

# California Behavioral Health Planning Council

## Patients' Rights Committee Agenda

Wednesday, April 17, 2024

Holiday Inn Sacramento Downtown - Arena

300 J Street

Sacramento, California, 95814

Diablo Room

[Zoom Meeting Link](#)

**Call-in #:** +1 669 900 6833

**Meeting ID:** 876 2222 9611

**Passcode:** 088645

10:30am to 12:30pm

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|-----------------|---|--------------|
| <b>10:30 am</b> | <b>Welcome, Introductions, and Housekeeping</b><br><i>Daphne Shaw, Chairperson and All Members</i>              |              |
| <b>10:35 am</b> | <b>Review January 2023 Meeting Minutes</b><br><i>Daphne Shaw, Chairperson and All Members</i>                   | <b>TAB A</b> |
| <b>10:40 am</b> | <b>Senate Bill 43 Updates</b><br><i>Samuel Jain, Disability Rights California</i>                               | <b>TAB B</b> |
| <b>10:50 am</b> | <b>Public Comment</b>   |              |
| <b>10:55 am</b> | <b>CARE Act Implementation</b><br><i>Mike Phillips, Chair-Elect and Tony Vartan, Council Member</i>             | <b>TAB C</b> |
| <b>11:15 am</b> | <b>Public Comment</b>   |              |
| <b>11:20 am</b> | <b>Bridge Medication and Towing Protection Bills</b><br><i>Melanie Roland, Law Foundation of Silicon Valley</i> | <b>TAB D</b> |
| <b>11:50 am</b> | <b>Public Comment</b>   |              |
| <b>11:55 am</b> | <b>Committee Updates</b><br><i>Daphne Shaw, Chairperson and Justin Boese, CBHPC Staff</i>                       | <b>TAB E</b> |
| <b>12:15 pm</b> | <b>Planning for Future Meetings/Activities</b>  |              |
| <b>12:25 pm</b> | <b>Public Comment</b>   |              |
| <b>12:30 pm</b> | <b>Adjourn</b>  |              |

*The scheduled times on the agenda are estimates and subject to change.*

**If reasonable accommodations are required, please contact the Council at (916) 701-8211, not less than 5 working days prior to the meeting date.**

**Patients' Rights Committee Members**

**Chairperson:** Daphne Shaw

**Chair Elect:** Mike Phillips

**Members:** Richard Krzyzanowski, Catherine Moore, Darlene Prettyman, Walter Shwe, Susan Wilson

**Staff:** Justin Boese

**California Behavioral Health Planning Council  
Patients' Rights Committee**

Wednesday, April 17, 2024

**Agenda Item:** January 2023 Meeting Minutes

**Enclosure:** Draft of PRC meeting minutes from January 2023

**Background/Description:**

Enclosed is a draft of the meeting minutes from the January 2023 meeting, prepared by Justin Boese. Committee members will have the opportunity to ask questions, request edits, and provide other feedback.

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**Committee Members Present:**

Daphne Shaw (Chairperson)  
Walter Shwe  
Richard Krzyzanowski  
Darlene Prettyman

Mike Phillips (Chair-Elect)  
Susan Wilson  
Catherine Moore

**Council Staff Present:**

Justin Boese

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**Item #1: Welcome and Introductions**

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Daphne Shaw welcomed all Patients' Rights Committee (PRC) members and guests. Committee members, staff, and guests introduced themselves. A quorum was reached.

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**Item #2: Review Meeting Minutes**

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The committee reviewed the October 2023 Meeting Minutes. No edits to the minutes were requested.

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**Item #3: SB 43 Updates**

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Deb Roth, from Disability Rights California, joined the meeting to speak to the committee about Senate Bill 43 (SB 43), which passed in October 2023. SB 43 was authored by Senator Eggman and expands the definition of "gravely disabled" in the state Welfare and Institution Code. Disability Rights California (DRC) opposed the legislation.

Deb stated that the bill included the option for counties to delay implementation for up to 2 years. She reported that 56 counties have decided to delay implementation, which the Governor's administration is not pleased with. Daphne Shaw asked how the administration might push the counties to implement the bill faster. Deb said that she was unsure, as there was no funding attached to this implementation.

