



County of San Mateo

Inter-Departmental Correspondence

Department: HEALTH

File #: 23-1001

Board Meeting Date: 12/12/2023

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Louise F. Rogers, Chief, San Mateo County Health
Jeï Africa, Director, Behavioral Health, and Recovery Services

Subject: Defer Implementation of Senate Bill 43

RECOMMENDATION:

Adopt a resolution authorizing deferral of implementation of SB 43 in San Mateo County up to January 1, 2026.

BACKGROUND:

The Lanterman-Petris-Short (LPS) Act was enacted in 1967 to end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, as well as to safeguard a person's rights, provide prompt evaluation and treatment, and provide services in the least restrictive setting appropriate to the needs of each person. The Act contains provisions for the involuntary detention of a person deemed to be a danger to self or others or defined as "gravely disabled" for periods of up to 72 hours for evaluation and treatment or for up to 14 days and up to 30 days for additional intensive treatment in county-designated facilities. The Act also sets out the process for a conservator to be appointed for someone who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism and who remains gravely disabled after periods of intensive treatment. For purposes of evaluating and treating an individual who has been involuntarily detained or for placing an individual in conservatorship, the Act currently defines "gravely disabled" as a condition in which a person, as a result of a mental health disorder or impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter.

On October 10, 2023, the California Legislature passed Senate Bill 43 (Eggman), effective as law on January 1, 2024. The new law expands the Act's definition of "gravely disabled" by adding "personal safety" and "necessary medical care" to the definition and including the qualifying conditions of "severe substance use disorder or co-occurring with both a severe mental health and severe substance use disorder."

In addition to expanding the definition of gravely disabled and the criteria for conservatorship, SB 43 also makes numerous changes to the conservatorship process. A limited hearsay exception is added for statements of specified health practitioners, which allows certain relevant medical records to be admissible in the proceedings.

Further, the law requires that alternatives to conservatorship be considered during the conservatorship investigation, specifically Assisted Outpatient Treatment (AOT/Laura's Law), a long-standing program in San Mateo County (County), and Community Assistance, Recovery and Empowerment (CARE) Court, which is currently in the planning stage in the County.

Finally, SB 43 places significant reporting requirements on Behavioral Health directors and LPS facilities. Failure to meet the increased reporting requirements can result in the State issuing corrective action plans and/or civil monetary penalties.

SB 43 further specifies that if counties must expand services to implement the law these costs qualify as a state mandated program requiring state reimbursement. However, this provision is subject to review and determination by the Commission on State Mandates, which has not considered the matter and is currently backlogged. Funding that might be available as a result of the Commission's review will be critical for reimbursement of services required under the law.

SB 43 allows counties to defer implementation of the expanded definition of grave disability until January 1, 2026. This memorandum requests the Board of Supervisors to consider the numerous and varied challenges created by this law, and the benefits of deferring implementation.

DISCUSSION:

The major challenges to SB 43 implementation include: identifying the additional placements and services that will result from an increase in the 72-hour and 14-day involuntary detentions, as well as in the conserved population; the impact of increased detentions on emergency departments; assuring state reimbursement to the County for the costs to expand services and infrastructure; developing funding mechanisms for Substance Use Disorder treatment where none currently exist; developing and building out alternative programs in lieu of conservatorship; legal challenges that may arise from an increase in conserved individuals without an increase in available placements; expanding the systems for reporting state required information; and aligning these efforts with other County initiatives that address homelessness and street level services.

Many of these challenges cannot be addressed in any meaningful way in the few months before January 1, 2024. As such, Behavioral Health and Recovery Services (BHRS) is requesting that this Board approve BHRS' recommendation to defer SB 43 implementation in the County to January 1, 2026, as allowed by the law itself.

This is not a proposal to defer all implementation for two years, but instead to allow time for thoughtful implementation of the program as soon as possible. The additional time will allow for major funding and infrastructure questions to be answered, will allow BHRS and other partners to bolster existing aftercare programs and expand alternatives to conservatorship such as AOT and CARE Court, and will provide time to train numerous personnel of the County, the cities (including law enforcement), hospitals and health care facilities.

