

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1238 (Eggman)
Version: April 1, 2024
Hearing Date: April 16, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Lanterman-Petris-Short Act

DIGEST

This bill expands the definition of a “designated facility” and “facility designated by the county” under the Lanterman-Petris-Short (LPS) Act and authorizes the State Department of Health Care Services (DHCS) to license and ensure reimbursement is provided for facilities that admit patients who are diagnosed only with a severe substance use disorder.

EXECUTIVE SUMMARY

The LPS Act authorizes a series of involuntary detentions, which may culminate in the establishment of a year-long conservatorship, for a person who is found to be “gravely disabled.” In 2023, the Legislature passed SB 43 (Eggman, Ch. 637, Stats. 2023), which expanded the definition of “gravely disabled” to, among other things, include severe substance abuse disorders, or co-occurring mental health and severe substance use disorders, to the list of conditions from which a person could be suffering and be gravely disabled. Current law, however, does not authorize the types of facilities necessary to treat persons who are gravely disabled as a result of standalone substance abuse disorders.

This bill is intended to close the gap in care left by SB 43 by requiring DHCS to authorize facilities to accept patients with standalone severe substance abuse disorders and to provide for reimbursement for the treatment of standalone severe substance abuse disorders. This bill also permits counties to designate facilities under the LPS Act to provide care for only certain stages of holds under the LPS Act, based on the level of care the facility is able to provide. Finally, the bill permits DHCS to implement the provisions of this bill (but not the LPS Act as a whole) through bulletins or other means without going through a formal rulemaking process. The author has agreed to amend

the bill to state that DHCS may implement the provisions through informal measures until it adopts formal regulations.

This bill is sponsored by the California Chapter of the American College of Emergency Physicians, the California State Association of Psychiatrists, and the Psychiatric Physicians Alliance of California, and is supported by the California Hospital Association, the California Medical Association, the County of San Diego, and Families Advocating for the Seriously Mentally Ill. This bill is opposed by the County Behavioral Health Directors Association and Disability Rights California. The Senate Health Committee passed this bill with a vote of 11-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the LPS Act, which provides for the involuntary detention for treatment and evaluation of people who are gravely disabled or a danger to self or others. (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.)
- 2) Defines “grave disability,” for purposes of involuntarily detaining a person under the LPS Act, as follows:
 - a) 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 use disorder, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or medical care.
 - b) A condition in which a person has been found incompetent to stand trial, as provided.
 - c) A condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care; except this definition does not apply in the initial 5150 hold. (Welf. & Inst. Code, § 5008(h)(1) & (2).)
- 3) Authorizes a county, by adoption of a resolution of its governing body, to elect to defer implementation of the definitions in 2)(a) and (c) until January 1, 2026, and instead use the definitions in place prior to the enactment of SB 43 (Eggman, Ch. 637, Stats. 2023), which are:
 - a) A condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for food, clothing and shelter.
 - b) A condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter; except this definition does not apply in the initial 5150 hold. (Welf. & Inst. Code, § 5008(h)(4).)

- 4) Establishes a series of escalating detentions for involuntary treatment of a person who meets the criteria above, which may culminate in a renewable one-year conservatorship for a person determined to be gravely disabled. Specifically:
 - a) If a person is gravely disabled as a result of mental illness, or a danger to self or others, then a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, take that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention, or placement in a designated treatment facility (known as a "5150 hold"). (Welf. & Inst. Code, § 5150.)
 - b) A person who has been detained for 72 hours may be further detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. (Welf. & Inst. Code, § 5250.)
 - c) After the 14 days, a person may be detained for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code, §§ 5260, 5270.15.)
 - d) If, after 15 days of the 30-day period of intensive treatment, but at least 7 days before the expiration of the 30 days, the professional staff find the person remains gravely disabled and remains unwilling or unable to accept treatment voluntarily, the facility may petition the superior court for approval for up to an additional 30 days of intensive treatment. (Welf. & Inst. Code, § 5270.70.)
 - e) At any time during the holds set forth in (a)-(d), the person in charge of the facility may recommend an LPS conservatorship for the person treated, provided the person being treated remains gravely disabled and remains unwilling or unable to accept voluntary treatment. If the county conservatorship investigator concurs with the assessment, the county must petition the superior court to establish an LPS conservatorship. The county must establish, beyond a reasonable doubt, that the person is gravely disabled. (Welf. & Inst. Code, §§ 5350 et seq.)

