To: Board of Supervisors
From: Sarah Collard, Ph.D., Director, Health and Human Services Agency
Subject: Implementation of SB 43

Recommended Action: Delay implementation of SB 43 until January 1, 2026 as allowed by law.

Bill Summary:
SB 43 makes several significant changes to the state's involuntary detention and conservatorship laws under the Lanterman-Petris-Short (LPS) Act by:

- Expanding the state's "gravely disabled" criteria to allow for the involuntary detention and conservatorship of individuals on the basis of a standalone "severe" substance use disorder or co-occurring mental health disorder and severe SUD;
- Expanding the definition of grave disability to include individuals who are unable to provide for their basic personal need for personal safety or necessary medical care;
- Defining "necessary medical care" to mean care that a licensed health care practitioner determines to be necessary to prevent serious deterioration of an existing medical condition which is likely to result in serious bodily injury if left untreated;
- Modifying hearsay evidentiary standards for conservatorship hearings in order to expand the array of testimony that can be submitted into conservatorship proceedings without requiring in-person cross examination; and,
- Requiring counties consider less restrictive alternatives such as assisted outpatient treatment (AOT) and CARE Court in conducting conservatorship investigations.

SB 43 also expands reporting requirements to align with the new criteria and allows counties to delay implementation until January 1, 2026 through adoption of a county board resolution.

<u>What will be needed to implement SB 43?</u>
Counties will need to develop an extensive array of new policies, procedures, workforce, and treatment capacity in order to implement SB 43, which is detailed, in part, below. Because SB 43 has not come with dedicated state funding to support these expanded obligations, counties will need additional lead-time to arrange the staffing and resources necessary to support implementation.

Key Issues/Concerns:

- Counties are already largely responsible for implementation of the LPS Act.
- The Behavioral Health Division agrees with concerns expressed by the author and sponsors that too many individuals suffer without adequate and appropriate treatment and housing, and 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).
- By expanding LPS to capture any person who has a severe SUD, this change in policy would significantly expand the portion of the population potentially subject to detention and conservatorship under LPS from around 1% to around 10% of the population.
    - For example, according to the California HealthCare Foundation (CHCF), 16% of young adults have a substance use disorder.
- Under LPS, only peace officers and individuals designated by the county may, with probable cause, detain a person and take them into custody for an assessment.
    - Counties will need to develop criteria for a "severe SUD" grave disability assessment, as no such assessment currently exists.

    - Counties will need to develop criteria and policies, as well as protocols for designating individuals to perform severe SUD grave disability assessments.
    - Counties will need to recruit and hire staff to perform severe SUD grave disability assessments.
- Often, when a person is detained by law enforcement, they are taken to a hospital emergency department or a designated facility for an assessment.
    - Because SB 43 expands LPS criteria to include an assessment of whether an individual is unable to survive safely in community or provide for necessary medical care without involuntary detention, counties will need to develop policies and procedures for how these determinations will be made, along with qualified licensed health care providers.
    - In addition, hospitals will be without qualified designated individuals to perform the assessments needed to remove involuntary holds, when appropriate, or recommend conservatorship when appropriate.
    - Behavioral Health is concerned that in addition, because there is no locked treatment capacity for individuals with severe SUD, hospitals may be impacted by additional individuals who are boarding (awaiting placement) in the absence of this new treatment capacity.
- Furthermore, there are very few treatment settings that have the capacity to serve individuals with complex co-occurring medical, SUD and mental health treatment needs.
- If conserved on the basis of a severe SUD, clinicians would have no way to determine when a conservatorship should end, since there are no clinical standards to determine when to end involuntary SUD treatment.
- By adding physical health conditions as a basis for conservatorship, the state would require counties to develop a new set of medical services to evaluate and assess physical health risks and status.
- However, under any LPS structure, counties would still only be able to treat the mental health or SUD needs of the individual which are within the county behavioral health system's scope.

State Investments in Behavioral Health

- Recent state investments in capacity under the BHCIP were not designed to address this policy change, and that capacity will take years to build out.
    - County behavioral health was not the primary recipient of BHCIP funding:
        - They represent 1/3 of grantees in competitive rounds and received less than half of the BHCIP funding
        - Counties will see very little of the $4.4 billion in CYBHI investments which will primarily benefit IT vendors, CBOs, education partners, and MCPs
- Proposition 1, if passed by the voters in March 2024, could address these issues:
    - The state has been clear that the new step-down capacity could be locked, although preference is given for the least restrictive and least costly settings for treatment and rehabilitation. However, we remain concerned that two years is an inadequate amount of time to build out necessary residential and inpatient SUD treatment capacity to enact this policy change.
    - Proposition 1 also allows for MHSA to be used for SUD treatment, but this would draw from funding already dedicated to mental health treatment services, and would not augment, but rather replace existing dollars going to county mental health services.
- The SUD workforce is significantly impacted: a recent UCSF analysis found that the state of California is facing a significant workforce gap, particularly for SUD counselors.[1] Despite the fact

[1] Coffman, Janet and Fix, Margaret, Building the Future Behavioral Health Workforce: Needs Assessment: Executive Summary, Healthforce Center at UCSF, February 2023:

that SUD counselors account for close to 70% of the SUD workforce in the county behavioral health safety net, graduates of certificate and associate degree programs for SUD counselors based at colleges and universities have decreased significantly in the last five years.

Fiscal Impacts

- LPS law changes do not trigger new state funding. The state pays nothing toward public guardians, funding for designated individuals to conduct assessments, or the Patient's Rights Advocates needed to make determinations and conduct investigations and manage conservatorships. In fact, county behavioral health often funds these functions within their existing resources.
- It also would not require funding for expanded treatment services, including SUD, mental health, or new physical health providers necessary to evaluate grave disability on the basis of failing to meet basic medical needs.
- The federal and state governments provide no reimbursement for long-term residential and inpatient drug treatment under Medi-Cal.
    - The Drug Medi-Cal ODS waiver allows for limited Medi-Cal coverage (up to 30 days only) of these services.[2]
- Commercial insurance plans often deny counties' requests for reimbursement for mobile crisis, crisis, and inpatient residential SUD treatment services.
- If courts were to order involuntary SUD treatment, they would not be bound by what Medi-Cal or other insurance payers would cover, leaving counties with a significant unfunded mandate.
- This structural lack of reimbursement across our major public and private insurance payers has directly led to the scarcity of SUD residential and inpatient treatment capacity.
- Addressing reimbursement for involuntary long-term inpatient and residential care, which would not be reimbursed through Medi-Cal or other payers, particularly those in locked settings, would need to be addressed in order to ensure adequate access to humane treatment.
- California needs to invest more in consistent, sustainable reimbursement for longer-term residential and inpatient SUD treatment to both prevent the deterioration of individuals and to assist with long-term treatment and recovery. Unfortunately, this policy allows for policymakers to side-step that larger structural need, along with the need to address long-term housing needs for Californians.

https://static1.squarespace.com/static/5b1065c375f9ee699734d898/t/63e695fee785253f65f4b6f0/1676056064594/CBHDA_Needs_Assessment_Executive_Summary_FINAL_2-23.pdf

[2] The 37 counties that have opted into the ODS waiver can only receive reimbursement if they maintain a 30-day average length of stay for residential and inpatient treatment.