



August 21, 2023

The Honorable Jim Wood, Chair
Assembly Committee on Health
1020 N Street, Room 390
Sacramento, California 95814

Re: SB 326 (Eggman) The Behavioral Health Services Act (BHSA)
AS AMENDED: August 15, 2023
SET FOR HEARING: August 22, 2023

Dear Chair Wood,

On behalf of the California State Association of Counties (CSAC), Urban Counties of California (UCC), Rural County Representatives of California (RCRC), County Behavioral Health Directors Association (CBHDA), County Welfare Directors Association (CWDA), County Health Executives Association of California (CHEAC), and the County Probation Officers of California (CPOC), we write to share our collective response to the recent amendments to SB 326, which reflects the Governor's revised proposal to significantly reform the Mental Health Services Act (MHSA) and makes additional changes beyond the MHSA to the behavioral health system more broadly. Counties have expertise in both the programs and the laws related to all streams of mental health funding. Addressing the concerns outlined below will be critical to the success of this reform, and we ask that they be included in the next set of amendments.

In our August 14 letter to this Committee, our organizations requested consideration of three critical county priorities and the adoption of associated changes to: maintain MHSA funding for core mental health services, add fiscal protections, and narrow the proposal to MHSA reform. Counties appreciate the continued engagement with your Committee and the Administration to discuss these county priorities and acknowledge the efforts reflected in the recent amendments in response to issues that stakeholders have raised. However, there are foundational issues that counties still seek to address, as well as concerns that some amendments do not adequately address the specific issues raised. Upon review and assessment of the August 15 amendments, we note the following outstanding concerns:

- **Proposal Still Results in Significantly Less Funding for Core Services.** With the newly proposed diversion of additional local MHSA funds to pay for state-administered prevention programs and the 30-percent set-aside for housing interventions, this proposal will result in significantly less MHSA funding (over \$1 billion less statewide) for core mental health and prevention services, necessitating canceling contracts with community based organizations, closing programs serving our communities, and potentially reducing county staffing in the midst of a severe workforce shortage. Additionally, counties have a significant and growing obligation to fund behavioral health services under the Medi-Cal entitlement and use MHSA funds to support that obligation.

This proposal leaves counties with fewer resources to do so, including less funding available to use as Medi-Cal match to draw down additional federal dollars.

We acknowledge the recent amendments allow for a transfer mechanism among the funding categories. However, any flexibility is both highly limited and uncertain because that mechanism is to seek state approval through a process with unspecified criteria and timelines. Further, a transfer once granted is irrevocable within a three-year planning period, restricting counties from further adjustments to respond to changing economic conditions and unanticipated local needs, such as local crises or disasters. As a preferred alternative, counties request consideration of the establishment of minimum percentage thresholds for the new housing interventions and Full-Service Partnership categories, and upon reaching the established categorical percentage minimums, allowing counties to appropriately allocate the remaining funds to help counties not only sustain current programming but also expand services necessary to treat and support individuals once housed. Counties also request restoration of prevention funds to the local level where they already support a wide range of population prevention activities in schools, around suicide prevention, and among our underserved communities.

Within the housing interventions category, we acknowledge the recent amendments intended to broaden its reach. However, the revised definition remains too restrictive and will make it more difficult for counties to flexibly tailor programs and fund robust housing support services so that individuals can be successful in accessing and maintaining housing stability as envisioned by this proposal.

- **Volatility Issues are Exacerbated Under the Revised Proposal.** Behavioral health services include support for services and staff, and require consistent, ongoing funding. MHSA is an extremely volatile fund source as noted by the Legislative Analyst's Office. Over the past five years alone, MHSA fund swings in any one year have dropped by as much as 35 percent and increased by as much as 88 percent and estimates used for program planning purposes are always inaccurate as a result. This volatility, which poses particularly acute challenges for small counties, necessitates providing greater flexibility within the structure of the BHSA to enable counties to adequately plan for the multi-year expenditure of funds while maintaining critical services, including services for children and youth. We request consideration of the development of county BHSA planning budgets based on a multi-year rolling average of revenues. Developing plans and requiring spending percentages based on a five-year rolling average will have the effect of significantly smoothing the inherent volatility of this revenue source.

The reserve cap that counties have relied on to maintain services through annual revenue fluctuations is being reduced to 15 percent (20 percent for small counties) by this proposal. In addition, because the reserve cap is based on a much smaller funding base (due to the shift of funds from counties to the state), it will result in an over 40-percent reduction in allowable reserves. A 15-percent decline in BHSA revenues would result in nearly \$500 million less for counties, which would quickly overwhelm available reserves and result in the need to make reductions.

- **New Prescriptive State Requirements with Impacts Beyond the MHSA Remain.** New prescriptive state requirements direct how counties must spend BHSA funds and restrict a county's ability to design programs best suited to serving local communities.

For the new requirements imposed on counties that are placed on the statewide ballot, the state may not be required to fulfill its responsibility to provide additional funding when it mandates local governments provide higher levels of service and new programs, because provisions of a voter-approved initiative are not subject to reimbursement as a mandate from the state. We further continue to request that SB 326 be amended to remove any new unfunded mandates on counties. These new requirements merit more robust discussion and analysis and should be considered separately through the legislative process for full consideration of the policy and fiscal implications.

