

AMENDED IN ASSEMBLY MARCH 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1340

Introduced by Assembly Members Santiago and Friedman
(Principal coauthor: Senator Stern)

February 19, 2021

An act to amend Section 5008 of, and to add Sections 5014, 5402.5, and 5899.3 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1340, as amended, Santiago. ~~Mental health services: involuntary detention: services.~~

Existing

(1) *Existing* law, the Lanterman-Petris-Short Act, authorizes the involuntary commitment and treatment of persons with specified mental health disorders for the protection of the persons so committed. Under the act, if a person, as a result of a mental health disorder, is a danger to others, or to themselves, or is gravely disabled, the person may, upon probable cause, be taken into custody by a peace officer, a member of the attending staff of an evaluation facility, designated members of a mobile crisis team, or another designated professional person, and placed in a facility designated by the county and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation. The act also authorizes a conservator of the person, of the estate, or of both, to be appointed for a person who is gravely disabled as a result of a mental health disorder. For these purposes, existing law defines “gravely disabled” to mean either a condition in which a person, as a result of a mental health disorder or chronic alcoholism, is unable

to provide for the person’s basic personal needs for food, clothing, or shelter, or a condition in which a person has been found mentally incompetent, as specified.

~~This bill would state the intent of the Legislature to enact legislation to reform the Lanterman-Petris-Short Act, including expanding the definition of “gravely disabled” to add a condition in which a person is unable to provide for their own medical treatment as a result of a mental health disorder, and emphasizing the necessity to create policies that prioritize living safely in communities.~~

This bill would expand the definition of “gravely disabled” for these purposes to also include a condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for medical treatment, as defined, if the failure to receive medical treatment is either for an existing life-threatening medical condition or the person is in imminent danger of physical injury or life-threatening medical condition and there is a substantial and imminent risk, in either instance, of either death or prolonged hospitalization. By expanding the definition of “gravely disabled” and thereby increasing the duties of local agencies, this bill would impose a state-mandated local program.

This bill would require the State Department of State Hospitals to create a model discharge plan for counties and hospitals to follow when discharging those held under temporary holds or conservatorship. The bill would require county mental health departments to collaborate with facilities and hospitals to develop, implement, and adhere to an adequate discharge plan that ensures continuity of services and care in the community for all individuals exiting holds or conservatorship and to implement that plan across the entire network of acute and subacute facilities on or before July 1, 2023. By placing additional duties on counties, this bill would impose a state-mandated local program.

(2) Existing law, the Mental Health Services Act (MHSA), an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, establishes the continuously appropriated Mental Health Services Fund to fund various county mental health programs. The MHSA also established the Mental Health Services Oversight and Accountability Commission to oversee the administration of various parts of the act.

This bill, to the extent permitted under state and federal law and consistent with the Mental Health Services Act and for the purposes of

the above-mentioned provisions of the Lanterman-Petris-Short Act, would clarify that counties may pay for the services authorized in those provisions using funds from the Mental Health Services Fund when included in county plans, as specified, and would also authorize counties to pay for those services with specified funds from the Local Revenue Fund and the Local Revenue Fund 2011. The bill would require the State Department of Health Care Services to, on or before July 1, 2022, issue guidance specifying which services authorized under the Lanterman-Petris-Short Act may be paid by counties with funds from the Mental Health Services Fund.

This bill would require the commission to develop, implement, and oversee a public and comprehensive framework for tracking and reporting spending on mental health programs and services from all major fund sources and of program- and service-level and statewide outcome data, as specified. The bill would require counties to report to the commission its expenses in specific categories, including, but not limited to, inpatient care or intensive outpatient services, as well as their unspent funding from all major funding sources. By imposing new reporting requirements on counties, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5008 of the Welfare and Institutions Code
2 is amended to read:

3 5008. Unless the context otherwise requires, the following
4 definitions shall govern the construction of this part:

5 (a) "Evaluation" consists of multidisciplinary professional
6 analyses of a person's medical, psychological, educational, social,
7 financial, and legal conditions as may appear to constitute a

1 problem. Persons providing evaluation services shall be properly
2 qualified professionals and may be full-time employees of an
3 agency providing face-to-face, which includes telehealth,
4 evaluation services or may be part-time employees or may be
5 employed on a contractual basis.

6 (b) “Court-ordered evaluation” means an evaluation ordered by
7 a superior court pursuant to Article 2 (commencing with Section
8 5200) or by a superior court pursuant to Article 3 (commencing
9 with Section 5225) of Chapter 2.