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Mike Phillips stated that the bill changes the language around conservatorship in detrimental ways. He added that there is a lot of confusion around who is responsible for what within this system, and this will contribute to the delays. Daphne Shaw mentioned a book written by Alex Bernard about the conservatorship system within California.

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**Item #4: CARE Act Updates**

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Veronica Kelley joined the meeting to discuss CARE Act implementation in Orange County. She said that there has been a total of 46 petitions, 23 of which have continued to county Behavioral Health (BH). Of those, 16 of the individuals are homeless, and 12 of the petitioners have been family members. Only 3 people have received court dates so far. Veronica said that one of those people might make it to their court date, but the other 2 have unfortunately deceased.

Veronica said that during talks with state legislators, they have expressed surprise that CARE Court isn't actually about homelessness and has a far narrower applicability and potential impact than they thought. She said they are also surprised at the short timeline that Behavioral Health has to fulfill their required duties for each successful petition.

Susan Wilson asked if this would ultimately lead to an increase in conservatorship. Veronica replied that for both the CARE Act and SB 43, there is no additional funding for the conservatorship system, so the increase will be limited by that.

Tony Vartan provided a brief update on CARE Act implementation in Stanislaus County. He said that in many ways things are very similar to what is going on in Orange County but noted some of the differences. Stanislaus County has received 18 petitions, 5 of which have moved forward. The majority of their petitions have been made by law enforcement officers. Their Behavioral Health team is engaging in public education and case finding.

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**Item #5: Letter to DCHS Re: Distribution of Patients' Rights Handbooks**

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Justin Boese updated the committee on a letter to the Department of Health Care Services (DHCS) about the distribution of patients' rights handbooks and materials. At the October 2023 quarterly meeting, Mike Phillips informed the committee that DHCS had recently decided to only provide printed patients' rights handbooks to hospitals. Previously, patients' rights advocacy programs could request and obtain copies of the handbooks themselves, which they could stamp with their office information and distribute to patients or facilities. This helped ensure that patients actually receive the materials while also providing them the contact information for the local advocacy office, rather than the general statewide contact for the California Office of Patients' Rights.

The committee decided to send a letter to DHCS requesting them to reconsider this change. Justin said that the letter has been finalized and will be sent after the conclusion of the January 2024 quarterly meetings.

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**Item #6: Patients' Rights in Board and Cares**

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Melissa Hall and Whitney Wilson from the Patient Advocacy Program of the Jewish Family Service of San Diego presented to the committee on patients' rights in adult residential facilities (ARFs), also known as board and cares. They began with an overview of ARFs and how they fit into the system of care. They then spoke about the rights of individuals in these facilities and the role of patients' rights advocates (PRAs) in protecting them. This includes:

- Monitoring ARFs to ensure residents and providers are aware of residents' rights.
- Providing education and trainings to residents and staff.
- Investigating complaints to resolve concerns.
- Regular visits and check-ins with staff members and residents.
- Meeting quarterly with Community Care Licensing Division and county behavioral health services to discuss concerns and trends.

Melissa and Whitney spoke about some of the common issues and concerns they see in ARFs in San Diego County. These include issues in facilities like bedbugs, denial of rights, medication concerns, evictions, poor food quality, aging building in need of repairs, and staff member rudeness. On a more system-wide level, they see caregiver burnout, staffing shortages, and significant financial issues leading to facilities closing. They said that the SSI rate is not high enough for facilities to pay to keep facilities open and maintained, leading to ARFs closing across the state. This in turn is leading to a lack of beds for people who need this level of care.

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They went on to discuss some support strategies to help keep facilities open. One is Community Care Expansion Program, which provide assistance to help facilities remain open by paying for necessary repairs and maintenance. San Diego County also provides some support locally through the Augmented Service Program, which provides additional patch funding to support residents with higher needs. Whitney and Melissa concluded by talking about their collaboration with various community partners.

Richard Krzyzanowski asked about unlicensed/illegal facilities, as well as whether they saw any difference in urban versus rural facilities. Whitney answered that in San Diego County, the vast majority of their ARFs are clustered in urban regions. She also said that they provide trainings for staff if they are cited by licensing.

