

## MEMORANDUM

TO: Interested Persons

FROM: Daniel Brzovic  
Associate Managing Attorney

RE: Proposition 63 and involuntary services

DATE: November 18, 2004

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I have been asked whether Proposition 63 contains language prohibiting the use of Proposition 63 funds for involuntary services.

There is no language in Proposition 63, itself, that either prohibits or authorizes the use of any funds for involuntary services. This is because involuntary treatment is governed entirely by the provisions of the Lanterman-Petris-Short (LPS) Act. Welfare and Institutions Code section 5000, *et seq.* Proposition 63 does not amend the LPS Act. Proposition 63 expands existing service programs, creates new service programs, and provides funding for those programs.

However, this does not mean that Proposition 63 funds can be used to pay for assisted outpatient treatment pilot projects (AB 1421). Proposition 63 provides that Proposition 63 funds can only be used to pay for specific, listed programs. AB 1421 assisted outpatient treatment programs are not on the list of programs that Proposition 63 funds can be used to pay for. Therefore, counties cannot use Proposition 63 funds to set up AB 1421 pilot projects.

Proposition 63, among other things, amends the Adult and Older Adult Systems of Care Act (AB 34/2034), Welfare & Institutions Code section 5800, *et seq.*, by expanding the categories of persons eligible for services, and by providing additional funding for the services. Welfare and Institutions Code section 5813.5. Under the AB 34/2034 program, as it existed before the enactment of Proposition 63, and as it exists after the enactment of Proposition 63, services should be

provided on a voluntary basis unless danger to self or others or grave disability requires temporary involuntary treatment. Welfare and Institutions Code section 5801(b)(5). AB 34/2034 funds have never been available to fund AB 1421 programs. Proposition 63 does not change this.

**AB 34/2034 services are designed to be voluntary.**

The current Adult and Older Adult Mental Health System of Care Act was added to the Welfare and Institutions Code by the Statutes of 1996, chapter 153 (SB 659). AB 34/2034 amended the Adult and Older Adult Mental Health System of Care Act effective in 2000 and 2001. Proposition 63 also amends the Act.

Since its enactment, Adult and Older Adult Mental Health System of Care Act has provided that services should be provided on a voluntary basis. None of the amendments to the Act made by AB 34, AB 2034, or Proposition 63 have changed this.

Welfare and Institutions Code section 5801(b)(5), as added by SB 659 in 1996, provides:

(b) The underlying philosophy for these systems of care includes the following:

... ..

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.

Any county applying for an adult system of care grant has to agree to this philosophy. A grant application that is inconsistent with this philosophy would be contrary to the intent of the Legislature in establishing this program, and contrary to the intent of the people of California in expanding the program through Proposition 63. Proposition 63 specifically requires that Proposition 63 funds be distributed for the provision of services under this section (5301) of the law. Welfare and Institutions Code section 5813.5.

The service standards for adult system of care also require the provision of voluntary services. Welfare and Institutions Code section 5806 requires, among other things, the following client-centered service standards:

The State Department of Mental Health shall establish service standards that ensure that members of the target population are identified, and services provided to assist them to live independently, work, and reach their potential as productive citizens... These standards shall include, but are not limited to, all of the following:

... ..  
(a) A service planning and delivery process that is target population based and includes the following:

... ..  
(6) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.

... ..  
(b) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services.... Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate.

... ..  
(c) The individual personal services plan shall ensure that members of the target population involved in the system of care receive age, gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

... ..  
(6) Self-manage their illness and exert as much control as possible over both the day-to-day and long-term decisions which affect their lives.

It is important to note that there is nothing in the Adult Systems of Care Act that authorizes any type of involuntary treatment. The focus of the Act is on providing services to clients on a voluntary basis. Provision of involuntary services is not prohibited, but involuntary services can be provided only in narrow circumstances under LPS, namely, only to individuals who are determined to be a danger to self or others or gravely disabled, and even then only when the involuntary services are temporary.

