

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

SB 363 (Eggman)
Version: February 8, 2023
Hearing Date: April 11, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Facilities for inpatient and residential mental health and substance use disorder:
database

DIGEST

This bill requires the State Department of Health Care Services (DHCS), in consultation with the State Department of Public Health and the State Department of Social Services, to develop a real-time, internet-based database to collect, aggregate, and display information about beds to identify the availability of inpatient and residential mental health or substance use disorder treatment for specified types of facilities, as provided. The bill requires the database to be operational by January 1, 2025. The bill provides that DHCS has the authority to impose a plan of correction or assess civil money penalties, or both, against a facility that fails to submit data accurately, timely, or as required under the bill and provides for an appeal process.

EXECUTIVE SUMMARY

This bill is intended to address the need for inpatient psychiatric services by providing a centralized database that can identify and locate the appropriate bed for an individual seeking mental health or substance abuse services so that treatment services can be expedited. This bill is substantially similar to several prior bills introduced by the author, all of which were not heard by this Committee. The bill is sponsored by Big City Mayors, the California State Association of Psychiatrists, the National Association of Mental Illness – California, and the Psychiatric Physicians Alliance of California. The bill is supported by local governments and organizations representing local governments, law enforcement, and social workers, public administrators, and conservators. The bill is opposed by the County Behavioral Health Directors Association. The bill passed out of the Senate Health Committee on a vote of 11 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires the Department of Health Care Services (DHCS) to license and regulate residential alcoholism or drug abuse (or substance use disorder) recovery or treatment facilities (RTFs). (Health & Saf. Code § 11834.02, et seq.)
- 2) Requires DHCS and counties to provide specialty mental health services for Medi-Cal beneficiaries through a county mental health plan, as specified, which may include crisis stabilization services and inpatient psychiatric care. (Welf. & Inst. Code § 14705 & § 14712.)
- 3) Requires the California Department of Public Health (CDPH) to license and regulate hospitals, including a general acute care hospital (GACH) and an acute psychiatric hospital (APH). (Health & Saf. Code §1250, et. seq.)
- 4) Requires mental health rehabilitation centers (MHRCs) to be licensed only by DHCS subsequent to application by counties, county contract providers, or other organizations and requires DHCS to conduct annual licensing inspections of MHRCs. (Welf. & Ins. Code §5675.)
- 5) Requires chemical dependency recovery hospitals (CDRHs) to be licensed by CDPH and authorizes them to provide 24-hour inpatient care for persons who have a dependency on alcohol or other drugs, or both alcohol and other drugs, and includes the following basic services: patient counseling, group therapy, physical conditioning, family therapy, outpatient services, and dietetic services. (Health & Saf. Code § 1250.3.)
- 6) Requires psychiatric health facilities (PHFs) to be licensed by DHCS and authorizes them to provide 24-hour inpatient care for people with mental health disorders that includes, but is not limited to, the following services: psychiatry; clinical psychology; psychiatric nursing; social work; rehabilitation drug administration; and, appropriate food services for those persons whose physical health needs can be met in an affiliated hospital or in outpatient settings. (Health & Saf. Code § 1250.2 & Welf. & Inst. Code §4080.)
- 7) Requires the California Department of Social Services (CDSS) to license community care facilities (CCFs), including any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and may include crisis residential services. (Health & Saf. Code § 1501, et seq.)

- 8) 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, § 5000 et seq.)
 - a) “Grave disability” is defined as a condition in which a person, as a result of a mental disorder, or impairment by chronic alcoholism, is unable to provide for the person’s basic personal needs for food, clothing, or shelter. (Welf. & Inst. Code § 5008(h)(1)(A) & (2).)
 - b) Requires facilities, for the purposes of detaining a person for up to 72-hour treatment and evaluation, to be designated by a county and approved by DHCS, which may be a licensed psychiatric hospital, a licensed PHF, and a certified crisis stabilization unit (CSU). (Welf. & Inst. Code § 5008.)

This bill:

- 1) Requires DHCS, in consultation with CDPH and CDSS, to develop a real-time, internet-based database to collect, aggregate, and display information about beds to identify the availability of inpatient and residential mental health or substance use disorder treatment for all of the following facilities:
 - a) GACHs designated as part of supplemental psychiatric unit or chemical dependency service;
 - b) CDRHs;
 - c) APHs and licensed long-term care facilities with mental health program approval or certification from DHCS;
 - d) PHFs;
 - e) MHRCs;
 - f) inpatient psychiatric facilities;
 - g) CSUs;
 - h) licensed CCFs with a mental health program approval or certification from DHCS; and,
 - i) licensed RTFs.
- 2) Requires the database to be operational by January 1, 2025, and to include specified information.
 - a) The database is required to collect data and enable searches to identify beds that are appropriate for individuals in need of inpatient or residential mental health or substance use disorder treatment.
 - b) The database is to be maintained in a manner that complies with all applicable state and federal confidentiality laws.
 - c) The database and the information contained within is not to be publicly available, and authorizes DHCS to limit access to entities authorized by the department in a manner that is consistent with state and federal confidentiality laws.

