes clear that the services that are graded are only those funded by Proposition 63's Community Services and Support program.

Moreover, the failure of so many counties to create programs that address the unique situations and mental health needs of Transition Age Foster Youth — as opposed to transition age youth who still have some parental supports, who were not abused and neglected, who were not for years shunted through what the Little Hoover Commission dubbed a “heartless limbo” of a system, who were not cleaved from their home and parents and siblings and grandparents, and who are not rendered homeless at age 18 — has real consequences. For example, Transition Age Foster Youth are eligible for Medi-Cal only up to age 21,⁵ but Proposition 63 programs could be providing critical services for Transition Age Foster Youth up to age 25.⁶

Beyond this, because Transition Age Foster Youth are by state law and policy forced into transience and homelessness, and because state law currently requires them to submit Medi-Cal forms periodically reaffirming their eligibility,⁷ an inordinate number of eligible Transition Age Foster Youth are routinely dumped from Medi-Cal.⁸ This well-known fact underscores both the logical flaw of relying on the mere existence of Medi-Cal as a substitute for Proposition 63 assistance and the consequences of failing to address the unique needs of this vulnerable population.

CAI agrees that counties could use Proposition 63 funding to fill the gaps in Medi-Cal services and makes note of that in its report.⁹ However, to the extent that counties do not specifically seek to serve the Transition Age Foster Youth population, they will not address the needs of these youth except by fortuity.

The outcome data from Contra Costa County and San Mateo County cited by CMHDA is commendable, but it fails to specify how many of the transition age youth who benefitted from the programs and avoided homelessness, hospitalization, incarceration and arrest or improved their grades were in fact Transition Age Foster Youth, the subject of CAI’s report. For this reason, these laudable statistics do not address — let alone contradict — the precise question raised by the report.

As CAI’s report concludes, California’s counties have not adequately met the needs of Transition Age Foster Youth through Proposition 63 funding, and as such the initiative has not kept its promise to voters where these youth are concerned.

2) Counties have not treated Transition Age Foster Youth populations separately from other transition age youth. CMHDA labeled this conclusion “false.”

CAI’s Response: CAI’s report acknowledges that many counties mention the unique needs of the Transition Age Foster Youth population in the narrative portion of their plans.¹⁰ However, after an exhaustive review of each county’s Community Services and Supports plan, CAI found that no county had designed a program specifically to meet the unique needs of Transition Age Foster Youth.

Thus, while most counties are aware of the unique needs of Transition Age Foster Youth¹¹, they have failed to address those unique needs through a Community Services and Supports program, and instead lump Transition Age Foster Youth into other more generic programs

designed to meet the needs of the broader at-risk transition age youth population.¹² This fact is incontrovertible.

3) **County Mental Health Services Act plans ignore the needs of Transition Age Foster Youth. CMHDA labeled this conclusion “false.”**

CAI’s Response: The report repeatedly acknowledges that many counties name Transition Age Foster Youth as one of the priority populations eligible to access programs, but explains that these youth must compete with much larger, broader priority populations for programs that typically have extremely limited capacity¹³ — programs that are broadly structured so as to meet the more general needs of the entire transition age youth population. To use CMHDA’s own example of Sonoma County, note that Sonoma County’s response to CAI’s 2007 Public Records Act Request stated that the County “**did not create any Proposition 63-funded programs...that specifically address only foster and transitional age foster youth populations.**”¹⁴ Moreover, the CAI report credits Sonoma County for providing more than 25% of its slots in its general Full Service Partnership (Transition Age Youth only) program to Transition Age Foster Youth.¹⁵

Further, CMHDA points out that counties must conduct an extensive community planning process where the community determines what services and programs are to be funded. This comment precisely highlights the problem here: foster youth are cloaked by confidentiality and lack the funding or the organization to participate in these events absent focused and sustained outreach efforts by a county itself. Transition Age Foster Youth are generally not in a position to attend county meetings to advocate for themselves or their cause, and yet nearly every adult and senior group has such capacity. Even other child populations have their parents or relatives to advocate for them. But, by definition, Transition Age Foster Youth have none of these natural advocates and, we might add, we have made these young people unemployed, penniless, homeless, and transient while still teenagers. Needless to say, the situation we impose upon them hinders their ability to be a squeaky wheel at local Proposition 63 meetings where the “community” determines what services and programs will be funded.

The exception to this general rule is evident in counties that included organizations such as the California Youth Connection in their planning process; the CAI report commends Humboldt County, for example, which did engage in such outreach.¹⁶

Thus, CAI’s report acknowledges that many counties recognize the needs of the Transition Age Foster Youth population, but documents the fact that most counties do not follow through with programs created solely and specifically for this unique population — and thus ignore this population in practice.