- 5) Authorizes DHCS to license psychiatric health facilities to provide a range of care, including acute inpatient services and structured outpatient services. (Health & Saf. Code, §§ 1250-1252.)

This bill:

- 1) Requires DHCS to authorize licensed psychiatric health facilities to admit patients who are diagnosed only with a severe substance use disorder; "severe substance use disorder" has the same meaning as in the LPS Act.
- 2) Provides that, within the LPS Act, the terms "designated facility" or "facility designated by the county for evaluation and treatment" may include a facility that meets the following requirements:

- a) The facility has appropriate services, personnel, and security to safely treat individuals being held involuntarily.
 - b) The facility is licensed as a skilled nursing facility, a facility licensed as a mental health rehabilitation center, a facility licensed or certified as capable of providing treatment at American Society of Addiction Medicine levels of care 3.7 to 4.0, inclusive, or a facility licensed as a social rehabilitation facility with a mental health program certified by DHCS, as specified.
- 3) Provides that nothing in 2) shall be interpreted to preclude a mental health facility or substance use disorder facility from treating either mental health or substance use disorders as a primary condition if the facility is appropriate to provide those treatment services.
- 4) Permits a county to designate a facility for the purpose of providing one or more of the following services, as is appropriate and based on capability, without designating the facility to provide all treatments under the LPS Act:
 - a) Providing evaluation and treatment during a 5150 hold.
 - b) Providing intensive treatment during the initial 14-day hold.
 - c) Providing additional intensive treatment during a 30-day hold.
 - d) Providing treatment to a person following their certification for placement in a conservatorship.
- 5) Requires DHCS to ensure that designated facilities are reimbursed for evaluation and treatment of standalone severe substance use disorders at reimbursement rates equivalent to those provided for evaluation and treatment of mental health disorders.
- 6) Requires DHCS to authorize licensed mental health rehabilitation centers to admit clients who are diagnosed only with a severe substance use disorder; "severe substance use disorder" has the same meaning as in the LPS Act.
- 7) Permits DHCS to implement, interpret, or make specific 1)-6), in whole or in part, by means of information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.
- 8) Makes nonsubstantive technical and conforming changes, and corrects a reference to SB 43.

COMMENTS

1. Author's comment

According to the author:

Last year, this Legislature passed SB 43 to amend the Lanterman-Petris-Short Act by modernizing the definition of “gravely disabled.” Thousands of Californians are suffering with severe mental illness and substance use disorders and it is our obligation to ensure appropriate facilities and services are made available to give them the treatment they need. SB 1238 is necessary to ensure that counties have the necessary authorized facilities, appropriate reimbursement, and policy guidance from the state to both implement SB 43, and provide the appropriate care to these Californians.

2. County facilities do not have the capacity or authorization to treat the number of people who qualify as “gravely disabled” under SB 43

The LPS Act authorizes a series of involuntary detentions, which may culminate in the establishment of a year-long conservatorship, for a person who is found to be “gravely disabled.”¹ Until this year, the definition of “gravely disabled” was limited to persons who were unable to provide for their basic personal needs for food, clothing, and shelter as a result of a mental health or, in the case of holds other than a 5150 hold, as a result of impairment by chronic alcoholism.²

