

DATE: February XX, 2024

Behavioral Health Information Notice No: 24-XXX

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: Senate Bill (SB) 43. Lanterman-Petris-Short (LPS) Act: changes to the definition of “gravely disabled”; changes for conservatorship proceedings; expanded data collection requirements.

PURPOSE: Provide stakeholders with a summary of SB 43’s changes to the LPS Act, effective January 1, 2024, and provide information about implementation of expanded data collection policy.

REFERENCE: [Senate Bill 43](#) (2023); Welfare and Institutions (W&I) Code sections [5008](#), 5122, [5350](#), [5354](#), and [5402](#); Health and Safety Code (HSC) section [1799.111](#); and [BHIN 23-015](#).

BACKGROUND:

On October 10, 2023, the Governor signed Senate Bill 43 (Eggman), which made substantive changes to the LPS Act within the W&I Code and a related provision of the HSC.



SUMMARY OF STATUTORY CHANGES:

W&I Code Section 5008:

W&I Code Section 5008 defines various terms used throughout the LPS Act, including “gravely disabled.” (W&I, § 5008(h).)

SB 43 amends the definitions of “gravely disabled” contained in subdivisions (h)(1)(A) and (h)(2) of section 5008. Effective January 1, 2024, the definitions of “gravely disabled” under these two subdivisions are amended as follows:¹

- “For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200, *Article 3 (commencing with Section 5225)*, and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350, ‘gravely disabled’ means...[a] condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and severe substance use disorder, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, or ~~shelter.~~ *shelter, personal safety, or necessary medical care.*” (W&I, § 5008(h)(1)(A) [as amended by SB 43, effective 1-1-24].)
- “For purposes of Article 3 (commencing with Section 5225) and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), ‘gravely disabled’ *includes* a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter.~~ *shelter, personal safety, or necessary medical care.*” (W&I, § 5008(h)(2) [as amended by SB 43, effective 1-1-24].)

In addition, SB 43 adds the following definitions to section 5008:

- “*“Severe substance use disorder’ means a diagnosed substance-related disorder that meets the diagnostic criteria of ‘severe’ as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.”* (W&I, § 5008(o) [as added by SB 43, effective 1-1-24].)
- “*“Personal safety’ means the ability of one to survive safely in the community without involuntary detention or treatment pursuant to [the LPS Act].”* (W&I, § 5008(p) [as added by SB 43, effective 1-1-24].)

¹ Where this BHIN references amendments to statute, stricken language is denoted in ~~strikethrough~~, and added language is denoted in *italics*.

- *“Necessary medical care” means care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury as defined in Section [15610.67](#).”* (W&I, § 5008(q) [as added by SB 43, effective 1-1-24].)

SB 43 does not amend W&I Code Section 5008(n)’s definition of “designated facility” or “facility designated by the county for evaluation and treatment” and neither authorizes counties to designate nor DHCS to approve designation of new categories of facilities for evaluation and treatment of individuals on involuntary holds for grave disability due to severe substance use disorder.²

DHCS-licensed mental health treatment facilities are prohibited from admitting patients diagnosed with standalone diagnoses of substance use disorders. (California Code of

² Under W&I Code section 5008(n), “designated facility” or “facility designated by the county for evaluation and treatment” means “a facility that is licensed or certified as a mental health treatment facility or a hospital, as defined in subdivision (a) or (b) of Section 1250 of the HSC, by the State Department of Public Health, and may include, but is not limited to, a licensed psychiatric hospital, a licensed psychiatric health facility, and a certified crisis stabilization unit.”

In accordance with W&I Code section 5008(n), the following types of facilities can be designated by counties and approved by DHCS to provide evaluation and treatment for individuals on involuntary LPS holds for grave disability due to severe substance use disorder:

- general acute care hospitals (as defined in HSC section 1250(a)) with distinct part units providing chemical dependency recovery as a supplemental service in accordance with HSC section 1250.3(e)-(g);
- acute psychiatric hospitals (as defined in HSC section 1250(b)) with distinct part units providing chemical dependency recovery as a supplemental service in accordance with HSC section 1250.3(e)-(g); and
- certified crisis stabilization units in accordance with sections 1840.338 and 1840.348 of Title 9 of the California Code of Regulations. To be approved by DHCS, county-designated facilities shall meet the requirements set forth in section 821 of Title 9 of the CCR.

In addition, W&I Code section 5150(a) permits an individual detained on involuntary LPS hold for grave disability due to severe substance use disorder to be taken into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention and does not require the facility where the individual is taken, such as an emergency department, to be designated and approved for evaluation and treatment. W&I Code section 5150(a) requires that, at a minimum, assessment (as defined in W&I Code section 5150.4) and evaluation (as defined in W&I Code section 5008(a)) shall be conducted and provided on an ongoing basis during the 72-hour period and that crisis intervention (as defined in W&I Code section 5008(e)) may be provided concurrently with assessment, evaluation, or any other service.

Regulations (CCR)., tit. 9, § 784.26(d) [Mental Health Rehabilitation Centers]; CCR, tit. 22, § 77113(a)(3) [Psychiatric Health Facilities].)

SB 43 permits a county, by adoption of a resolution of its governing body, to defer implementation of the changes made to W&I Code Section 5008 until January 1, 2026. (W&I, § 5008(h)(4) [as added by SB 43, effective 1-1-24].)

