

Minutes of the
Tobacco Education and Research Oversight Committee (TEROC)
Friday, March 23, 2018
9:00 AM – 11:00 AM

Location

The Holiday Inn
300 J Street
Sacramento, CA 95814

Alternative Locations

2001 N. Soto Street, Room 324
Los Angeles, CA 90032

10940 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024

530 Parnassus Avenue, Suite 366
San Francisco, CA 94143

MEMBERS PRESENT:

Dr. Michael Ong (Chair), Dr. Alan Henderson (Vice-Chair), Ms. Patricia Etem, Dr. Pamela Ling, Dr. Mark Starr, Dr. Robert Oldham, Ms. Vicki Bauman, Ms. Mary Baum, Mr. Primo Castro, and Dr. Lourdes Baézconde-Garbanati

MEMBERS ABSENT:

Dr. Wendy Max and Dr. Claradina Soto

OTHERS IN ATTENDANCE:

Charmaine Monte, Sacramento Office of Education
Elizabeth Escalante, Sacramento Office of Education
April Roeseler, California Tobacco Control Program (CTCP)
Michelle Gibbons, County Health Executives Associate of California
Tonia Hagaman, CTCP
Lindsey Freitas, American Lung Association (ALA)
Bob Curry, Local Lead Agency (LLA)
Gordon Sloss, California Department of Public Health (CDPH)
John Lagomarsino, California Department of Education (CDE)
Teresa Calvert, California Department of Finance (DOF)
Adam Dorsey, DOF
Joseph Martin, University of California (UC), Davis Health System, Rover Library
Darren Yee, CTCP,
Jerry Katsumata, CTCP

Noah Johnson, DOF
Alan Lum, CDPH
Margarita Garcia, CDE
Lina Grant, DOF
Tim Gibbs, American Cancer Society Cancer Action Network (ACS CAN)
Jamie Morgan, American Heart Association (AHA), American Stroke Association (ASA)
Sarah Planche, CDE/Tobacco-Use Prevention Education (TUPE)
Veronica Wogec, CTCP
Ryan Pyle, CTCP
Nadine Roh, CTCP
Humberto Jurado, CTCP
Mayra Miranda, CTCP

OTHERS WHO JOINED VIA WEBINAR:

Guadalupe Manriquez
Eipryl Tello, Long Beach County
Rebecca Lee, CDPH
Lisa Peterson, UC Davis, Rover Library
Tonya Gallow, Los Angeles County
Jorge Andrews, UC Davis

Nicole Coxe, Santa Clara County
Davis Alcocer, UC Office of the President
Alison Sipler, San Diego County
Stephanie Gonzalez, Health Collaborative
Danny Fung, UC Office of the President
Rich Heintz, LLA
Irene Linayao-Putman, San Diego County
Richard Kwong, CTCP
Bart Aoki, UC Office of the President, Tobacco-
Related Disease Research Program (TRDRP)

Carol McGruder, the Loop
Jennifer Gideon, Shasta County
Anna Aistrich, Santa Clara County
Gonzalo Coronado, Monterey County
Selfa Saucedo, Ventura County
Vanessa Hanson, Lassen County
Christina Smith, Del Norte County
Nancy McClafin, Del Norte County
Rhonda Folsom, Orange County
Ginnie Day, Mariposa County

1. Welcome and Introductions

The TEROC Chair, Dr. Michael Ong, called the meeting to order. TEROC members and meeting guests introduced themselves.

2. Discussion about Proposition 56 Funding

Dr. Ong summarized the purpose of the meeting was to hear an update regarding multiyear encumbrance and spending authority concerns relating to Proposition (Prop) 56 funds. He noted, at the February 6, 2018 meeting, TEROC became aware of concerns from agencies receiving Prop 56 funds regarding the authority to spend Fiscal Year (FY) 2017/18 funds beyond June 30, 2018. Due to the time involved developing and executing grants and contracts and hiring staff, local agencies are not able to encumber and spend their FY 2017/18 appropriations/contract and grant awards in their entirety by June 30, 2018. Dr. Ong asked to hear an update about the status of discussions between the California Department of Public Health (CDPH) and the Department of Finance (DOF) around this issue.

General Discussion

Dr. Alan Henderson mentioned a letter was recently sent to TEROC from Jennie Cook, Chair of the Smoke-Free Marin Coalition, on the issue of Prop 56 funds and multiyear spending authority.