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**Item #7: Committee Charter and Workplan Review**

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Due to lack of time, Daphne proposed that the committee revisit the Charter and Workplan during the April 2024 meeting.

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**Item #8: Planning for Future Meetings/Activities**

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The committee discussed future activities and meeting planning, which include:

- Reviewing and updating the committee Charter and Workplan
- Updates on SB 43, CARE Court, and Proposition 1, as needed
- Updates on the letter to DHCS
- Further discussion of PRA staffing ratios and lack of beds.

Richard Krzyzanowski brought up an issue he felt was timely, which was two pieces of legislation being advocated for by Melanie Roland at the Silicon Valley Law Foundation. One is about ensuring bridge medications during patient discharge, and the other protects property such as vehicles from impoundment while on LPS holds. The committee agreed to look into these issues and hear from Melanie during the April 2024 meeting if possible.

**The meeting adjourned at 12:30 pm.**

**California Behavioral Health Planning Council  
Patients' Rights Committee**

Wednesday, April 17, 2024

**Agenda Item:** Senate Bill 43 Updates

**Enclosure:** Implementing SB-43 in the Context of the Lanterman-Petris-Short (LPS) Act

**How This Agenda Item Relates to Council Mission**

*To review, evaluate and advocate for an accessible and effective behavioral health system.*

This agenda item will help Council members advocate for an accessible and effective behavioral health system.

**Background/Description:**

Senate Bill 43 (SB 43), passed in October 2023, expands the definition of “gravely disabled” in state welfare and institution code. The expansion of this definition will lead to an increase in the number of people with mental illness who are involuntarily detained or placed into conservatorship. The PRC is tracking implementation and will continue to receive relevant updates, as this topic is directly related to patients’ rights in California.

Samuel Jain from Disability Right’s California will provide an update on SB 43 implementation and speak to the committee about the SB 43 Public Forum, held by the Planning Council on April 16.



## **Implementing SB-43 in the Context of the Lanterman-Petris-Short (LPS) Act**

Mike Phillips, Esq., Senior Director of Patient Advocacy and Housing  
Services Jewish Family Service of San Diego

### **Legislative Intent of the LPS Act:**

- To end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, and to eliminate legal disabilities.
- To provide prompt evaluation and treatment of persons with mental health disorders or impaired by chronic alcoholism.
- To guarantee and protect public safety.
- To safeguard individual rights through judicial review.
- To provide individualized treatment, supervision, and placement services by a conservatorship program for persons who are gravely disabled.
- To encourage the full use of all existing agencies, professional personnel, and public funds to accomplish these objectives and to protect duplication of services and unnecessary expenditures.
- To protect persons with mental health disorders and developmental disabilities from criminal acts.
- To provide consistent standards for protection of the personal rights of persons receiving services under this part.
- To provide services in the least restrictive settings appropriate to the needs of each person receiving services under this part.

### **Voluntary Status:**

- Individuals must be advised of and offered services on a voluntary basis.
- If an individual is willing and able to accept treatment on a voluntary basis, they have a right to receive those services voluntarily.
- A voluntary patient should not be placed on an involuntary hold.
- A patient who was initially detained involuntarily should be switched to a voluntary legal status if they are willing and able to accept services voluntarily.

## **Criteria Under which Individuals Can Be Civilly Detained Pursuant to the LPS Act:**

- Danger to Self
- Danger to Others
- Grave Disability

### **Current Definition of Grave Disability:**

- A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.
- Mental health disorder, food, clothing, and shelter are not defined.
- However, per *Doe v. Gallinot* (1979), grave disability implicitly requires a finding of harm to self; an inability to provide for one's basic physical needs.

### **Burden of Proof for Grave Disability / Probable Cause:**

- To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion.
- *People v. Triplett* (1983)

### **EnterSB-43**

Senate Bill 43 (SB-43), authored by State Senator Susan Talamantes Eggman, was signed into law by Governor Newsom on October 10, 2023. SB-43 significantly expands the definition of grave disability by including severe substance use disorder (SUD) as an allowable category for someone to be compelled into treatment or placed under conservatorship. This law also includes "personal safety and necessary medical care" as part of basic personal needs standard and allows for wider discretion for the court considering conservatorship to hear expert testimony. Under SB 43, the number of individuals eligible to receive care could dramatically increase, placing additional strain on local infrastructure and services.