10 (c) “Intensive treatment” consists of ~~such~~ *those* hospital and
11 other services as ~~may be~~ *are* indicated. Intensive treatment shall
12 be provided by properly qualified professionals and carried out in
13 facilities qualifying for reimbursement under the California
14 Medical Assistance Program (Medi-Cal) set forth in Chapter 7
15 (commencing with Section 14000) of Part 3 of Division 9, or under
16 Title XVIII of the federal Social Security Act and regulations
17 thereunder. Intensive treatment may be provided in hospitals of
18 the United States government by properly qualified professionals.
19 This part does not prohibit an intensive treatment facility from
20 also providing 72-hour evaluation and treatment.

21 (d) “Referral” is referral of persons by each agency or facility
22 providing assessment, evaluation, crisis intervention, or treatment
23 services to other agencies or individuals. The purpose of referral
24 shall be to provide for continuity of care, and may include, but
25 need not be limited to, informing the person of available services,
26 making appointments on the person’s behalf, discussing the
27 person’s problem with the agency or individual to which the person
28 has been referred, appraising the outcome of referrals, and
29 arranging for personal escort and transportation when necessary.
30 Referral shall be considered complete when the agency or
31 individual to whom the person has been referred accepts
32 responsibility for providing the necessary services. All persons
33 shall be advised of available precare services that prevent initial
34 recourse to hospital treatment or aftercare services that support
35 adjustment to community living following hospital treatment.
36 These services may be provided through county or city mental
37 health departments, state hospitals under the jurisdiction of the
38 State Department of State Hospitals, regional centers under contract
39 with the State Department of Developmental Services, or other
40 public or private entities.

1 Each agency or facility providing evaluation services shall
2 maintain a current and comprehensive file of all community
3 services, both public and private. These files shall contain current
4 agreements with agencies or individuals accepting referrals, as
5 well as appraisals of the results of past referrals.

6 (e) “Crisis intervention” consists of an interview or series of
7 interviews within a brief period of time, conducted by qualified
8 professionals, and designed to alleviate personal or family
9 situations ~~which~~ *that* present a serious and imminent threat to the
10 health or stability of the person or the family. The interview or
11 interviews may be conducted in the home of the person or family,
12 or on an inpatient or outpatient basis with ~~such~~ *that* therapy, or
13 other services, as ~~may be~~ *is* appropriate. The interview or
14 interviews may include family members, significant support
15 persons, providers, or other entities or individuals, as appropriate
16 and as authorized by law. Crisis intervention may, as appropriate,
17 include suicide prevention, psychiatric, welfare, psychological,
18 legal, or other social services.

19 (f) “Prepetition screening” is a screening of all petitions for
20 court-ordered evaluation as provided in Article 2 (commencing
21 with Section 5200) of Chapter 2, consisting of a professional
22 review of all petitions; an interview with the petitioner and,
23 whenever possible, the person alleged, as a result of a mental health
24 disorder, to be a danger to others, or to ~~himself or herself,~~ *self,* or
25 to be gravely disabled, to assess the problem and explain the
26 petition; when indicated, efforts to persuade the person to receive,
27 on a voluntary basis, comprehensive evaluation, crisis intervention,
28 referral, and other services specified in this part.

29 (g) “Conservatorship investigation” means investigation by an
30 agency appointed or designated by the governing body of cases in
31 which conservatorship is recommended pursuant to Chapter 3
32 (commencing with Section 5350).

33 (h) (1) For purposes of Article 1 (commencing with Section
34 5150), Article 2 (commencing with Section 5200), and Article 4
35 (commencing with Section 5250) of Chapter 2, and for the purposes
36 of Chapter 3 (commencing with Section 5350), “gravely disabled”
37 means either of the following:

38 (A) A condition in which a person, as a result of a mental health
39 disorder, is unable to provide for ~~his or her~~ *their* basic personal
40 needs for food, clothing, or shelter. *A person may also be “gravely*