A new chapter proposed to be added to the Welfare and Institutions Code (WIC) imposes extensive new requirements on counties related to reporting, data collection, compliance, and penalty provisions. In addition to the unfunded requirements imposed on counties, of particular concern are the provisions that would expand the state's broad authority to impose corrective action plans (CAPs) or monetary sanctions, or temporarily withhold payments for failure to meet outcome metrics that have yet to be established, failure to report timely, or "if a county's actual expenditures of its allocations from the Behavioral Health Services Fund significantly varies from its budget." It is unclear what constitutes a "significant" variation from a county's budget, but rarely if ever do actual expenditures materialize as budgeted. And because of the complexities inherent in each county's budget, including the use of braided funding/multiple fund sources, this statutory change could indirectly provide sanction authority over variations in county spending of other fund sources, including 1991 and 2011 Realignment funds. In addition, the state already has broad authority to impose CAPs, sanctions and withholds for Medi-Cal contracted services.

As stated in our August 14 letter, sanctions should be reserved for deliberate and chronic deficiencies and should be imposed only after meaningful engagement with the responsible state agency, with appropriate procedural safeguards and due process. We acknowledge amendments were adopted to specify that any resulting withholdings or penalties will be returned to the county of origin, however, the amendments do not afford counties clarity on state requirements, provide any limitations on how much the state can penalize counties in sanctions or withholds, or provide due process for any potential penalties. Finally, monetary sanctions and payment withholds, even if temporary, have the effect of delaying funding available for core services.

One of the county coalition's priorities remains narrowing the current proposal to those provisions specific to the MHSA. However, the proposal as amended still amends numerous sections of law beyond the MHSA. The recent amendments remove one section amending the statutes of the Bronzan-McCorquodale Act (1991 Realignment) but retain others and add new changes to the Act, as well as other changes beyond revisions to the MHSA, including to the Short-Doyle Act and even add additional non-MHSA related statutes from existing law. We continue to request SB 326 be limited to the proposed changes to MHSA to be placed before the voters for approval.

Lastly, we express concern with the recent amendments that decouple SB 326 from the Governor's related housing bond measure, AB 531 (Irwin). Amendments to SB 326 no longer make the BHSA's operation contingent on voter approval of the Behavioral Health Infrastructure Bond Act of 2023, a \$4.7 billion bond to finance the acquisition and construction of voluntary, unlocked residential treatment facilities and other types of housing for Californians experiencing behavioral health issues, including veterans and others experiencing or at risk of homelessness. Passage of the BHSA without the associated infrastructure support that is so critically needed raises significant concerns regarding future capacity to meet the placement needs of those being served under the BHSA to safely stabilize, heal, and receive ongoing support.

Thank you for your consideration of these priorities and requested improvements to SB 326 to provide counties the opportunity to implement these significant programmatic and operational changes through a phased-in approach to bring about real and sustainable change. We are preparing specific language for the provisions outlined above and respectfully request consideration of their inclusion in future amendments to SB 326.

Counties appreciate the continued engagement to strengthen this proposal to realize the opportunities it presents to improve the behavioral health system, and most importantly, best support the people it intends to serve. Should you have any questions regarding the information outlined above, please do not hesitate to contact our organizations.

Sincerely,



Jacqueline Wong-Hernandez
Chief Policy Officer
CSAC
jwh@counties.org



Michelle Cabrera
Executive Director
CBHDA
mcabrera@cbhda.org



Kelly Brooks Lindsey
Legislative Advocate
UCC
kbl@hbeadvocacy.com



Sarah Dukett
Policy Advocate
RCRC
sdukett@rcrc.org



Eileen Cubanski
Deputy Executive Director
CWDA
ecubanski@cwda.org



Karen Pank
Executive Director
CPOC
karen@c poc.org



Michelle Gibbons
Executive Director
CHEAC
mgibbons@cheac.org

cc: The Honorable Susan Eggman, Senator
Honorable Members of the Assembly Health Committee
Honorable Members of the Senate Health Committee
Judith Babcock, Principal Consultant, Assembly Health Committee
Reyes Diaz, Principal Consultant, Senate Health Committee
Jason Elliott, Deputy Chief of Staff, Office of Governor Newsom
Richard Figueroa, Deputy Cabinet Secretary, Office of Governor Newsom
Kim McCoy Wade, Senior Advisor, Office of Governor Newsom
Jessica Devencenzi, Chief Deputy Legislative Secretary, Office of Governor Newsom
Angela Pontes, Deputy Legislative Secretary, Office of Governor Newsom
Dr. Mark Ghaly, Secretary, California Health and Human Services Agency (CalHHS)
Stephanie Welch, Deputy Secretary of Behavioral Health, CalHHS
Michelle Baass, Director, Department of Health Care Services
Marjorie Swartz, Policy Consultant, Office of Senate Pro Tempore Atkins
Liz Snow, Chief of Staff, Office of Assembly Speaker Robert Rivas
Joe Parra, Policy Consultant, Senate Republican Caucus
Gino Folchi, Policy Consultant, Assembly Republican Caucus