December 15, 2021

Ms. Keely Martin Bosler
Director, California Department of Finance
1021 O Street, Suite 3110
Sacramento, CA 95814

RE: CSAC/CBHDA OIG Audit Forgiveness Request

Dear Ms. Bosler,

The California State Association of Counties (CSAC) and the County Behavioral Health Directors Association of California (CBHDA), representing all 58 of California's Boards of Supervisors and county behavioral health departments, respectfully request the discharge of the remaining $134.5 million repayment from counties incurred due to a 2018 federal audit into behavioral health claims submitted in federal fiscal year 2014.

For background, in 2017 the Centers for Medicare and Medicaid Services (CMS) directed the federal Office of Inspector General (OIG) to audit California's specialty mental health services claims for federal fiscal year 2014. Initially, the OIG identified more than $200 million in incomplete or inaccurate claims and recommended repayments to the federal government in that amount. The county associations undertook a line-by-line review of the disallowed claims and provided supporting documentation to rebut nearly a third of the disallowances. The final repayment amount for disallowed claims was set at $180.7 million, which was paid out of State General Fund via a placeholder in the 2018-19 Budget Act. The technical disallowances ranged from incomplete progress notes to inadequate timekeeping and occurred during a time where the Department of Health Care Services (DHCS) and counties were struggling to implement state claiming regulations and large amounts of required paperwork without any technical assistance. In response, language included in the Governor's 2018 May Revision outlined an agreement between the Department of Finance, CSAC, and CBHDA to recoup the funds from counties over four years, commencing in 2019. The county associations developed a methodology for the repayments and requested that the installments be drawn from each county's August 1991 Realignment allocation, provided that sufficient funds were available.

Thus far, $46.2 million was diverted in August 2018 from county mental health subaccounts to the Child and Family Poverty Account of 1991 Realignment. Then the pandemic arrived, and the Newsom Administration graciously deferred the August 2020 and August 2021 repayments due to insufficient funds within 1991 Realignment as well as the additional impacts of the COVID-19 pandemic on county behavioral health systems and providers.

Counties are now respectfully seeking the dispensation of this debt due to ongoing fiscal distress and pressures on the delivery of specialty mental health and substance use services, as outlined below:

1991 Realignment as a Flexible Funding Source

The 1991 Realignment mental health subaccount revenue is the most flexible of the three main revenue sources that fund federal entitlement specialty mental health and substance use services provided by California's counties. For example, funds for inpatient psychiatric hospitalization costs are almost solely drawn from 1991 Realignment revenues, as both the Mental Health Services Act (MHSA) and 2011 Realignment revenues are either earmarked for other services (2011 Realignment is reserved for Medi-Cal and many inpatient/residential costs are excluded from Medicaid reimbursement under the Institutes for Mental Disease Exclusion) or prohibit reimbursement for locked inpatient services (MHSA). Due to its relative flexibility, 1991 Realignment can also be a source of funding for other important acute- and crisis-level services such as mobile crisis services or services for justice-involved populations not reimbursable through Medi-Cal. Considering the increase in need for inpatient services and skyrocketing costs due to the supply/demand impacts of the pandemic, any reduction in a county's share of 1991 mental health subaccount revenues could impact access to these critical services.

1991 Realignment is Stressed

1991 Realignment revenues dipped precipitously in the 2020-21 fiscal year due to the economic impact of the pandemic. Though 2021-22 revenues are on pace to meet the 1991 "base," county behavioral health is receiving a smaller slice of the available growth amount due to the statutory requirement to fully fund 1991 Realignment social services caseload growth first.

For some counties, the share of the OIG Audit installment due in August 2022 might divert more than half of that month's revenues for the county. This example points to a larger issue that must be addressed soon: the structural gap between 1991 Realignment revenues and the growing behavioral health needs of all Californians. Notably, 1991 Realignment levels were lower in 2020 than in 2004-05 in real dollars and have not kept pace with inflation or caseload growth. The diversion of 1991 Realignment revenues toward the repayment of a technical 2014 audit will hinder the provision of critical local behavioral health services throughout the state.