4) **Counties can be mandated to provide specific services to only Transition Age Foster Youth. CMHDA labeled this conclusion “false.”**

CAI’s Response: CMHDA argues that setting aside money for Transition Age Foster Youth “would mean shifting money away from other community-identified priorities.” This is not true. Proposition 63 currently has a reserve of over \$1.1 billion.¹⁷ The Transition Age Foster

Youth population is extremely small, numbering approximately 33,000 at any given time (in a state with a population of over 35 million). Vast improvements could be made in the dismal treatment of Transition Age Foster Youth using just the interest on the measure's reserve.

Moreover, CMHDA's oft-repeated reliance on "community-identified" priorities is a bit of a distraction. The community must interpret — not ignore — the initiative, both its letter and spirit. The initiative promises the electorate that it will address the mental health needs of transition age youth. The category of transition age youth with the most significant unmet mental health need, and the fewest fall-backs and supports, is the Transition Age Foster Youth population. To the extent the initiative fails to meet the needs of the most urgent group of transition age youth, taxpayer funds are being spent on something that is by definition less central to the aims of the voters.

Phrased more bluntly, the voters were not told that money would be spent on the basis of who best lobbies the decisionmakers, but on who most needs assistance.

In modest contrast, CAI's suggestions simply encourage the Commission and the counties, moving forward, to be cognizant of the entirely unique needs of Transition Age Foster Youth, and the state's and counties' unique responsibility to them given the fact that they took on the role of parent for these youth in the first place.¹⁸ Given this responsibility — and the aims and dictates of the initiative — each county should give top priority to the creation of programs solely and specifically for Transition Age Foster Youth.

More broadly, the electorate contemplates a role for the Legislature in ensuring that the purpose and goals of Proposition 63 are fulfilled. In Section 18 of Proposition 63, the electorate empowered the Legislature to amend the act by a two-thirds vote "so long as such amendments are consistent with and further the intent of this act."¹⁹ If there is something structurally flawed about the implementation of the initiative such that funding throughout the state is not reaching a specific group acutely in need of it, then it would certainly further the intent of the initiative to set aside monies for that group as appropriate.

Two of Proposition 63's priorities are to enhance services for "transition age youth," and "prevention." Assisting Transition Age Foster Youth clearly falls well within the purview of these priorities. If counties are not using funds to address adequately a population intended as a beneficiary, the Legislature may and should properly act to further the underlying intent of the initiative.

5) CMHDA alleges that CAI "did not work with county mental health departments" when researching and drafting its report.

CAI's Response: CAI's report is based on what counties officially stated in their Community Services and Supports plans — and it is entirely appropriate to evaluate counties for what they included in those plans. It is entirely inappropriate for counties to spend Proposition 63 funds in ways not substantially reflected in those plans, which have been approved by the Department of Mental Health after review and comment by the Mental Health Services Oversight and Accountability Commission. To the extent counties are using Proposition 63

funds in ways not reflected in their approved plans, there is a serious problem with the accountability of the entire Proposition 63 program.

Even so, CAI did in fact reach out to the counties, not once or twice, but three times. In addition to carefully reviewing each county's original Community Services and Supports plan, CAI contacted officials in each county on three separate occasions while preparing its report.

First, in 2007, CAI sent officials in each county a California Public Records Act (PRA) request, asking for information about how they were utilizing Proposition 63 funding specifically to address Transition Age Foster Youth. The PRA request letter specifically requested information on Proposition 63-funded Community Services and Supports and Prevention and Early Intervention programs.

Second, in 2008, CAI contacted each county Mental Health Services Act (MHSA) Coordinator via email to confirm the narrative of his/her county program that CAI would be including in its report. (A listing of county MHSA Coordinators with contact information is located on the state Department of Mental Health website.)

Finally, in mid-2009, CAI contacted each MHSA County Coordinator via email or phone to clarify how his/her county was tracking outcomes for Proposition 63 programs.

To be clear, in addition to reviewing each county's approved Community Services and Supports plan and available Prevention and Early Intervention plans, CAI contacted each county on three separate occasions to obtain and /or verify information throughout the process of researching the report.

SUMMARY

It is disappointing that CMHDA — comprised of the public officials best able to correct the problems identified in CAI's report — is instead attempting to dismiss the report's findings and deflect attention from the fact that **Proposition 63 is not reaching the state's Transition Age Foster Youth in any meaningful way.**

For the record, at no time has CMHDA reached out to CAI to express issues or dissatisfaction with the report. CMHDA did not even provide CAI with a copy of its three-page response; CAI learned of the CMHDA response only when a Commissioner gave it to a member of the CAI staff.

As noted above, Proposition 63 explicitly sets “prevention” and “transition age youth” as two of its priorities.²⁰ The electorate voted for new investment, not the maintenance of services currently suffering General Fund reductions. The latter, which amounts to diversion of funds from its intended beneficiaries, is regrettably now occurring, something CMHDA does not contest and which is contrary to the letter and spirit of the initiative. To the extent that such unlawful diversions are occurring — and especially against a backdrop where the transition age youth most in need of new Proposition 63 mental health services are failing to get it — Proposition 63 is revealed to be deeply flawed. Instead of funding new programs based purely

on need, counties are funding the same old type of programs based in part on who has the most “juice” or which organization best lobbies the local decisionmakers.