1 *disabled” pursuant to this subparagraph if the person, as a result*
 2 *of a mental health disorder, is unable to provide for their own*
 3 *medical treatment, if the failure to receive medical treatment is*
 4 *either for an existing life-threatening medical condition or the*
 5 *person is in imminent danger of physical injury or life-threatening*
 6 *medical condition and there is a substantial and imminent risk, in*
 7 *either instance, of either death or prolonged hospitalization, as*
 8 *attested by a medical professional in their best medical judgment.*
 9 *For purposes of this subparagraph, “medical treatment” means*
 10 *the administration or application of remedies for a mental health*
 11 *condition, as identified by a licensed mental health professional,*
 12 *or a physical health condition, as identified by a licensed medical*
 13 *professional. A person who is deemed “gravely disabled” pursuant*
 14 *to this subparagraph has the right to refuse medical treatment,*
 15 *subject to the provisions of this part.*

16 (B) A condition in which a person, has been found mentally
 17 incompetent under Section 1370 of the Penal Code and all of the
 18 following facts exist:

19 (i) The complaint, indictment, or information pending against
 20 the person at the time of commitment charges a felony involving
 21 death, great bodily harm, or a serious threat to the physical
 22 well-being of another person.

23 (ii) There has been a finding of probable cause on a complaint
 24 pursuant to paragraph (2) of subdivision (a) of Section 1368.1 of
 25 the Penal Code, a preliminary examination pursuant to Section
 26 859b of the Penal Code, or a grand jury indictment, and the
 27 complaint, indictment, or information has not been dismissed.

28 (iii) As a result of a mental health disorder, the person is unable
 29 to understand the nature and purpose of the proceedings taken
 30 against ~~him or her~~ *them* and to assist counsel in the conduct of ~~his~~
 31 ~~or her~~ *the* defense in a rational manner.

32 (iv) The person represents a substantial danger of physical harm
 33 to others by reason of a mental disease, defect, or disorder.

34 (2) For purposes of Article 3 (commencing with Section 5225)
 35 and Article 4 (commencing with Section 5250), of Chapter 2, and
 36 for the purposes of Chapter 3 (commencing with Section 5350),
 37 “gravely disabled” means a condition in which a person, as a result
 38 of impairment by chronic alcoholism, is unable to provide for ~~his~~
 39 ~~or her~~ *their* basic personal needs for food, clothing, or shelter.

1 (3) The term “gravely disabled” does not include persons with
2 intellectual disabilities by reason of that disability alone.

3 (i) “Peace officer” means a duly sworn peace officer as that
4 term is defined in Chapter 4.5 (commencing with Section 830) of
5 Title 3 of Part 2 of the Penal Code who has completed the basic
6 training course established by the Commission on Peace Officer
7 Standards and Training, or ~~any~~ a parole officer or probation officer
8 specified in Section 830.5 of the Penal Code when acting in relation
9 to cases for which ~~he or she~~ *the parole officer* has a legally
10 mandated responsibility.

11 (j) “Postcertification treatment” means an additional period of
12 treatment pursuant to Article 6 (commencing with Section 5300)
13 of Chapter 2.

14 (k) “Court,” unless otherwise specified, means a court of record.

15 (l) “Antipsychotic medication” means ~~any~~ medication
16 customarily prescribed for the treatment of symptoms of psychoses
17 and other severe mental and emotional disorders.

18 (m) “Emergency” means a situation in which action to impose
19 treatment over the person’s objection is immediately necessary
20 for the preservation of life or the prevention of serious bodily harm
21 to the patient or others, and it is impracticable to first gain consent.
22 It is not necessary for harm to take place or become unavoidable
23 prior to treatment.

24 (n) “Designated facility” or “facility designated by the county
25 for evaluation and treatment” means a facility that is licensed or
26 certified as a mental health treatment facility or a hospital, as
27 defined in subdivision (a) or (b) of Section 1250 of the Health and
28 Safety Code, by the State Department of Public Health, and may
29 include, but is not limited to, a licensed psychiatric hospital, a
30 licensed psychiatric health facility, and a certified crisis
31 stabilization unit.

32 *SEC. 2. Section 5014 is added to the Welfare and Institutions*
33 *Code, to read:*

34 *5014. (a) To the extent otherwise permitted under state and*
35 *federal law and consistent with the Mental Health Services Act,*
36 *all of the following shall apply for purposes of Article 1*
37 *(commencing with Section 5150) and Article 4 (commencing with*
38 *Section 5250) of Chapter 2 and Chapter 3 (commencing with*
39 *Section 5350):*

1 (1) Counties may pay for the provision of services using funds
2 distributed to the counties from the Mental Health Subaccount,
3 the Mental Health Equity Subaccount, and the Vehicle License
4 Collection Account of the Local Revenue Fund, funds from the
5 Mental Health Account and the Behavioral Health Subaccount
6 within the Support Services Account of the Local Revenue Fund
7 2011, funds from the Mental Health Services Fund when included
8 in county plans pursuant to Section 5847, and any other funds
9 from which the Controller makes distributions to the counties for
10 those purposes.