- 3) Requires CDPH to confer with stakeholders to inform the development of the database, including, but not limited to, DHCS, DSS, the County Behavioral Directors Association (CBHDA), and organizations that have experience providing inpatient psychiatric care, psychiatric crisis stabilization, residential community mental health, and RTF services.
 - a) Requires CDPH and stakeholders to consider strategies for facility use of the database

COMMENTS

1. Stated need for the bill

The author writes:

While California has seen a small increase in the number of psychiatric beds since 2012, we are still falling well below nationally established standards of 40-60 beds per 100,000 adults and have 30% fewer beds than we had in 1995. Finding beds in this environment is hard. Hospital emergency departments continue to be frontline responders in behavioral health crises, and often board patients until an open bed in an appropriate facility is found. The backdrop here is that 16% of California adults live with serious mental illness, and 60% of those individuals do not receive any treatment whatsoever. Identifying open beds so that timely transfers can take place expedites the connection to critical and badly needed treatment. It decreases adverse incidents and improves outcomes. Mental illness or substance use disorders, like many other health conditions, when treated early and with appropriate supports and services, is less disabling with fewer serious consequences. Bed registries are an essential tool to speed access to care and provide timely coordination between service settings. The online registry in SB 363 fits perfectly with current behavioral health infrastructure building initiatives – helping to map and connect patients and facilities and as such contributes to a badly needed transformation of our mental health system.

2. Bill requires the establishment of a database to provide real-time data on availability of beds in specified types of facilities

a. Background

The Senate Health Committee provided a detailed analysis of the state of access to treatment beds in California, the current status of grants being awarded under the Behavioral Health Continuum Infrastructure Program (Asm. Comm. on Budget, Ch. 143, Stats. 2021.), and federal initiatives in this policy area.¹ The Senate Health Committee analysis notes:

¹ Sen. Health Comm. analysis of SB 363 (2023-24 reg. session) as amended Feb. 8, 2023.

According to a 2019 report published by the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation (ASPE), entitled "In-Patient Bed Tracking: State Responses to Need for Inpatient Care," states have begun to collect and post information on bed availability (i.e., create bed registries or bed tracking systems) as a tool for providers, patients, and caregivers to identify open beds more efficiently. In the absence of a bed registry, ED staff, patients, or other providers must call multiple hospitals or residential settings to determine if there is a slot available that would be appropriate given the patient's needs. Little was known about state bed registries, their effectiveness, and challenges faced in their execution and utilization. [...] In some states, systems to track the availability of psychiatric hospital beds have been challenged by the reluctance of hospitals to update information on open beds frequently enough to be useful given rapid patient turnover. ED staff noted that the system does not negate the need for them to call hospitals to confirm that there is still an open bed that is appropriate for the patient's needs and that relationships among hospitals and EDs and other crisis system staff may be more efficient than using the bed registries. However, some states reported that the registries were very helpful in locating open beds as well as in documenting the need for additional psychiatric beds. According to the ASPE report, there have been no formal evaluations of the effect of bed registries on access to care.²

b. This bill is substantially similar to prior bills, which were not heard by this Committee

This bill is substantially similar to SB 1154 (Eggman, 2022), AB 682 (Eggman, 2019), AB 1136 (Eggman, 2018), and AB 2743 (Eggman, 2016), which were held in the Assembly Appropriations Committee (SB 1154, AB 682, and AB 2743) and the Senate Appropriations Committee (AB 1136). None of the prior bills were heard by this Committee. Additionally, none of the prior bills included a civil penalty enforcement mechanism, which this bill does.

This bill requires DHCS, in consultation with CDPH and CDSS, to develop a real-time, internet-based database to collect, aggregate, and display information about beds to identify the availability of inpatient and residential mental health or substance use disorder treatment for the types of facilities specified above. The database is to be operational by January 1, 2025. The database is not to be publicly available and must be maintained in a manner that complies with all applicable state and federal confidentiality laws. Under the bill, DHCS may limit access to the database to entities authorized by it in a manner that is consistent with state and federal confidentiality laws; however, the bill does not specifically state who or what entities are authorized to access the database. Obviously, the facilities required to post data on the database will need access to it; however, it is unclear from the face of the bill what, if any, other facilities or persons would be authorized to access the database. The author may wish to

² *Id.* at 5.

make it clear who or what entities would be authorized to access the database once it is operative.

