



## **ASSEMBLY FLOOR ALERT**

### **Senate Bill 43 (Eggman): Behavioral Health As Amended September 8, 2023 – CONCERNS**

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On behalf of the Rural County Representatives of California (RCRC), the Urban Counties of California (UCC), and the California State Association of Counties (CSAC), we write to express concerns with Senate Bill 43 (Eggman), which expands the definition of "gravely disabled" under the Lanterman-Petris-Short (LPS) Act and modifies hearsay evidentiary standards for conservatorship hearings.

Counties agree with concerns expressed by the author and sponsors that too many individuals suffer without adequate and appropriate treatment and housing; we share in the urgency to bring about real change to address the needs of unhoused individuals with serious mental illness and substance use disorders (SUDs). Counties provide the full continuum of prevention, outpatient, intensive outpatient, crisis and inpatient, and residential mental health and SUD services, primarily to low-income Californians who receive Medi-Cal benefits or are uninsured. Counties also have responsibility for supporting and guiding individuals through the process of involuntary commitment under the LPS Act in both our county behavioral health and Public Guardian capacities.

#### **Substance Use Disorder (SUD) Concerns**

SB 43 expands the eligibility criteria for LPS by redefining grave disability to include individuals with an SUD-only condition (i.e., without a mental health diagnosis). While we appreciate the recent amendments to limit LPS expansion to only those with severe SUD, counties still lack the ability to provide involuntary SUD treatment, as California has no such system of care, including no existing civil models for locked treatment settings or models of care for involuntary SUD treatment. In addition, funding for SUD treatment is limited, even under Medi-Cal; the federal and state governments provide no reimbursement for long-term residential and long-term inpatient drug treatment under Medi-Cal. The current treatment landscape doesn't address involuntary treatment for individuals with SUD.

Counties welcome more detailed conversations about a path forward on court-ordered SUD treatment. However, significant discussions need to occur on issues including a state study to: evaluate court-ordered SUD treatment models; assess the creation of a licensing structure for involuntary SUD treatment facilities; identify appropriate policy changes necessary to facilitate implementation; and understand the resources/infrastructure investment required to serve this new population.

## **Capacity and Resources**

Responsibility for administering and funding the LPS system falls almost entirely on counties. Today, counties solely fund the role of the public guardian; there are no state or federal revenue streams available to support the public guardian. Existing law provides counties with substantial legal tools to conserve individuals who may be at risk to themselves or others under existing law. In the LPS system today, that demand outweighs existing resources.

Counties have wide discretion regarding the commencement of LPS conservatorship proceedings, and the availability and adequacy of care for the proposed conservatee informs the exercise of that discretion. It makes little sense to impose a conservatorship, if there is no adequate placement available for the proposed conservatee, and the conservatorship, therefore, provides no treatment benefits. It is essential that SB 43 recognizes this discretion, and the real-world constraints under which it is exercised. Counties are unable to meet the current demand for placements, and conserved individuals in rural areas are often placed hundreds of miles away from the county in which they were conserved. Without significant ongoing investment into LPS conservatorships, this bill will have little to no impact on the number of individuals conserved and will likely exacerbate the resource problem.

As proposed, investigations and referrals for conservatorship alternatives for assisted outpatient treatment and the Community Assistance, Recovery, and Empowerment (CARE) Act program are explicitly required. These alternative programs along with LPS will need ongoing investment to absorb the increased caseload.

To truly realize an expansion of LPS, additional investments are needed for treatment, including locked facilities, workforce, housing, and step-down care options. According to a comprehensive 2021 study of the state's mental health infrastructure by the non-partisan think tank RAND, as reported by the Editorial Board in the [San Francisco Chronicle](#), "California lacks space to meet demand at all three main levels of care — *acute*, highly structured, around-the-clock medically monitored inpatient care that aims to stabilize patients who can't care for themselves or risk harming themselves or others; *subacute*, inpatient care with slightly less intensive monitoring; and *community residential*, staffed non-hospital facilities that aim to help patients with lower-acuity or longer-term needs achieve interpersonal and independent living skills. Excluding state hospital beds, California is short about 2,000 acute beds and 3,000 beds each at the subacute and community residential levels, RAND estimated — though woefully inaccurate and incomplete data makes it difficult to determine the state's actual bed totals."

While we acknowledge the recent amendments that allow a county, by adoption of a resolution of its governing body, to defer implementation for two years, a build-out of delivery networks to support this significant policy change will take numerous years, with new, sustained and dedicated state resources, above and beyond the one-time investments already made by the state through recent initiatives such as the Behavioral Health Continuum Infrastructure Program (BHCIP). While an unprecedented level of investment has been made across the continuum through BHCIP, funding is in the early stages of deployment, and we are still years away from seeing the results of this investment.

These challenges sit on top of the most intense behavioral health workforce crisis our state has experienced, and at a time when state initiatives are attempting to significantly expand services – through initiatives such as the Medi-Cal mobile crisis services benefit, diversion from jails and state hospitals, CARE Court, and expanded services in schools and primary care.

For LPS expansion to be successful, additional investments including ongoing state funding for public guardians must be prioritized. SB 43 should reiterate the Legislature's commitment to continue exploring options for the expansion of these resources to meet growing needs.

### **Hearsay Exception**

Lastly, counties believe there is merit in SB 43's hearsay exception by enabling public guardians to provide courts with evidence of individuals' ongoing grave disability. We appreciate these changes that will ensure the court is considering the contents of the medical record and that, during conservatorship proceedings, relevant testimony regarding medical history can be considered to provide the most appropriate and timely care.

For these reasons, RCRC, UCC and CSAC have a CONCERNS position on SB 43. Should you have any questions regarding our position, please do not hesitate to have your staff contact our organizations.

cc: The Honorable Susan Talamantes Eggman  
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