Governor Newsom points to SB-43, along with the proposed Proposition One

"Behavioral Health Services Act," and the implementation of the CARE Act as key to his overarching strategy to overhaul California's mental health system.

SB-43 went into effect January 1, 2024, but the legislation allows counties to choose to delay up to two years, until January 1, 2026, to ensure that the counties can adequately anticipate the increased need for intervention and support in mental health, including appropriate housing, and judicial spaces. San Diego County will implement SB-43 by January 1, 2025, per Board of Supervisor approval.

#### **New Definition of Grave Disability (emphasis added to new language):**

- 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 a severe substance disorder**, is unable to provide for their basic personal needs for food, clothing, shelter, **personal safety, or necessary medical care.**

#### **New Definitions:**

- "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. This is six or more of the eleven symptoms listed in the substance-related disorder criteria.
- "Personal safety" means the ability of one to survive safely in the community without involuntary detention or treatment pursuant to this part.
- "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.

#### **LPS Detentions that this New Definition Will Apply to:**

- 5150 or 72-hour detention
- 5256.4 or new probable cause hearings (as of January 1, 2023) that occur when someone is detained pursuant to 5150, beyond 72 hours, at a non-LPS-designated facility (AB- 2275)
- 5250 or 14-day hold
- 5720.55 or 30-day hold (grave disability only) and (as of January 1, 2023, pursuant to SB-1227) a 5270.70 or second 30-day hold (grave disability

only)

- Laura's Law and Assisted Outpatient Treatment
- The CARE Act
- 5350 or LPS Conservatorship

#### **Weapons Prohibitions:**

- Individuals detained pursuant to 5150, admitted to an LPS-designated facility for intensive treatment, and placed on a 14-day hold pursuant to this new definition of grave disability will be placed on a State Department of Justice weapons prohibition for 5 years from the date of the initiation of the 14-day hold; this can be challenged in court by the individual.
- Individuals detained pursuant to 5150, admitted to an LPS-designated facility for intensive treatment, placed on a 14-day hold pursuant to this new definition of grave disability, who then lose their automatic due process hearing will be placed on a Federal Department of Justice weapons prohibition for the remainder of their lifetime.

#### **Facilities that Individuals Detained Pursuant to 5150 Can be Taken To:**

- "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 Health and Safety Code, 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.
- This does not appear to include facilities currently providing treatment for severe substance use disorder.

#### **Who Can Initiate 5150:**

- Peace Officer
- Attending staff at LPS-designated Facilities
- Designated members of a mobile crisis team
- Professional persons designated by the county

**Who Will Need Additional Training:**

- Law Enforcement
- PERT
- Mobile Crisis Response Team
- Clinical Staff at all Facilities that Initiate 5150
- Superior Court Hearing Officers who Oversee Due Process Certification Hearings
- Public Defenders
- Laura's Law, Assisted Outpatient Treatment, and In Home Outreach Team (IHOT) staff
- CARE Act staff
- Mental Health Court Judges
- County Counsel
- Office of the Public Conservator

**How to Address Inter-County Transfers When All 58 Counties May Be Implementing SB- 43 on a Different Timeline?**

- A non-San Diego County facility who has already implemented SB-43, and who is attempting to transfer an individual, detained pursuant to the new definition of grave disability, might be denied by a San Diego County LPS-designated facility if this occurs before January 1, 2025.
- A San Diego County facility who has implemented SB-43 (on or after January 1, 2025, and until January 1, 2026), and who is attempting to transfer an individual, detained pursuant to the new definition of grave disability, might be denied by a non-San Diego County LPS-designated facility if this occurs after January 1, 2025 and before January 1, 2026.

**Historical: 5170 Detention:**

- When any person is a danger to others, or to himself, or gravely disabled as a result of inebriation, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, or other person designated by the county may, upon reasonable cause, take, or cause to be taken, the person into civil protective custody and place him in a facility designated by the county and approved by the State Department of Alcohol and Drug Abuse as a facility for 72-hour treatment and evaluation of people that are inebriated.

- It is unclear whether this pathway was ever implemented, or whether these facilities existed.