In 2023, however, the Legislature passed, and the Governor signed, SB 43 (Eggman, Ch. 637, Stats. 2023), which expanded the definition of “gravely disabled” in two main ways. First, SB 43 added severe substance abuse disorders, or co-occurring mental health and severe substance use disorders, to the list of conditions a person could be suffering and be gravely disabled. Second, SB 43 expanded the list of limitations the mental health, substance abuse, or co-occurring mental health and substance abuse disorder, or chronic alcoholism, could cause to render a person gravely disabled, to include the person’s basic personal needs for personal safety or medical care. SB 43 took effect on January 1, 2024, but gave counties the option to delay implementation of the new definition until January 1, 2026.³ At the time, many stakeholders raised concerns about SB 43’s expansion of the “gravely disabled” definition on the grounds that the LPS system was already overburdened and over capacity, and that there is no system of care in California to involuntarily treat persons suffering from severe substance abuse

¹ Welf. & Inst. Code, § 5008(h). The LPS Act also authorizes detention and involuntary treatment for persons who, as a result of a mental health disorder, are a danger to themselves or others (Welf. & Inst. Code, §§ 5150, 5250); this category is not pertinent to this analysis.

² Former Welf. & Inst. Code, § 5008(h).

³ See Welf. & Inst. Code, § 5008(h)(4).

disorders.⁴ According to the Senate Health Committee’s analysis of this bill, all but two counties have indicated that they would take advantage of SB 43’s delayed implementation option, in part due to a lack of clarity over whether designated facilities are authorized to treat patients with a primary or standalone substance use disorder.

3. This bill expands authorization and reimbursement for facilities to treat people newly categorized as “gravely disabled” under the LPS Act

This bill makes a number of changes to the statutes relating to licensed mental health facilities and reimbursement for mental health care. Specifically, this bill:

- Authorizes psychiatric health facilities and licensed mental health rehabilitation centers to admit clients who are diagnosed only with a severe substance use disorder.
- Amends the current definitions of “designated facility” and “facility designated by the county for evaluation and treatment” for purposes of the LPS Act to licensed skilled nursing facilities, licensed mental health rehabilitation centers, and facilities licensed as capable of providing treatment at American Society of Addiction Medicine levels of care 3.7-4.0, inclusive, provided that the facility has appropriate services, personnel, and security to safely treat individuals being held involuntarily.
- Requires DHCS to ensure that facilities designated pursuant to the LPS Act are reimbursed for evaluation and treatment of standalone severe substance use disorders at reimbursement rates equivalent to those provided for evaluation and treatment of mental health disorders.
- Authorizes DHCS to implement the licensing and designation provisions of this bill through information notices, provider bulletins, or other similar instructions without undergoing a formal rulemaking process.⁵

The Senate Health Committee’s analysis, incorporated here by reference, discusses the licensing and reimbursement issues, including the suitability of the designated facilities for treating severe substance abuse disorders, in greater detail. For purposes of this Committee’s analysis, it appears that these changes merely authorize DHCS and the counties to establish facilities to provide treatment for persons covered by SB 43; the bill does not make any substantive changes to the LPS Act or restrict any of the rights guaranteed to persons within the LPS Act system. And to respond to stakeholder concerns and ensure that members of the public are given the right to weigh in on regulations adopted to implement the bill’s provisions, the author has agreed to amend the bill to provide that DHCS may use informal implementation measures until the time it adopts regulations via the formal rulemaking process.

⁴ E.g., Assem. Com. on Judiciary, Analysis of Sen. Bill No. 43 (2023-2024 Reg. Sess.) as amended Jun. 30, 2023, pp. 18-19.

⁵ The bill language refers to DHCS implementing provisions of “this act” in Section 5 of the bill, which is not codified; in this context, “this act” refers to this bill (SB 1238), not the LPS Act.