Dr. Ong asked if a staff person from CDPH or DOF would like to give an update on discussions. Ms. Teresa Calvert from DOF summarized since the February 6, 2018 TEROC meeting, DOF has been working with CDPH to research contract and accounting issues surrounding the topic. Ms. Calvert noted DOF identified an administrative fix to address TEROC's concerns raised at the February TEROC meeting.

Dr. Ong summarized his appreciation for an administrative fix and noted there are significant concerns at the local tobacco control level. He invited a representative from CDPH to describe their engagement with DOF on the issue. Mr. Alan Lum, Deputy Director of Administration at CDPH, said CDPH is looking at an administrative way to address the multiyear funding issue. Ms. Patricia Etem asked about a timeline for finalizing the administrative fix. Mr. Lum replied that CDPH is working as fast as it can, and the Administration Division will reach out to the California Tobacco Control Program (CTCP) to implement the administrative fix as soon as it is appropriate.

Dr. Ong asked how the funds that have already been encumbered would be treated differently from the funds yet to be encumbered. Mr. Lum replied that to ensure little impact, programs would be asked to spend the funds already encumbered as quickly as possible. Dr. Robert Oldham asked if the process for this year's funds allows for rollover authority. Mr. Lum replied this is the issue CDPH and DOF are looking at to see if there is an administrative solution.

Dr. Bart Aoki from the University of California (UC), Tobacco-Related Disease Research Program (TRDRP) asked if DOF could further explain the details of the administrative fix and whether or not it applies to UC allocations. Ms. Calvert responded that the administrative fix is looking more at the Prop 56 funded programs within CDPH, specifically CTCP.

Dr. Ong summarized TRDRP's program is intertwined with activities of CTCP and the California Department of Education (CDE). He continued and said not including UC/TRDRP would negatively affect their program activities if they were not included with the same spending timeframe as CTCP. Dr. Ong asked DOF if another DOF representative should be separately engaged around this issue. Ms. Calvert said she would take this back to her counterparts in DOF that are assigned to the UC.

Dr. Alan Henderson referred to the highlighted meeting handout and summarized the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund (Revenue and Tax Code Section 30130.53), which specifies all revenues deposited in the Fund are to be "continuously appropriated . . . without regard to fiscal year." Dr. Henderson questioned the need for an administrative fix when the language of the law is clear about multiyear spending authority. He continued that TEROC's responsibility is to ensure that Prop 56 funds are continually allocated so programs can be established, maintained, and evaluated. The administrative fix should be in support of this structure and not the other way around.

Mr. Adam Dorsey from DOF summarized there is the main Prop 56 fund which is continuously appropriated and funds from this main account flow to subaccounts, which are subject to Budget Act appropriations each year. Dr. Henderson questioned the need for the funds to be subjected to annual budget appropriations since the language of the Revenue and Taxation Code Section 30130.53 states, "revenues deposited into the Fund . . . shall not be subject to appropriation, reversion, or transfer by the Legislature, the Governor, the Director of Finance, or the Controller for any purpose other than those specified in this act."

Dr. Mark Starr asked what would happen to the revenues in the subaccounts if they were not used and whether or not they could be rolled over into the next fiscal year. Mr. Dorsey replied the reason DOF created the subaccounts for the separate programs was in response to similar concerns from TEROC last year, and unspent funds would remain in the specific program subaccount. Dr. Ong added TEROC recognizes Prop 56 is a new initiative, but is concerned about agencies not receiving FY 2017/18 funds until after January 2018 and then being told they have six months to disperse five quarters of funding. TEROC is highly concerned local programs do not have sufficient time to spend the funds in the most effective way.

Dr. Henderson added that the tobacco control field has been through this before and summarized how the American Cancer Society and other agencies sued the State of California in the 1990s for diverting tobacco tax revenues specified for health education to purposes other than those required in Proposition 99, and they won the lawsuit.

Dr. Ong noted the key thing is to find a way to move forward, to do what Prop 56 requires and intended, and to make sure the programs are functioning to the best of their ability, including harmonizing the use of Prop 99 and 56 funds for tobacco control research and educational efforts.

Dr. Starr asked DOF if the administrative fix would give programs rollover authority. Ms. Calvert replied, "Yes." Mr. Dorsey added while this is true for the contracts administered by CDPH, he is not sure about the contracts administered by UC/TRDRP and CDE.

Dr. Ong noted TEROC might want to engage the State Controller's Office (SCO), who sets up rules on how the funds are dispersed, because SCO may not be aware of the current issue.

