



September 9, 2023

The Honorable Gavin Newsom, Governor
1021 O Street, Suite 9000
Sacramento, California 95814

RE: SB 326 (Eggman) The Behavioral Health Modernization Act
AS AMENDED: September 8, 2023
REMAINING CONCERNS

Dear Governor Newsom,

On behalf of the California State Association of Counties (CSAC), 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), our organizations write to thank your Administration for the recent progress and improvements made to SB 326, as amended on September 8, which seeks to modernize the Mental Health Services Act (MHSA) that was passed by the voters nearly 20 years ago. Counties are the key partner responsible for funding and delivering behavioral health services to our communities' most vulnerable Californians. The changes proposed in SB 326 will have a considerable and long-term impact on how funds are allocated to support these services in our communities.

We appreciate the latest amendments that strengthen the proposal, including added flexibility that counties may use to fund reserves and the added collaboration with county organizations on important provisions of the proposal. Counties do, however, have several remaining concerns, as follows:

Proposal Still Results in Significantly Less Funding for Core Services. With the proposed diversion of additional local MHSA funds to pay for 1) state-administered prevention programs, 2) a state-administered workforce initiative, 3) the newly created grant program funded from total MHSA funds to the Innovation Partnership Fund, and 4) 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.

Counties have previously requested consideration of lower established minimums for the new housing interventions and Full-Service Partnership categories that would allow counties to appropriately allocate the remaining funds to help counties maintain critical behavioral health services. Counties have also

requested restoration of prevention funds to the local level where they currently support a wide range of locally tailored population prevention activities in schools, around suicide prevention, and among our underserved communities. Local prevention funds are integral to counties in addressing equity and disparities and today support a broad range of programs that provide community defined evidence practices and build awareness and engagement into services for historically underserved communities.

We acknowledge recent amendments make improvements to the transfer mechanism among the funding categories, including sustaining the level of transfer authority. We also appreciate the amendments that seek to provide more clarity and assurances for counties, including the development of reasonable criteria in collaboration with county organizations. Although a transfer once granted remains irrevocable within a three-year planning period unless approval is obtained from the state, we appreciate the amendments that allow for potential changes through annual plan updates. Concerns do remain that the extra step required could restrict counties from operating most efficiently to respond to changing economic conditions and unanticipated local needs, such as local crises or disasters.

Housing Category Limitations. Within the housing interventions category, we acknowledge prior 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 both subsidies and the robust housing support services some individuals require to be successful in accessing and maintaining housing stability as envisioned by this proposal. The criteria proposed in the bill would be more restrictive than the housing services and supports counties can fund through MHSA funds today, which we do not believe is the intent of this proposal.

Specifically, counties have continued to request flexibility for using housing funds for utility payments, utility deposits, moving cost assistance, security deposits, reimbursing lessor or housing providers for loss or damage, site supervision, operational staff, physical site improvement, operating supports, transitional housing, supplemental payments for board and care facilities, housing navigation, other services necessary to ensure housing readiness and stability, among others.

Further, recent amendments require housing interventions to comply with core components of Housing First, as defined in subdivision (b) of Section 8255. While counties embrace and apply Housing First principles in housing county behavioral health clients, the requirements of subdivision (b) of Section 8255 would inadvertently create new challenges for counties in attempting to house their most vulnerable and medically complex clients.

Reserves Inadequate and Volatility Remains Unaddressed in the Near-Term Under the Revised Proposal. County behavioral health spending is primarily to support services and staff, and requires 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 BHSAs to enable counties to adequately plan for the multi-year

expenditure of funds while maintaining critical services, including services for children and youth. We acknowledge the recent amendments establishing a Behavioral Health Services Act Revenue Stability Workgroup to potentially address the issue in the future. In particular, we appreciate the inclusion of county input in the collaborative development of a proposal to bring about both short- and long-term fiscal stability to support the sustainability of county programs and services. In the near-term, counties continue to request that the reserve cap be restored to the level authorized under existing law.

The reserve funds with the state-imposed cap that counties must comply with have been critical to maintain services through annual revenue fluctuations has been reduced by 25 percent. Furthermore, maintaining the new, less flexible, funding categories also increases the need for reserves to buffer essential services during an economic downturn or unexpected local surge in need. A 15-percent decline in BHSA revenues would result in over \$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.

Further we are concerned that some new requirements imposed on counties are being placed on the statewide ballot. We have continued 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.

We acknowledge and appreciate the recent amendments intended to address some of the counties' fiscal concerns related to several new mandates on counties; however, we are concerned that newly added provisions in the bill create additional cost pressures on counties. For example, the incorporation of outpatient services to the Full-Service Partnership statutes has been added as a requirement, whereas all counties would most benefit if the provision was permissive, and a reference has been stricken for the available use of state and matching funds for specified expenditures for eligible adults and older adults. We interpret that this change would require counties to use BHSA funds for the services outlined in the

adult system of care statutes, and these sections are updated to add the provision of substance use disorder services. Whereas the prior language required counties to use available state and matching funds, this narrows the focus to just BHSA, which will put more strain on BHSA funding to provide services as defined. Given the absence of adequate time to review, analyze and vet these new provisions, it is unclear what the intent and possible long-term consequences will be of these changes.

As stated in previous communications, 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 remaining priorities continues to be a narrowing of the current proposal to those provisions specific to the MHSA. However, the proposal as amended still amends sections of law beyond the MHSA. Prior amendments removed one section amending the statutes of the Bronzan-McCorquodale Act (1991 Realignment) but retained others and added new changes to the Act, as well as other changes beyond revisions to the MHSA, including to the Short-Doyle Act and even added additional non-MHSA related statutes from existing law. We have continued to request SB 326 be limited to the proposed changes to MHSA to be placed before the voters for approval.

Counties have continued to seek amendments to make this proposal more workable and to allow a phased-in approach to implement these programmatic and operational changes to bring about real and sustainable change. We appreciate the recent engagement with your Administration 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.

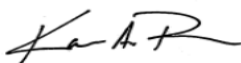
Respectfully,



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



Michelle Cabrera
Executive Director
CBHDA
mcabrera@cbhda.org



Karen Pank
Executive Director
CPOC



Sarah Dukett
Policy Advocate
RCRC

karen@cpoc.org

sdukett@rcrc.org



Eileen Cubanski
Interim Executive Director
CWDA
ecubanski@cwda.org



Michelle Gibbons
Executive Director
CHEAC
mgibbons@cheac.org

cc: The Honorable Susan Eggman, Senator
Honorable Members of the Assembly Appropriations Committee
Honorable Members of the Assembly Housing and Community Development Committee
Honorable Members of the Assembly Health Committee
Honorable Members of the Senate Health Committee
Allegra Kim, Principal Consultant, Assembly Appropriations Committee
Lisa Engel, Chief Consultant, Assembly Housing and Community Development 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
Rosielyn Pulmano, Health Policy Consultant, Office of Assembly Speaker Robert Rivas
Joe Parra, Policy Consultant, Senate Republican Caucus
Justin Boman, Policy Consultant, Assembly Republican Caucus