

## **RESPONSE TO GRAND JURY REPORT**

**Report Title: BeHOLD: The Department of Mental Health's Management of the Public Guardian Office and Patients' Rights Advocate (aka HESS report)**

**Response by: DHHS Director Connie Beck**

**Report Date: 06/23/2020**

### **FINDINGS**

1. DHHS agrees with the findings numbered: F1
2. DHHS disagrees wholly or partially with the findings numbered: F2, F3, F4, F5

### **RECOMMENDATIONS**

1. Recommendations numbered R1 and R2 have been implemented.
2. Recommendation numbered R3, R4, R5 and R6 will not be implemented because it is not warranted or is not reasonable.
3. Recommendation number R7 needs more analysis.



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INTEROFFICE MEMORANDUM

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**TO:** BOARD OF SUPERVISORS

**FROM:** DEPARTMENT OF HEALTH & HUMAN SERVICES DIRECTOR  
CONNIE BECK

**SUBJECT:** RESPONSE TO 2019-20 GRAND JURY REPORT “BEHOLD: THE DEPARTMENT OF MENTAL HEALTH’S MANAGEMENT OF THE PUBLIC GUARDIAN’S OFFICE AND PATIENTS’ RIGHT ADVOCATE (AKA HESS REPORT)”

**DATE:** 8 / 25 / 20

In the Grand Jury Report, “*BeHold: The Department of Mental Health's Management of the Public Guardians Office and Patients' Right Advocate (AKA Hess Report)*,” the Grand Jury has requested that the Department of Health & Human Services respond to Findings F1 through F5 and Recommendations R1 through R7. The Department of Human Resources is proposing the following response as detailed below.

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**FINDINGS**

Finding F1: *The Public Guardian Office is understaffed. (R1, R2, R3)*

**Response: Agree.**

Steps have been taken over the past 2 years to address this prior to the Grand Jury report. The Public Guardian’s (PG) Office requested support in 2018 and received an extra help fiscal assistant from May through July 2018 and then an office assistant from December 2019 until March 2020. An office assistant was hired permanently in March 2020. Additionally, an allocation for another Deputy Public Guardian was approved for Fiscal Year (FY) 2020-21 and is available to be filled as of July 1, 2020.



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Finding F2: *Mental Health, which administers the Public Guardian Office, did not take sufficient proactive measures to help the Public Guardian Office manage the increased caseload when a key staff member took extended leave. (R1, R2, R3)*

**Response: Partially disagree.**

See response to F1 above. Steps taken include: Continually monitor the status of employees on leave with Human Resources to evaluate the opportunity to hire extra-help staff. In some instances, the PG Office is supported and supplemented with Behavioral Health (BH) staff.

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Finding F3: *The present Public Guardians are unable to meet their obligations to clients adequately because they are burdened with inordinately high caseloads. (R1, R2, R3)*

**Response: Partially disagree.**

See response to F1 above. The PG Office does not have a statutorily allocated funding source, and a large portion of its funding is outside the purview of Behavioral Health Administration. However, often times Behavioral Health staff assist the PG Office with more difficult clients. In addition, BH can bill insurance for services, which is more fiscally prudent. Behavioral Health staff manage many of the day-to-day activities for high needs LPS conservatees.

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Finding F4: *The Humboldt County Memorandum Of Understanding with employees has language that restricts the replacement of employees when a full-time employee is out on prolonged medical leave. (R3)*

**Response: Partially disagree.**

In situations like this, extra-help employees can be hired if the budget allows. Often, individuals on extended leave are given time off for a month or two at a time and this makes it difficult to predict the need to hire extra-help staff when the length of employment for them is so undetermined.

