



DATE: November 20, 2023

Behavioral Health Information Notice No: 23-067

TO: California Alliance of Child and Family Services  
California Association for Alcohol/Drug Educators  
California Association of Alcohol & Drug Program Executives, Inc.  
California Association of DUI Treatment Programs  
California Association of Social Rehabilitation Agencies  
California Consortium of Addiction Programs and Professionals  
California Council of Community Behavioral Health Agencies  
California Hospital Association  
California Opioid Maintenance Providers  
California State Association of Counties  
Coalition of Alcohol and Drug Associations  
County Behavioral Health Directors  
County Behavioral Health Directors Association of California  
County Drug & Alcohol Administrators

SUBJECT: Welfare and Institutions Code (W&I) Section 5402: Changes to County Data Reporting Pursuant to the Lanterman-Petris-Short (LPS) Act.

PURPOSE: To summarize changes to W&I Section 5402 made by Assembly Bill 118 (AB 118) that requires a county behavioral health director to report accurate and complete data and imposes a plan of correction and civil money penalties for failure to submit such data on a timely basis.

REFERENCE: [Assembly Bill 118](#) (Budget Act of 2023: Health) and [Section 5402](#) of the W&I Code; [Senate Bill 929](#) (2022); and [BHIN 23-015](#).

**BACKGROUND:**

In 2022, the Governor signed Senate Bill (SB) 929 (Eggman), which amended Section 5402 of the W&I Code. Among other amendments, SB 929's changes to Section 5402 included adding a requirement for each county behavioral health director, each designated and approved facility providing services pursuant to the LPS Act, and each other entity involved in implementing Section 5150 to report data specified in Section 5402(a)(1)-(11) to DHCS quarterly, or as otherwise required. In addition, Senate Bill 929 authorized DHCS to impose a plan of correction against a county or facility that failed to submit data on a timely basis. These changes took effect on January 1, 2023.

On July 10, 2023, the Governor signed AB 118, which further amended Section 5402's data reporting procedures and authorized DHCS to assess civil money penalties against counties and designated and approved facilities that do not submit data on a timely basis or as otherwise required. These changes took effect immediately when the Governor signed the bill. AB 118's changes to Section 5402 are summarized below.

**POLICY:**

AB 118 amended W&I Section 5402. Instead of requiring county behavioral health directors and designated and approved facilities and other entities involved in implementing Section 5150 to separately provide data directly to DHCS, Section 5402 now requires facilities and other entities to collect and provide their data to county behavioral health directors, who will provide the data to DHCS.

In addition, AB 118 amended Section 5402 to grant DHCS the authority to impose civil money penalties against a county or a designated and approved facility that fails to submit data on a timely basis and established processes for appealing the imposition of civil money penalties. Lastly, Assembly Bill 118 established the LPS Act Data and Reporting Oversight Fund in the State Treasury, which is where DHCS shall deposit civil money penalties assessed and collected.

**SUMMARY OF STATUTORY CHANGES:**

AB 118 made the following changes to the law:

W&I Section 5402(b)(1) and (b)(2):

- Each county behavioral health director shall receive the data specified in Section 5402(a)(1)-(11) from designated and approved facilities and other entities involved in implementing Section 5150 and report that data to DHCS in a form and manner, and in accordance with timelines prescribed by DHCS. (W&I, § 5402(b)(1)(A) and (B), (b)(2).)
- All data submitted to DHCS by each county behavioral health director shall be transmitted in a secure manner in compliance with all applicable state and federal requirements, including, but not limited to, Section 164.312 of Title 45 of the Code of Federal Regulations. (W&I, §5402(b)(4).)
- Each designated and approved facility that admits, detains, or provides services to persons pursuant to the LPS Act and each other entity involved in implementing Section 5150 shall collect and provide accurate and complete data to the county behavioral health director in the county in which they operate to meet the reporting obligations specified and any other information, records, and reports that the county or DHCS deems necessary. (W&I, § 5402(b)(2)(A).)

A county may establish policies and procedures to ensure compliance with the specified requirements. Each designated and approved facility that admits, detains, or provides services to persons pursuant to the LPS Act and each other entity involved in implementing Section 5150 shall collect and report data to the county behavioral health director consistent with the county's policies and procedures, if established. (W&I, § 5402(b)(2)(B).)

- Data shall be submitted to the county behavioral health director on a quarterly basis, or more frequently, as required by the county. (W&I, § 5402(b)(2)(C).)

W&I Code Section 5402(f):

- In addition to imposing a plan of correction, DHCS may now also impose civil money penalties against a county or a designated and approved facility that fails to submit data on a timely basis or as otherwise required. (W&I, § 5402(f)(1) and (f)(2).) DHCS may assess civil money penalties against a designated and approved facility or county in the amount of fifty dollars (\$50) per day from the date specified in the notice to impose civil money penalties issued by DHCS. (W&I, § 5402(f)(3).)
- A designated and approved facility or county may submit an informal written appeal of a civil money penalty to DHCS within 30 calendar days of the date of issuance of a notice to impose civil money penalties. (W&I, § 5402(f)(4)(A).) The designated and approved facility or county shall include any supporting documentation and explain any mitigating circumstances. (W&I, § 5402(f)(4)(B).) DHCS shall make a determination on the appeal within 60 calendar days of receipt of the informal written appeal. (W&I, § 5402(f)(4)(C).)
- A designated and approved facility or county may request a formal hearing within 30 calendar days following the issuance of DHCS's final determination on the appeal. (W&I, § 5402(f)(5)(A).) All hearings to review the imposition of civil money penalties shall be held pursuant to the procedures set forth in Section 100171 of the Health and Safety Code. (W&I, § 5402(f)(5)(B).) Civil money penalties imposed upon a designated and approved facility or county shall continue to accrue until the effective date of DHCS' final decision. (W&I, § 5402(f)(5)(C).)

W&I Code Section 5402(g):

- AB 118 established the LPS Data and Reporting Oversight Fund in the State Treasury, which shall be administered by DHCS. (W&I, § 5402(g)(1) and (g)(2).) Civil money penalties assessed and collected pursuant to subdivision (f) shall be deposited into this fund. (W&I, § 5402(g)(3).) The purpose of this fund is to fund DHCS' oversight activities and administrative costs associated with implementing Section 5402. (W&I, § 5402(g)(4).)

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If you have any questions regarding this Behavioral Health Information Notice, please contact the Mental Health Licensing Section at [MHData@dhcs.ca.gov](mailto:MHData@dhcs.ca.gov) or (916) 323- 1864. DHCS will issue additional guidance regarding how these changes will impact county reporting obligations in a separate Behavioral Health Information Notice.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief  
Licensing and Certification Division