Dr. Ong asked for local programs represented in the audience to comment on how this issue impacts their programs. Mr. Bob Curry, Marin County Local Lead Agency (LLA) Project Director and member of the Executive Committee for the LLA Project Director's Association (PDA), explained that the PDA surveyed sixty jurisdictions to report how much money they would have to send back to the State if they did not have the ability to roll FY 2017/18 funds into the next fiscal year. Two-thirds of the LLAs responded to the survey and the combined total amount of unspent funds would be \$22 million. Half of the respondents reported that they would have to lay off staff and cut contracts if they do not have ability to rollover funds.

Ms. Michelle Gibbons from the County Health Executives Associate of California, which represents the sixty-one local jurisdictions in California, expressed concerns about the inability to rollover funds for both tobacco control and oral health programs.

Ms. Lindsey Freitas from the American Lung Association (ALA) asked DOF to further explain the administrative fix and how it would be applied to other agencies receiving Prop 56 funds. She also asked if DOF could explain why the Prop 56 funds are being treated differently than the Prop 99 funds. In response to Ms. Freitas' first question, Ms. Calvert indicated "contract language" would be used to address the issue. She did not respond to Ms. Freitas' second question as to why Prop 56 funds are being treated differently from Prop 99 funds.

Mr. Primo Castro commented Prop 56 revenues provides tobacco control with stability over the next ten to fifteen years, which is a huge win for public health. He stated local tobacco control work involves close partnerships with law enforcement and Prop 56 allocates funds to many partners, including the Department of Justice (DOJ), who would also be significantly impacted without the ability to rollover funds. Dr. Ong added DOJ is most likely under the same timeline for spending current fiscal year funds.

Mr. Tim Gibbs from the American Cancer Society Cancer Action Network (ACS CAN) asked DOF to speak to the rationale for a policy change from multiyear spending authority with Prop 99. Ms. Calvert replied she does not think there has been a change in policy. She continued that DOF estimates revenues in January and May and those estimates inform and assist with building the budget appropriations. Mr. Gibbs asked if DOF could say that unspent CTCP funds could not be used for the Medi-Cal program. Ms. Calvert said this is a similar concern as last year and that is why DOF created separate subaccounts by program to demonstrate where the funds stay. Dr. Ong summarized that DOF set up the subaccount structure to try to ensure that unspent balances would not revert to the top-level fund and be reallocated to somewhere else.

Ms. Etem raised concerns about the lack of communication the tobacco control field has received about returning unspent funds at the end of this fiscal year. Dr. Ong replied that it is reasonable for TERO to write a letter to Prop 56 funded agencies requesting them to inform stakeholders about how to proceed with current year funds. Dr. Oldham suggested TERO include DOF is engaged in discussions with CDPH about an administrative solution in the letter.

Ms. Vicki Bauman commented local education agencies (LEAs) received notification from CDE that they have rollover authority for current year Prop 56 funds. She continued that LEAs would like more clarity on the difference between Prop 99 and 56 funding pots, including clear guidelines about how to spend the money. She noted she is supportive of notifying all local agencies about what to do with current fiscal year funds.

Dr. Lourdes Baézconde-Garbanati asked if CDPH and UC/TRDRP have the same rollover authority for current fiscal year as CDE. Ms. Calvert replied DOF has been working with CDPH only, so she cannot speak to CDE or TRDRP's authority. John Lagomarsino from CDE commented that CDE did send out clarification to the field since Prop 56 funds are being treated differently than Prop 99. Mr. Lagomarsino continued that CDE instructed their funded agencies that they have one additional year to spend Prop 56 funds, until June 2019.

Dr. Baézconde-Garbanati asked if DOF could give assurance that unspent funds would not revert to the main Prop 56 fund, but would be reallocated back into specific accounts. Mr. Dorsey replied this is what they tried to do for fiscal year 2018-19 with the subaccount structure so unspent funds stay within the specific subaccounts and do not go back into the main fund.

Jamie Morgan from the American Heart Association (AHA) commented the AHA thought the language in Prop 56 was clear: new revenue from Prop 56 would augment Prop 99 programs. Ms. Morgan said in her reading of Prop 56, it is well-defined that there is rollover authority. She asked DOF to describe the administrative fix and what AHA could do to help move the process along, including the possibility of proposing enabling legislation to ensure that if unspent funds have to revert to the State, they go to CDPH, CDE, and UC/TRDRP.

Ms. Calvert replied the administrative fix means looking at the contract language and determining a deadline to complete expenditures. She said there is contract language about expenditures having to happen at a certain time in the contract that prevent the authority to rollover. The administrative fix would focus on this language. On the question about unspent funds remaining where they are, Ms. Calvert summarized the subaccount structure for CDE, CDPH and UC/TRDRP are specific enough to track fund balances. DOF will use the May Revision for the Prop 99 and Prop 56 FY 2018/19 budget as a planning tool. As for what AHA can do, DOF is responsive to their concerns as well as TEROC's, which is already happening.