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Finding F5: *The Mental Health administration's interpretations of confidentiality create obstacles that prevent the Patients' Rights Advocate from serving clients' needs despite the Advocate's having signed a confidentiality agreement and having undergone the County's annual HIPAA training. (R4, R5, R6, R7)*



**Response: Disagree.**

The CGJ acknowledges that BH “observes federal law governing such protections” of confidentiality of clients served. Additionally, the CGJ acknowledged that “the legal bases of Mental Health’s policy is sound”. Violations of these laws and policies would leave the county and the individuals disclosing and receiving the protected health information (PHI), vulnerable to legal and financial penalties. This issue was thoroughly researched, and a decision was made to not disclose confidential information in violation of state and/or federal law. The law provides a way for the Patient Rights Advocate (PRA) to obtain client consent and access to confidential records and information, and that process will continue to be followed. More importantly, violations of clients’ rights to privacy could irreparably damage the therapeutic relationship with our clients. Just because an employee has the privilege of the ability to access a client’s PHI does not grant them the right to access the client’s PHI. BH operates in accordance with the industry standard of practices. BH only releases the “minimum necessary” of protected health information to authorized covered entities, individuals, or by what is legally permissible (See 45 CFR 164.514).

BH has conducted multiple meetings with the PRA, (1-16-19, 3-6-19, 9-17-19 and 12-3-19) two of which included a representative from the California Office of Patient’s Rights, and consulted with both internal county and outside counsel to establish methods and practices so that the PRA can obtain all of needed information within the confines of the law and can operate in their important role within our system of care. It is not uncommon in the industry for agencies to adjust their business practices for their workers in order to accomplish their role and function more efficiently. The PRA’s role is no different.

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**RECOMMENDATIONS**

Recommendation R1: *The Humboldt County Civil Grand Jury recommends that the Board of Supervisors ensure that adequate funding is budgeted for the hiring of an additional deputy public guardian. (F1, F2, F3)*

**Response: This recommendation was implemented on July 1, 2020.**

A full-time Deputy Public Guardian position was created to be filled in FY 2020-21.

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Recommendation R2: *The Humboldt County Civil Grand Jury recommends that the Department of Health and Human Services hire an additional (fourth) deputy public guardian in order to ensure the office can manage its caseloads. (F1, F2, F3)*



**Response: This recommendation was already implemented prior to receiving the CGJ report and will be fully implemented on or before Aug. 31, 2020.**

This position has been allocated for FY 2020-21 and is available to be filled as of July 1, 2020.

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Recommendation R3: *The Humboldt County Civil Grand Jury recommends that the Department of Health and Human Services develop and implement a process to mitigate the effects of the increased workload on remaining staff when a staff member takes an extended leave. (F1, F2, F3, F4)*

**Response: The recommendation will not be implemented because it is not warranted or is not reasonable.**

DHHS has a process for hiring extra help staff when appropriate. As indicated in F4, this can be done when the leave is determined to be for a significant amount of time. Unfortunately, this is often not the case when staff goes out on leave, and because leave is protected by state and federal labor laws, the position must be held for them. In addition, the PG Office does not have dedicated funding and relies on financing through County General Funds, Social Services and Behavioral Health. So, the addition of extra help staff often requires conversations broader than just Behavioral Health Administration.

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Recommendation R4: *The Humboldt County Civil Grand Jury recommends that Mental Health ensure that the Patients' Rights Advocate have full access to patient information relative to their duties. (F5)*

**Response: The recommendation will not be implemented because it is not warranted or is not reasonable.**

The PRA will receive access to patient information within the confines of the law and existing policies, as is the current policy.

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Recommendation R5: *The Humboldt County Civil Grand Jury recommends that Mental Health ensure that the Patients' Rights Advocate be provided with an unredacted census daily. (F5)*

**Response: The recommendation will not be implemented because it is not warranted or is not reasonable.**



State and federal law will continue to be followed to protect client health information.

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**Recommendation R6:** *The Humboldt County Civil Grand Jury recommends that Mental Health ensure that the Patients' Rights Advocate be provided unredacted denial-of-rights reports with patient information. (F5)*

**Response: The recommendation will not be implemented because it is not warranted or is not reasonable.**

State and federal law will continue to be followed to protect client health information.

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**Recommendation R7:** *The Humboldt County Civil Grand Jury recommends that Mental Health welcome the Patients' Rights Advocate to the entirety of Continuous Quality Improvement meetings without restrictions. (F5)*

**Response: The recommendation requires further analysis.**

DHHS-BH is in the process of changing the meeting format at which time this should no longer be an issue. The meeting will transition to being open and public with the PRA welcome to attend the public portion of the meeting. Any protected health information that is pertinent to discussions shall be redacted and shared during the public portion of the meeting in order to protect patient confidentiality.

