



August 25, 2023

The Honorable Buffy Wicks, Chair
Assembly Committee on Housing and Community Development
1020 N Street, Room 156
Sacramento, California 95814

Re: SB 326 (Eggman) The Behavioral Health Services Act (BHSA)
AS AMENDED: August 23, 2023
SET FOR HEARING: August 28, 2023

Dear Chair Wicks,

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 amendments of August 15 and August 23 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 the Assembly Committee on Health, 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 the Legislature and the Administration to discuss these county priorities and acknowledge the efforts reflected in the recent sets of 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 amendments, we note the following outstanding concerns:

- **Proposal Still Results in Significantly Less Funding for Core Services.** With the 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 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, and because the ability to transfer funds diminishes over time. 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. 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.

- **Housing Category Limitations:** Within the housing interventions category, we acknowledge the 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 individuals require in order 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, we are requesting 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.

Moreover, while we appreciate the amendments that streamline the approval and development of capital facilities funded through SB 326, including when a local agency provides SB 326 funding to assist a project, several provisions borrowed or modified from AB 2011 (Wicks, 2022) are not applicable to all types of capital facilities that could receive funding.

- **Volatility Issues Remain Unaddressed 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 has been reduced to 20 percent (25 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 a nearly 25-percent reduction in allowable reserves. 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.

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 August 15 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 August 15 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,



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