The bill authorizes DHCS to impose a plan of correction or civil money penalties, or both, for failure to submit data accurately, timely, or as required by the bill. Under the bill, DHCS is authorized to determine a reasonable length of time for completion of a plan of correction and can assess civil penalties if the facility fails to complete a plan of correction by the specified time in an amount of \$100 per day from the date of notice of imposition of the penalties. A facility may appeal issuance of a correction plan or imposition of penalties to the department within 15 working days of the issuance of the notice. DHCS is required to make a determination on the appeal within 30 calendar days of receipt of the appeal. The bill provides for a formal adjudicative hearing process within 30 days of DHCS's determination on the appeal that is to be conducted pursuant to existing provisions of law governing formal adjudicative proceedings for DHCS. (*See Health & Saf. Code § 10017 & § 11834.3.7.*) The bill provides that civil penalties will continue to accrue until the effective date of the final decision of DHCS. The bill authorizes DHCS to obtain a court order to recover any unpaid civil penalties assessed against a facility. Under the bill, civil penalties collected by DHCS are to be deposited into a specified fund created by the bill and are continuously appropriated, without regard to fiscal year, to DHCS to fund its administrative costs associated with implementing the bill's provisions.

3. Statements in support

The California State Association of Psychiatrists, one of the sponsors of the bill, writes in support stating:

This [database] would help provide timely access to care and increase coordination between service settings.

A significant roadblock in our fragmented behavioral health continuum is a lack of care coordination between various provider types and a lack of information about which resources are accessible or available in the community. SB 363 would require the database to include a minimum baseline of information, including the contact information for a facility's designated employee, the types of diagnosis or treatments for which the bed is appropriate, and the target populations served at the facility. The database would also have the capacity to enable searches to identify beds that are appropriate for individuals in need of inpatient or residential mental health or substance use disorder treatment.

4. Statements in opposition

The County Behavioral Health Directors Association write that they are opposed to the bill unless amended writing:

“[...] we concerned about the punitive provisions in SB 363 which would allow DHCS to assess a plan of correction or penalties against a facility for failing to update a database when the scope and parameters of that database have not yet been developed. We believe a bed registry inventory must be feasible, realistic and workable, particularly when it will require frequent, manual updating by facility staff. For that reason, we request an amendment that would remove DHCS’ ability to sanction facilities for their inability to keep a database updated.” [emphasis omitted]

SUPPORT

Big City Mayors (sponsor)
California State Association of Psychiatrists (sponsor)
National Association of Mental Illness – California (sponsor)
Psychiatric Physicians Alliance of California (sponsor)
California State Association of Public Administrators, Public Guardians, and Public Conservators
California Downtown Association
California State Sheriffs' Association
City of Bakersfield
City of Santa Cruz
City of West Hollywood
City of Whittier
Empirical Policy
Govern for California
League of California Cities
National Association of Social Workers, California Chapter
San Diego City Attorney's Office
Steinberg Institute

OPPOSITION

County Behavioral Health Directors Association

RELATED LEGISLATION

Pending Legislation:

SB 45 (Roth, 2023) establishes the California Acute Care Psychiatric Hospital Loan Fund to continuously appropriate moneys in that fund to the California Health Facilities Financing Authority to provide loans to qualifying county or city and county applicants to build or renovate acute care psychiatric hospitals, psychiatric health facilities, or psychiatric units in general acute care hospitals, as defined. SB 45 is pending in the Senate Appropriations Committee.

AB 512 (Waldron, 2023) requires the California Health and Human Services Agency, either on its own or through the Behavioral Health Task Force established by the Governor, to create an ad hoc committee to study how to develop a real-time, internet-based system, usable by specified entities, to display information about available beds in specified facilities for the transfer to, and temporary treatment of, individuals in mental health or substance use disorder crisis. AB 512 is pending in the Assembly Appropriations Committee.

Prior Legislation:

SB 929 (Eggman, Ch. 539, Stats. 2022) expands DHCS's responsibility in current law to collect and publish information about involuntary detentions to include additional information, such as clinical outcomes, services provided, and availability of treatment beds, as specified.

SB 1154 (Eggman, 2022), was substantially similar to this bill. SB 1154 was held on the Assembly Appropriations Committee suspense file.

AB 2768 (Waldron, 2022) was identical to AB 512. AB 2768 was held on the Senate Appropriations Committee suspense file.

AB 682 (Eggman, 2019), was substantially similar to this bill. AB 682 was held on the Assembly Appropriations Committee suspense file.

AB 1136 (Eggman, 2018), was substantially similar to this bill. AB 1136 was held on the Senate Appropriations Committee suspense file.

AB 2743 (Eggman, 2016) were substantially similar to this bill. AB 2743 was held on the Assembly Appropriations Committee suspense file.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