4. Amendments

As noted above, the author has agreed to amend the bill as follows, subject to any nonsubstantive changes the Office of Legislative Council may make:

At page 10, in line 25, after “instructions,” delete “without taking any further regulatory action” and insert “until the time regulations are adopted”

5. Arguments in support

According to the Psychiatric Physicians Alliance of California (PPAC), a co-sponsor of the bill:

PPAC last year surveyed medical directors of acute and subacute psychiatric inpatient units and consulted with emergency room physicians to determine next steps in implementing SB 43 (Eggman, 2023). One of the findings revealed that mental health rehabilitation centers regulations prohibited [mental health recovery centers (MHRCs)] from admitting and treating individuals gravely disabled solely by a [substance use disorder (SUD)]. There is no clinical reason why an MHRC could not treat gravely disabled individuals with SUD, in fact persons with a co-occurring [serious mental illness (SMI)] and SUD illness are routinely and successfully treated in these settings.

Designation authority simply means the ability of a county, with concurrence of the state, to designate secure acute and subacute facilities for the evaluation and treatment of individuals who are a danger to themselves, a danger to others, or gravely disabled. This authority already exists for individuals gravely disabled by an SMI but is lacking for individuals with a SUD. SB 1238 levels the playing field and creates parity in access to these vital and lifesaving services.

6. Arguments in opposition

According to Disability Rights California:

SB 1238 allows the California Department of Health Care Services (DHCS) to “implement, interpret, or make specific this act, in whole or in part, by means of information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.” This provides a workaround to the regulatory rulemaking process, which has comprehensive public notice and comment requirements. SB 1238 allows DHCS to issue guidance without a public process soliciting input from those most impacted.

SUPPORT

California Chapter of the American College of Emergency Physicians (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
Psychiatric Physicians Alliance of California (co-sponsor)
California Hospital Association
California Medical Association
County of San Diego
Families Advocating for the Seriously Mentally Ill

OPPOSITION

County Behavioral Health Directors Association
Disability Rights California

RELATED LEGISLATION

Pending Legislation:

SB 1184 (Eggman, 2024) permits a court's order that a person lacks capacity to refuse consent to psychotropic medication lasts for the duration of specified LPS Act detention periods. SB 1184 is pending before this Committee.

SB 1017 (Eggman, 2024) requires, by January 1, 2026, the State Department of Health Care Services to develop a solution to collect, aggregate, and display information about beds in specified types of facilities, to identify the availability of inpatient and residential mental health or substance use disorder treatment, and have the capacity to, among other things, enable searches to identify beds that are appropriate for individuals in need of inpatient or residential mental health or substance use disorder treatment. SB 1017 is pending before the Senate Appropriations Committee.

Prior Legislation:

SB 363 (Eggman, 2023) was substantially similar to SB 1017 (Eggman, 2024), except it required the creation of a database instead of a solution. SB 363 died in the Assembly Appropriations Committee.

SB 43 (Eggman, Ch. 637, Stats. 2023) among other things, expanded the definition of "gravely disabled," for purposes of involuntarily detaining an individual under the LPS Act, to include an individual with a severe substance use disorder (SUD), or a co-occurring mental health disorder and a severe SUD, or chronic alcoholism, who is unable to provide for food, clothing, shelter, personal safety or necessary medical care.

SB 1227 (Eggman, Ch. 619, Stats. 2022) modified the LPS Act to allow a second 30-day intensive treatment hold for a person who has been certified as "gravely disabled" on

top of the existing 3-day, 14-day, and 30-day treatment holds, without needing to file a conservatorship petition or seek judicial review.

SB 1154 (Eggman, 2022) would have required, by January 1, 2024, the State Department of Public Health, in consultation with the State Department of Health Care Services and the State Department of Social Services, and by conferring with specified stakeholders, to develop a real-time, internet-based database to collect, aggregate, and display information about beds in inpatient psychiatric facilities, crisis stabilization units, residential community mental health facilities, and licensed residential alcoholism or drug abuse recovery or treatment facilities in order to facilitate the identification and designation of facilities for the temporary treatment of individuals in mental health or substance use disorder crisis. SB 1154 died in the Assembly Appropriations Committee.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