### **Other Changes Required by SB-43:**

#### **Section 1799.111 of the Health and Safety Code (24-Hour Immunity for Detention at Non- LPS Facilities):**

- Language is modified to reflect the new definition of grave disability.
- Less relevant in San Diego County, as all San Diego County Emergency Department physicians can initiate 5150 detentions, per Board of Supervisor Resolution.

#### **New Hearsay Exception Created for LPS Conservatorship Appointment and Reappointment:**

- For purposes of an opinion offered by an expert witness in a proceeding relating to the appointment or reappointment of a conservator 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.

#### **Assisted Outpatient Treatment and the CARE Act must be considered Before Placing an Individual on LPS Conservatorship:**

- The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship, including, but not limited to, assisted outpatient treatment pursuant to Section 5346 and the Community Assistance, Recovery, and Empowerment (CARE) Act program pursuant to Section 5978, as applicable, and shall recommend conservatorship to the court only if no suitable alternatives are available.

**Additional Reporting Requirements:**

- 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.
- A new 5150 form (form DHCS 1801) will need to be created.

**Civil Penalties (In Addition to Plans of Correction) may be Applied to Counties and/or Facilities who do not Report Data Timely or Accurately:**

- The State Department of Health Care Services may impose a plan of correction or assess civil money penalties, or both, against a facility or county that fails to submit data on a timely basis.

[This information is provided for educational purposes only.]

**California Behavioral Health Planning Council  
Patients' Rights Committee**

Wednesday, April 17, 2024

**Agenda Item:** CARE Act Implementation

**How This Agenda Item Relates to Council Mission**

*To review, evaluate and advocate for an accessible and effective behavioral health system.*

This agenda item will help Council members advocate for an accessible and effective behavioral health system.

**Background/Description:**

The Patients' Rights Committee continues to track the implementation of the Community Assistance, Recovery, and Empowerment (CARE) Act, which was opposed by the Planning Council. The PRC will receive ongoing updates on the CARE Act implementation from fellow council members, including Tony Vartan and Mike Phillips.



**California Behavioral Health Planning Council  
Patients' Rights Committee**

Wednesday, April 17, 2024

**Agenda Item:** Bridge Medication and Towing Protection Bills

**Enclosures:**

- Law Foundation Bridge Medication Fact Sheet
- Law Foundation Towing Fact Sheet

For copies of these documents, please contact Justin Boese at [justin.boese@cbhpc.dhcs.ca.gov](mailto:justin.boese@cbhpc.dhcs.ca.gov)

**How This Agenda Item Relates to Council Mission**

*To review, evaluate and advocate for an accessible and effective behavioral health system.*

This agenda item will help Council members advocate for an accessible and effective behavioral health system.

**Background/Description:**

The Law Foundation of Silicon Valley is working on securing authors for two pieces of legislation that affect patient's rights in California. The first could ensure that people who are discharged from mental health holds are provided bridge medications and/or prescriptions upon request. The second would prevent the vehicles of people taken into custody for mental health treatment from being towed, and/or protect them from the negative consequences of having their vehicle towed.

Melanie Roland from the Law Foundation of Silicon Valley will present to the committee on the two pieces of legislation.

**California Behavioral Health Planning Council  
Patients' Rights Committee**

Wednesday, April 17, 2024

**Agenda Item:** Committee Updates

**How This Agenda Item Relates to Council Mission**

*To review, evaluate and advocate for an accessible and effective behavioral health system.*

This agenda item provides committee members time to receive updates on recent developments and ongoing activities of the committee, aligning with the Council Mission and committee charter.

**Background/Description:**

The purpose of this agenda item is to allow time for quick updates on various topics and activities of the committee's work. Updates will be provided by the chairperson, chair-elect, and committee staff as needed.

Updates for the April 2024 meeting include:

- The committee letter sent to the Department of Healthcare Services (DHCS) in January 2024 regarding Patients' Rights Advocacy materials.
- Efforts to obtain copies of the California Office of Patient's Rights (COPR) reports to the Department of State Hospitals (DSH) on patient's rights advocacy services provided in state hospitals.
- Efforts to request a study by the Legislative Analyst's Office (LAO) on the staffing ratio of patients' rights advocates.