W&I Code Section 5122:

Effective January 1, 2024, SB 43 adds Section 5122 to the W&I Code, as follows:

(a) For purposes of an opinion offered by an expert witness in a proceeding relating to the appointment or reappointment of a conservator pursuant to Chapter 3 (commencing with Section 5350) or Chapter 5 (commencing with Section 5450), the statement of a health practitioner, as defined in subdivision (d), included in the medical record is not made inadmissible by the hearsay rule when the statement pertains to the person's symptoms or behavior stemming from a mental health disorder or severe substance use disorder that the expert relies upon to explain the basis for their opinion, if the statement is based on the observation of the declarant, and the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(b) This section does not affect the ability of a party to call as a witness the declarant of any statement contained in the medical record, whether or not the declarant's statement was relied on by the expert witness.

(c) The court may grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel.

(d) (1) "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, resident, intern, registered nurse, licensed clinical social worker or associate clinical social worker, licensed marriage and family therapist or associate marriage and family therapist, licensed professional clinical counselor or associate professional clinical counselor, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, and a psychological associate registered pursuant to Section 2913 of the Business and Professions Code.

(2) *“Medical record” means any record, in any form or medium, maintained or lawfully obtained by, or in the custody or control of, the office of the public conservator or public guardian that is prepared by a health practitioner and relates to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient who is subject to a conservatorship pursuant to Chapter 3 (commencing with Section 5350). Medical record includes records of care in any health-related setting used by health care professionals while providing patient care services, for reviewing patient data or documenting observations, actions, or instructions, including records that are considered part of the active, overflow, and discharge chart. Medical record also includes, but is not limited to, all alcohol and substance use and treatment records.*

(e) *Nothing in this section affects the application of Section 1201 of the Evidence Code.*

W&I Code Section 5350:

W&I Code Section 5350 permits for a conservator to be appointed for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism. SB 43 makes the following clarifying and grammatical amendments to the following three subdivisions of Section 5350, effective January 1, 2024:

- (b)(2): *“In appointing a ~~conservator~~, conservator for a person who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, the court shall consider the purposes of protection of the public and the treatment of the conservatee. Notwithstanding any other provision of this section, the court shall not appoint the proposed conservator if the court determines that appointment of the proposed conservator will not result in adequate protection of the public.”*
- (c): *“~~No~~ A conservatorship of the estate pursuant to this chapter shall *not* be established if a conservatorship or guardianship of the estate exists under the Probate Code. When a gravely disabled person already has a guardian or conservator of the person appointed under the Probate Code, the proceedings under this chapter shall not terminate the prior proceedings but shall be concurrent with and superior thereto. The superior court may appoint the existing guardian or conservator of the person or another person as conservator of the person under this chapter.”*
- (e)(1): *“Notwithstanding subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, a person is not “gravely disabled” if that person can survive safely without involuntary detention with the help of responsible family, friends, or*

others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter. needs."

W&I Code Section 5354:

W&I Code Section 5354 requires the officer providing conservatorship investigation to investigate and report all available alternatives to conservatorship and recommend conservatorship only if no suitable alternatives are available. Effective January 1, 2024, SB 43 amends W&I Code Section 5354(a) to require the officer to investigate and report on assisted outpatient treatment and the Community Assistance, Recovery, and Empowerment (CARE) Act program as alternatives to conservatorship.

W&I Code Section 5402:

W&I Code Section 5402 requires DHCS to collect data quarterly and publish, on or before May 1 of each year, a report including quantitative, deidentified information concerning operation of the LPS Act. (W&I, § 5402(a).) Effective January 1, 2024, SB 43 amends subdivision (a) of Section 5402 to require DHCS to collect and report on the following additional data:

(18) Beginning with the report due May 1, 2024, the number of persons admitted or detained, including 72-hour evaluations and treatment, 14-day and 30-day periods of intensive treatment, and 180-day post certification intensive treatment, for each of the following conditions:

- (A) Danger to self.*
- (B) Danger to others.*
- (C) Grave disability due to a mental health disorder.*
- (D) Grave disability due to a severe substance use disorder.*
- (E) Grave disability due to both a mental health disorder and a severe substance use disorder.*

HSC Section 1799.111:

Effective January 1, 2024, SB 43 amends HSC section 1799.111 to make changes to conform the definition of "gravely disabled" with the definition in W&I Code section 5008(h)(1), as amended.

POLICY:

In W&I Code Section 5402(h), the Legislature provided DHCS with authority to “implement, interpret, or make specific” Section 5402 by means of information notice without taking further regulatory action.³

SB 43 expands existing data collection and reporting requirements in W&I Code Section 5402. Beginning with the report of data on May 1, 2024, county behavioral health directors will be responsible for providing DHCS with the additional data required by W&I Code section 5402(a)(18)(A)-(E), described above, that they have collected since January 1, 2024.

The data collected by county behavioral health directors will be submitted to DHCS using the online forms located at:
<https://www.dhcs.ca.gov/services/MH/Pages/InvoluntaryDetention-MH.aspx>.

If you have any questions regarding this Behavioral Health Information Notice, please contact the Mental Health Licensing Section at MHLIC@dhcs.ca.gov or (916) 323-1864.

Sincerely,

Janelle Ito-Orille, Chief
Licensing and Certification Division

³ The Legislature has not provided DHCS with authority to “implement, interpret, or make specific” by information notice any other section of the LPS Act amended or added by SB 43.