**Proposition 63 does not provide funding for AB 1421 services.**

Proposition 63 added section 5891 to the Welfare and Institutions Code. That section provides as follows:

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. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program. These funds may not be loaned to the state General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section 5892.

Welfare and Institutions Code section 5891 says, in several ways, that Proposition 63 provides new money for new services. Funding is for specific types of services specified in Proposition 63. Maintenance of effort by both the counties and the State is required for all existing services. This means that existing mental health services cannot be reduced.

The programs authorized in Welfare and Institutions Code section 5892 include only the adult and older adult systems of care program (AB 34/2034), children's system of care program, prevention and early intervention programs, education and training programs, capital facilities, and technological needs. AB 1421 is not one of the programs authorized in Welfare and Institutions Code section 5892. Therefore, Proposition 63 funds cannot be used for AB 1421 programs.

**The provisions of AB 1421 do not allow funding of AB 1421 programs with money from voluntary programs such as AB 34/2034.**

AB 1421 permits counties to set up assisted outpatient treatment pilot projects for individuals who do not meet LPS criteria for danger to self, danger to others, or

grave disability. Welfare and Institutions Code section 5346. A county can only set up an AB 1421 program if it provides a certain array of services, if it offers the same array of services on a voluntary basis, and if it does not reduce any voluntary mental health service program serving adults, or any mental health service program (whether or not voluntary) serving children.

A county can set up an AB 1421 pilot project only if the county provides a certain array of services. Welfare and Institutions Code section 5346(a) provides:

(a) In any county in which services are available as provided in Section 5348, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment....

One component of the required array of services is intensive case management as defined in Welfare and Institutions Code section 5348(a)(1):

(1) Community-based, mobile, multidisciplinary, highly trained mental health teams that use high staff-to-client ratios of no more than 10 clients per team member for those subject to court-ordered services pursuant to Section 5346.

The remaining services that a county is required to set up in order to implement AB 1421 are virtually identical to the AB 34/2034 array of services. Welfare and Institutions Code sections 5348(a)(2) and (3).

If a county sets up an AB 1421 pilot project, it must offer the full array of AB 1421 involuntary services on a voluntary basis as well. Welfare and Institutions Code section 5348(b) provides:

(b) Any county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis.

At a minimum, this means that in order for the county to set up an AB 1421 pilot project, the county must make the full array of AB 34/2034 services, as well as intensive case management services, available on a voluntary basis. In addition, if the county provides services under AB 34/2034, it cannot make them involuntary under AB 1421. If the county did so, it would be reducing a voluntary service program in order to provide involuntary services under AB 1421. This is

specifically prohibited by Welfare and Institutions Code section 5349, which provides:

This article shall be operative in those counties in which the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the implementation of this article. Compliance with this section shall be monitored by the State Department of Mental Health as part of its review and approval of county Short-Doyle plans.

This means that the county cannot turn voluntary applicants away from its AB 34/2034 program, claiming lack of funds or lack of resources, at the same time that it provides those same services on an involuntary basis under AB 1421. Also, funding for other voluntary services cannot be diverted into involuntary AB 1421 services. No voluntary services of any kind can be reduced. As discussed above, Proposition 63 provides new money for new services. Welfare and Institutions Code section 5891. Therefore, the Proposition 63 funds will not free up money now going to existing voluntary services. If a county wants to set up an AB 1421 pilot project, it must either reduce current involuntary services (generally inpatient services) or come up with new money from a source other than voluntary mental health programs.

Prior to the enactment of Proposition 63, no county took the position that AB 34/2034 money could be used to fund AB 1421 implementation. This is because Welfare and Institutions Code section 5349, above, prohibits the use of AB 34/2034 money for that purpose. Proposition 63 does not change this. Proposition 63 provides more money for AB 34/2034 services to more people, but it does not change the array of services under AB 34/2034, the voluntary nature of the AB 34/2034 program, or the requirement under AB 1421 that involuntary services under that program not reduce any voluntary program.