Ms. Morgan asked a follow up question about why Prop 56 funds cannot follow the same model as Prop 99. Ms. Calvert responded Prop 56 is new and funds different programs. Mr. Adam Dorsey from DOF added the answer depends on how prescriptive the Prop 56 initiative was, and how the departments that administer the programs structure and allocate the funds.

Dr. Ong summarized a webinar chat box comment from UC/TRDRP, "the administrative fix for current year funds for UC/TRDRP is to send back unspent funds, which would then be re-authorized". Dr. Ong continued that TEROC does not find this acceptable and would want to see CDE, CDPH, DOJ, and UC/TRDRP have a similar process for unspent funds.

Mr. Lagomarsino from CDE said he wants clarification regarding multiyear spending authority of CDE, UC/TRDRP, and CDPH for Prop 56 funds and if it is the same timeframe as Prop 99 funds: three additional years to encumber funds.

Mr. Dorsey commented that the main fund, the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund is continuously appropriated, and the funds allocated into the program subaccounts are subject to Budget Act appropriations. The subaccounts have different encumbrance and liquidation periods than a continuously appropriated fund. Mr. Dorsey said he was not familiar enough with the way CDE funds are typically appropriated under Prop 99 and he offered to work further on the issue to understand it better. Dr. Henderson said TEROC members believe the Prop 56 funds are continuously appropriated for the purposes of the act without regard to fiscal year. He continued and stated the voters of California approved this via Prop 56.

Dr. Ong commented that there will be ongoing discussions about this issue and summarized possible TEROC action, which in addition to writing a letter, would be to hold an interim TEROC meeting before the planned June 7th one to re-assess the issue and whether additional TEROC action would be needed.

Dr. Starr summarized the continuous appropriation mechanism in the main Prop 56 fund is not carried over to the subaccounts because the subaccounts are created by the Budget Act. He asked DOF if the administrative fix would allow the subaccounts to have the same continuous appropriation mechanism as the

main Prop 56 fund. Ms. Calvert clarified the subaccounts have different encumbrance and liquidation timeframes because of the Budget Act appropriations. Dr. Starr continued that it sounded like Mr. Dorsey was going to look into how the subaccounts are established so that for future years, the subaccounts may be continuously appropriated.

Mr. Dorsey replied that the crux of the issue is the State Budget controls State appropriations, but then there is a relationship between a Department that is administering programs with local entities. The State Budget Act has no impact on local expenditures. Dr. Henderson commented that it does. Mr. Dorsey clarified the State Budget Act has no direct impact on local expenditures. Mr. Dorsey said local entities are not subject to State appropriations, though they might have contracts with State Departments that administer programs, and those contracts are the rules of the road for local expenditures. DOF focused on CDPH administrated programs, so the administrative fix is a contractual mechanism that will be applied in CDPH programs.

TEROC Action

TEROC will write a letter advising all relevant Departments (CDE, CDPH, UC/TRDRP, DOJ) and stakeholders, including the Governor, Legislature, SCO, and DOF, to issue clarification by April 15, 2018 about contracts coming out of Prop 56 funds for current fiscal year and how spending will be affected based on ongoing discussions about the ability to rollover funds. In the letter, TEROC will recommend CDE, UC/TRDRP, and DOJ work with DOF before mid-April about an administrative fix for current year funds as well as work to identify a long-term solution. TEROC will state it reads Prop 56 as providing multiyear spending authority and the long-term fix is to implement the language of Prop 56 as per its intent and requirements. Dr. Henderson motioned, and Ms. Etem seconded. Motioned passed unanimously.

TEROC proposed an interim meeting at the end of April or in early May with the purpose of assessing progress on TEROC actions and the administrative fix. Ms. Etem motioned for an interim TEROC meeting and Ms. Baum seconded. Motioned passed unanimously.

Dr. Starr motioned to send a letter to DOF thanking them for spending time with TEROC, explaining the multiyear expenditure authority issue, working to identify an administrative fix and their willingness to determine applicability of that fix for future years, and for establishing program specific subaccounts. Dr. Baézconde-Garbanati seconded. Motioned passed unanimously.

Dr. Ong thanked Ms. Calvert and Mr. Dorsey for their time and opportunity to discuss the issue and work toward a collaborative solution so that Prop 56 is as effective as possible.

4. Adjourn

Dr. Ong adjourned the meeting.