Potential Impact Of an Increased Conserved Population

One of the planning tasks prior to implementation is to estimate the number of additional individuals who will require services under the new law. BHRS will work with partners in the coming months to develop estimates. The LPS process consists of four stages, including: 1) 5150 (72-hour holds); 2) 5250 (14-day holds); 3) Temporary Conservatorships (30-days - six months); and 4) LPS Conservatorships (re-established on an annual basis). The California Behavioral Health Directors Association estimated the impact might be as large as a 10% increase to each of the categories.

Funding Infrastructure

Deferring implementation also allows the County time to ascertain the availability of state funding or Mental Health Services Act (MHSA) funding, as well as learn whether the state will implement a reimbursement mechanism for acute inpatient care for a substance use condition. Currently, SB 43 does not include state funding to support the County's expanded obligations and is considered an unfunded state mandate. The Commission on State Mandates has not yet considered whether these unfunded costs are reimbursable by the state. Deferring implementation will afford time to ascertain if such costs will be state funded.

The current funding sources administered by BHRS do not cover the cost of acute inpatient care for a substance use condition. Such costs may ultimately be reimbursable, but the state first needs to develop a reimbursement mechanism. Deferring implementation allows time for the establishment of such a mechanism.

Initial implementation funding support could come from County funds such as realignment or the MHSA. Proposition 1 will be on the next ballot and, if passed, will divert existing funds now going to mental health services to other purposes, including for substance use treatment purposes. Deferring implementation allows for the vote on Proposition 1, as well as a firmer understanding of the future allowable uses of MHSA funds.

Impact on Current Service Provision in Emergency Departments

Hospital partners such as Sutter Mills-Peninsula Medical Center have requested to defer SB 43 implementation due to concerns about increased volumes in their emergency departments and lack of resources for placement. A rise in volume without corresponding expansion of resources could lead to delays in appropriate placement and further impacts on other general acute needs.

Consideration and Expansion of Alternative Paths and Services

The new law requires conservatorship investigations to consider alternatives to conservatorship, specifically requiring consideration of AOT and CARE Court. Implementation of SB 43's expanded definition of gravely disabled would be better instituted after the County has an opportunity to evaluate and improve AOT capacity. Additionally, deferring implementation allows the County to gain experience with CARE Court, and familiarize itself with that pathway as an alternative to conservatorships, prior to expanding the population of persons determined to be gravely disabled. Finally, the deferment would provide opportunity for additional alternatives to conservatorship to be identified and considered prior to implementation.

Training

Implementation of the expanded definition of grave disability will require BHRS to update its 5150 certification policies, trainings, and guidance, as well as provide re-training to County-authorized LPS-designated professionals. To ensure a more consistent application of the expanded criteria, BHRS will need to provide guidance for all LPS-designated professionals, and anticipates working closely

with all local law enforcement departments to ensure consistent understanding of the new criteria. Behavioral Health providers responsible for evaluation of individuals brought in for 5150 holds in LPS facilities will need to be trained in assessing substance use disorders, identifying treatment resources and determining when an individual is no longer gravely disabled due to a substance use disorder. Public Guardian staff will also need training and guidance on how to apply the expanded grave disability criteria to individuals solely with substance use disorders. The development of these new policies, the provision of these trainings, and the assurance of consistent understanding across the continuum of partners implementing aspects of SB 43 will take a thoughtful approach and requires time beyond the January 1, 2024 implementation date.

Reporting Requirements

SB 43 significantly expands reporting requirements for LPS Act-related activities and services, which requires additional systems and administrative support. Implementing SB 43's expanded definition of gravely disabled before the internal reporting mechanisms are established could result in corrective action and/or civil penalties.

The recommendation to defer implementation until a future date, to be assessed by the BHRS Director in consultation with the County Executive and brought back to the Board, not later than January 1, 2026, will allow the BHRS Director time to complete the planning process, collaborate with community partners, obtain further information regarding funding, and ascertain and access areas within the system of care that can be utilized to address the additional conserved population under SB 43.

FISCAL IMPACT:

As explained in the section above, the costs of implementing SB 43 in San Mateo County are currently not determinable. The recommendation to defer will allow more accurate cost estimates to be developed. Implementation deferment will also allow time to establish whether there are new funding mechanisms available, through MHSA as a result of the ballot initiative Prop 1 and/or through the State Mandates Commission decision.