Counties are constrained by the level of revenue collected for all three funding streams – both Realignments and MHSA funding, and data also shows that local property tax growth is lagging, too – whereas the state is experiencing an unprecedented recovery in overall revenues despite the ongoing pandemic. Counties seek the state's assistance at this critical juncture in which the local need is great, and the state general fund is healthy.

Increasing Need for Services

County mental health plans and substance use programs are struggling to address the ongoing social and behavioral health impacts of the pandemic, and the increased costs and workforce shortages that go along with it, which are sure to impact county specialty mental health and substance use services into the future.

Additionally, policy and regulatory changes continue to expand access to specialty mental health and substance use services, such as automatic eligibility for homeless individuals and foster youth and a new peers benefit – which are a positive developments for Californians served by counties – but augmented funding to implement these changes remains elusive. Exciting new initiatives, such as CalAIM, promise to streamline county behavioral health access, payment, and documentation for services. In fact, many of the CalAIM behavioral health elements were developed to address the cumbersome state eligibility, billing and claiming rules uncovered by the OIG audit. It is also important to note that county claiming accuracy has significantly improved since 2014, with recent county triennial reviews showing double-digit increases in claiming compliance.

California is now almost two years into the pandemic, and while public health efforts to lessen the threat of COVID are well established, county behavioral health services continue to manage an influx of Californians in crisis, often referred to as the “Second Pandemic.” The tail of this second pandemic is difficult to predict, but prior emergencies and disasters indicate that it may take years post-pandemic for related behavioral health challenges to stabilize. It is clear that every penny counties receive in 1991 Realignment mental health funding is badly needed to support county specialty mental health and substance use services and launch exciting new opportunities, while also continuing to procure and sustain acute inpatient access.

Implementation
The 2018 Budget Act only included a placeholder for the payment of $180 million from the state to CMS, which was remitted from California to the federal government in the fall of 2018. Subsequently, DHCS noted the $180 million payment in the November 2018 Medi-Cal Estimate (Audit Settlements, change number 187, PC page 391), and referenced the narrative language outlining the county-state agreement on the repayment schedule within the Governor’s May 2018 Revision document.

Our associations believe that an agreement to forgive the outstanding $134.5 million could easily be included in a budget or budget trailer bill in 2022 or memorialized in another fashion. We look forward to further conversations on this topic.

Conclusion
County behavioral health services are a critical component for meeting the Administration’s and Legislature’s policy priorities, including reducing the number of unsheltered Californians, expanding services to assist children and youth, and improving the outcomes associated with those involved in the criminal justice system.

Our members appreciated the good faith efforts of the Brown administration to allow repayment in installments and are deeply grateful for the Newsom administration’s recognition of the pandemic’s impact on 1991 Realignment mental health subaccount revenues and deferral of the 2020 and 2021 installments. We now respectfully request forgiveness of the remaining 2014 OIG Audit outstanding debt, which could be effectuated with simple budget language in 2022.

On behalf of county supervisors and behavioral health directors, we extend our gratitude in advance for your consideration of our request.

Thank you,

As signed by

Farrah McDaid Ting
fmcting@counties.org
Senior Legislative Representative
CSAC

As signed by

Michelle Doty Cabrera
mcabrera@cbhda.org
Executive Director
CBHDA

cc. Richard Figueroa, Deputy Legislative Secretary, Office of Governor Newsom
Tam Ma, Deputy Legislative Secretary, Office of Governor Newsom
Dr. Mark Ghaly, Secretary, California Health and Human Services Agency
Michelle Baass, Director, Department of Health Care Services
Marko Mijic, Deputy Secretary, California Health and Human Services Agency
Stephanie Welch, Deputy Secretary, California Health and Human Services Agency
Marjorie Swartz, Office of Senate pro Tempore Atkins
Agnes Lee, Office of Assembly Speaker Rendon
Joe Parra, Policy Consultant, Senate Republican Caucus
Scott Ogus, Senate Budget and Fiscal Review Committee
Andrea Margolis, Assembly Committee on Budget
Anthony Archie, Fiscal Consultant, Senate Republican Caucus