As CAI’s report documents, current spending from Proposition 63 substantially excludes the most vulnerable, needy, and explicitly eligible population: Transition Age Foster Youth. This group’s exclusion is momentous in two respects: (a) they suffer extraordinarily tragic outcomes because of their abandonment at age 18; and (b) that abandonment comes at the hand of each and every Californian — as we are their legal parent.

Regrettably, the CMHDA response promises only continued denial of a thoroughly documented problem and, where the most vulnerable of transition age youth are concerned, continued abandonment and nonfeasance. It is now apparent that unless the Legislature or Mental Health Services Oversight and Accountability Commission take action, we shall have more of the same.

Endnotes:

¹ Section 3(d) of Proposition 63 (the Mental Health Services Act) provides that “...State funds shall be available to provide services that are not already covered by federally sponsored programs or by individuals’ or families’ insurance programs.” See also Welf. & Inst. § 5891: “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. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this act....” See also voter information distributed prior to the 2004 election, Analysis by Legislative Analyst at 33: “*How This Funding Would Be Spent*. Beginning in 2004–05, revenues deposited in the Mental Health Services Fund would be used to create new county mental health programs and to expand some existing programs....”

² Welf. & Inst. § 5847(b).

³ Melanie Delgado, PROPOSITION 63: IS THE MENTAL HEALTH SERVICES ACT REACHING CALIFORNIA’S TRANSITION AGE FOSTER YOUTH? Children’s Advocacy Institute, University of San Diego School of Law (Jan. 2010) at 4–5 (available online at http://www.caichildlaw.org/Misc/Proposition_63_Report_FINAL_Master.pdf).

⁴ *Id.* at 5–7.

⁵ Welf. & Inst. § 14005.28.

⁶ Welf. & Inst. § 5847(e).

⁷ See SB 114 (Liu) (2009), Senate Health Committee Bill Analysis and Senate Appropriations Committee Bill Analysis.

⁸ *Id.*

⁹ DELGADO, *supra* note 3 at 7: “Further, while California has extended Medi-Cal to former foster youth, there remain gaping holes in coverage—the most notable of which is that the coverage does not extend to former foster youth who were part of the Kin-GAP program, when nearly one-third of Transition Age Foster Youth aging out of child welfare-supervised foster care each year are exiting from Kin-GAP placements. California’s children should be at the front of the line where funding is concerned, especially in a tight budget year.”

¹⁰ *Id.* at 26; see, e.g., Butte County. Additionally, CAI note several instances where counties named Transition Age Foster Youth as a priority population (*id.* at 21–131).

¹¹ See, e.g., Sacramento County Community Services and Supports Three Year Program and Expenditure Plan (Jan. 31, 2006) at 51.

¹² DELGADO, *supra* note 3, at 21–131 (see the named priority populations for county programs in each county plan summary).

¹³ *Id.* For example, see Alameda County at 21: “The priority populations for the STAY program is youth who are homeless or leaving one of the following systems: foster care, justice, or residential treatment.”

¹⁴ Letter from JoAnn Borri, Compliance Officer, Sonoma County Department of Health Services, to Melanie Delgado, Children’s Advocacy Institute (May 9, 2007) (emphasis added).

¹⁵ DELGADO, *supra* note 3, at 117; *see esp.* criteria 3, regarding capacity. Approximately 71 Transition Age Foster Youth in Sonoma County (23% of the estimated total Transition Age Foster Youth population) potentially qualify for MHSAA-funded services. Sonoma County’s Transition Age Youth program has the capacity to serve 40 clients, and there are four different

priority populations that the program serves. Therefore the program could be expected to serve about 10 youth from each priority population (25% of available slots), including 10 Transition Age Foster Youth. One of the priority populations is homeless transition age youth, and since Transition Age Foster Youth are disproportionately represented in this population, (30–40% of those in homeless shelter are former foster youth), CAI credited the program with serving an additional four youth (homeless youth with a foster care background). Therefore, CAI estimated that the program could be expected to serve approximately 14 Transition Age Foster Youth (35% of the program’s total capacity) — which is less than 20% of the total TAFY population estimated to qualify for these services.

¹⁶ *Id.* at 43 (Humboldt County).

¹⁷ California Department of Finance, Governor’s Budget 2010–11 (Jan. 2010) at HHS-1 (Fund Condition Statement, Mental Health Services Fund, 2010–11) (available online at <http://www.ebudget.ca.gov/pdf/GovernorsBudget/4000/4440FCS.pdf>).

¹⁸ DELGADO, *supra* note 3, at 16–18.

¹⁹ Prop. 63, § 18 (Gen. Elec. (Nov. 2, 2004)).

²⁰ Section 3(a) of Proposition 63, Purpose and Intent: “To define serious mental illness among children, adults and seniors as a condition deserving priority attention, including prevention and early intervention services and medical and supportive care.” See also Welf. & Inst. Code § 5847(e).