

MHSA Issue Resolution Process Project Commission Brief for April 28, 2016

The purpose of this document is to describe the MHSA Issue Resolution Process (IRP) Policy Project that has been initiated by the MHSOAC in 2016. The IRP Project will have panel presentations at the April 28, 2016 Commission meeting in Calaveras County.

Problem Statement

Key stakeholders have raised several concerns about the Issue Resolution Process for the handling of complaints and grievances related to the MHSA, citing fears of retaliation, a lack of accessibility and consistency with the filing process, and a lack of transparency with the case handling process. Altogether, these issues may deter stakeholders from filing, making it difficult for the counties, Department of Health Care Services (DHCS), and the MHSOAC to be aware of and address the problems that stakeholders have with the implementation of the MHSA. Without this knowledge, stakeholders may resort to other methods for issue resolution, making it harder to understand and meet clients' needs, and fulfill the goals of the MSHA.

Background

The MHSA IRP has been operational since 2009. First implemented by the Department of Mental Health (DMH), DHCS inherited authority over this issue in 2011. The scope of MHSA issues include:

- Access to mental health services
- Violation of statute or regulations relating to use of MHSA funds
- Non-compliance with the General Standards pursuant to Welfare and Institutions Code Sec. 3320
- Inconsistency between the approved MHSA Plan and its implementation
- The local MHSA Community Program Planning Process
- Supplantation (i.e., inappropriately replacing one thing with another)

The DHCS IRP policy states that issues should be addressed first at the local/county level, in an expedient and appropriate manner. If the Issue Filer is unsatisfied with the local resolution, he or she may submit the issue to DHCS in writing, by email, or by calling. Once DHCS receives an issue, the review process begins within 10 business days. DHCS confirms whether (1) the local county IRP was exhausted, and (2) the issue is related to the MHSA regulations, or statutes. If DHCS determines that these two conditions are not met, DHCS will refer the Issue Filer back to their local process or to other resources. The DHCS IRP Process does provide an exception whereby Issue Filers may go directly to DHCS without first exhausting the local IRP. The Issue Filer may also submit an issue to MHSOAC, the California Mental Health Planning Council, or any agency/entity the Filer believes may assist in resolving the issue.

Problems with the current DHCS MHSA IRP that have been raised include potential filers not filing an issue due to fear of retaliation. It has been argued that “in fact, the counties providing services are the ones who are creating them, and if someone has a problem, they have to attempt to go to those in power which will more than likely result in the status quo.” (Little Hoover Commission Report #225, page 22). Stakeholders could hesitate to speak against county decisions for fear of losing funding for their priorities in the next budget cycle. Furthermore, bias could occur naturally from counties investigating themselves, as opposed to a neutral third party investigating the issue. Stakeholders also feel that procedures for anonymity are insufficient.

Some have noted substantial variability in IRPs across counties, arguing for more consistency and minimum standards. For example, while some counties’ websites on IRP are well-documented and straightforward, other counties have a submission process that is not user-friendly (e.g., broken hyperlinks, redirection in a circle between websites, hard-to-find forms) and/or confusing (e.g., being directed to different departments depending on the type of MHSA grievance) with little or no information on how issues will be handled.

Information about the nature, status, and resolution of complaints filed at the local level is not easily obtained or publicly reported. According to counties’ Performance Contracts with DHCS (under Exhibit A (2)), counties are required to develop a log to record issues and include the date the issue was received, a brief synopsis of the issue, the final issue resolution outcome and the date it was reached. It is unclear whether the information in these logs is actually provided to DHCS and examined, and whether it is accessible to others. Without this kind of information, it is difficult to analyze data and identify systemic, common, or serious problems.

Members of the MHSOAC’s Client and Family Leadership Committee (CFLC) have said that the State-level IRP is not clear and easily accessible to filers. For example, information, forms, and contacts are not clearly posted and searchable on county MHSA websites, Medi-Cal complaint and grievance process websites, or at the DHCS website; there is no 1-800 phone number for contacting DHCS regarding the IRP and information is not available in threshold languages.

From July 1, 2012 to January 30, 2015, only six complaints were received by DHCS through its IRP. As of January 6, 2016, no additional complaints have been filed. Without stakeholders coming forward, due to fears of retaliation, difficulty with the submission process, and/or lack of trust in the fairness or timeliness of the process, the MHSOAC cannot get a good understanding of whether the MHSA is being appropriately administered. As an alternative, stakeholders may be inclined to seek resolution through other methods, such as going to the press or through litigation options.

Medi-Cal Complaint or Grievance Process

In addition to the MHSA DHCS IRP, Medi-Cal has a complaint or grievance process. Complaints can be made by phone or in writing to Medi-Cal Managed Care Plans. Plans must provide a decision within 30 days, or in 3 days if a problem is urgent. If a filer is unsatisfied with a plan’s decision, or the plan fails to meet a deadline for a decision, a filer may file a complaint with the state. A filer may ask for a Medi-Cal Fair Hearing or file a complaint or ask for an Independent Medical Review through the Department of Managed Health Care (DMHC) Help Center. When filing for a Medi-Cal Fair Hearing, also known as a State Fair Hearing, eligible filers include original (fee-for-service) Medi-Cal clients or Medi-Cal Managed Care Plan members. For more information, see www.opa.ca.gov/Pages/Medi-CalComplaints.aspx.

MHSA Statutory IRP

There is also a statutory IRP that applies to the MHSOAC. The role of the MHSOAC in the statutory IRP is to bring substantive county performance issues to light and refer filers to DHCS. The Welfare and Institutions Code (W&IC) Section 5845(d)(10) states: "If the Commission identifies a critical issue related to the performance of a county mental health program, it may refer the issue to the [DHCS] pursuant to Section 5655." According to W&IC Section 5655, "If the director determines that there is or has been a failure...and that administrative sanctions are necessary, [DHCS] may...(a) Withhold part or all of state mental health funds from such county (b) Require the county to enter into negotiations for the purpose of assuring..compliance...(c) Bring an action ...in court...to compel compliance."

Current and Proposed Project Activities

- A Commissioner-led IRP Subcommittee has been established and met on 4/8/16 to hear from DHCS, Los Angeles and Napa Counties, and client and family members.
- The Commission meeting on 4/28/16 will study the IRPs with panels from clients and families, counties, and DHCS.
- After the Commission meeting on 4/28/16, the IRP Subcommittee will meet to discuss IRP strategies and recommendations to address IRP issues.
- Subsequently, the Subcommittee will draft a report to the Commission, and obtain and incorporate stakeholder feedback.