11 (2) A person shall not be denied access to services funded by
12 the Mental Health Services Fund based solely on the person's
13 voluntary or involuntary legal status.

14 (3) Counties shall not use funds from the Mental Health Services
15 Fund to pay for more than one cumulative year of acute or
16 subacute care services provided to a person under a
17 conservatorship established pursuant to Section 5350 for each
18 established conservatorship, including any succeeding periods of
19 conservatorship.

20 (b) On or before July 1, 2022, the State Department of Health
21 Care Services shall issue guidance specifying which services
22 authorized under Article 1 (commencing with Section 5150) and
23 Article 4 (commencing with Section 5250) of Chapter 2 and
24 Chapter 3 (commencing with Section 5350) may be paid by
25 counties with funds from the Mental Health Services Fund.

26 SEC. 3. Section 5402.5 is added to the Welfare and Institutions
27 Code, to read:

28 5402.5. (a) The State Department of State Hospitals shall
29 create a model discharging plan for counties and hospitals to
30 follow when discharging those held under temporary holds or
31 conservatorship.

32 (b) Each county mental health department shall collaborate
33 with facilities and hospitals to develop, implement, and adhere to
34 an adequate discharge plan that ensures continuity of services and
35 care in the community for all individuals exiting holds or
36 conservatorship pursuant to this part. The discharge plan shall
37 be implemented across the entire network of acute and subacute
38 facilities on or before July 1, 2023. Counties may adopt the model
39 plan created by the department for this purpose.

1 (c) Each county shall fund the implementation of the plan to
2 link individuals exiting holds or conservatorship to a broad
3 continuum of community-based programs and services, including
4 assisted outpatient treatment if the person is eligible for those
5 services. A county may use Mental Health Services Act funds for
6 this purpose, to the extent that use is consistent with the act and
7 included in the county's expenditure plan developed pursuant to
8 Section 5847.

9 SEC. 4. Section 5899.3 is added to the Welfare and Institutions
10 Code, to read:

11 5899.3. (a) The Mental Health Services Oversight and
12 Accountability Commission shall develop, implement, and oversee
13 a public and comprehensive framework for tracking and reporting
14 spending on mental health programs and services from all major
15 fund sources and of program- and service-level and statewide
16 outcome data. The framework shall, at minimum, do all of the
17 following:

18 (1) Include balances of all major, relevant funding sources,
19 including balances of unspent MHSA funds. Funding should
20 include specificity about how counties spend funds within the broad
21 MHSA categories, including, but not limited to, how funds support
22 specific types of services such as crisis intervention or housing
23 programs.

24 (2) Articulate information about the programs and services
25 counties provide and the populations they serve, statewide and for
26 each county, using those funds.

27 (3) Report broader outcomes that show the extent to which the
28 state's entire mental health system is helping people in need.

29 (b) To develop the framework required in subdivision (a) the
30 commission shall do all of the following:

31 (1) Consult with state and local mental health authorities to
32 develop and implement the framework.

33 (2) Consider utilizing available data and information when
34 developing the reporting framework. The commission may obtain
35 relevant data and information from other state entities for this
36 purpose.

37 (3) Develop categories of mental health programs and services
38 that are tailored to inform assessments of spending patterns.

1 (4) Develop statewide measurements of mental health and report
2 publicly about those measurements annually on the commission’s
3 internet website.

4 (5) Work with counties and other state and local agencies, as
5 necessary, to use the information it collects to improve mental
6 health in California.

7 (c) Each county shall report to the commission its expenses in
8 specific categories, including, but not limited to, inpatient care or
9 intensive outpatient services, as well as their unspent funding from
10 all major funding sources. Reporting shall be done in a format
11 prescribed by the commission.

12 SEC. 5. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.

17 ~~SECTION 1. It is the intent of the Legislature to enact~~
18 ~~legislation to reform the Lanterman-Petris-Short Act, including~~
19 ~~expanding the definition of “gravely disabled” to add a condition~~
20 ~~in which a person is unable to provide for their own medical~~
21 ~~treatment as a result of a mental health disorder, and emphasizing~~
22 ~~the necessity to create policies that prioritize living safely in~~
23 ~~communities.~~