



Special Legislative Update ■ May 18, 2020

Governor and CDPH Announce Changes to Regional Variance Criteria

The Governor held a noon press briefing today to unveil revised county variance criteria that will permit all but a handful of counties to move more quickly through Stage 2 of the [Resiliency Roadmap](#). The California Department of Public Health (CDPH) subsequently issued additional information detailing the changes, and the county variance [webpage](#) has already been updated to reflect the second variance process. In order to qualify, counties must attest to all of the following:

Case Metrics	
Stable or down trending hospitalizations, cases per population count and test positivity rate	<ul style="list-style-type: none"> ▪ Stable hospitalizations on a 7-day average of daily percent change of less than 5%; or no more than 20 hospitalizations on any single day over the past 14 days. ▪ 14-day cumulative positive incidence of less than 25 per 100,000; or testing positivity over the past 7 days of less than 8%.
Adequate Preparedness Planning	
A significant level of preparedness with testing, contact tracing, PPE and hospital surge, and planning for long-term care facility disease outbreak prevention and containment	<ul style="list-style-type: none"> ▪ Testing capacity. Minimum daily testing capacity to test 1.5 per 1,000 residents <ul style="list-style-type: none"> - Testing availability for at least 75% of residents ▪ Contact tracing <ul style="list-style-type: none"> - At least 15 staff per 100,000 county population trained and available for contact tracing ▪ Hospital surge <ul style="list-style-type: none"> - Hospital capacity to accommodate a minimum surge of 35% of their baseline average daily census. ▪ Skilled Nursing Facilities (SNF) disease outbreak prevention and containment <ul style="list-style-type: none"> - Plans to prevent and mitigate infections in skilled nursing facilities - SNFs have more than 14-day supply of PPE on hand for staff, with established process for ongoing procurement.

Response Planning

Producing plans related to county-wide containment, including testing, contact tracing, vulnerable populations, congregate settings, acute care surge, and essential workforce.

The Governor cited the state’s increased response capacity, including stabilization in the number of hospitalizations, better preparedness, and increased ability to ensure essential workers have PPEs as factors that permitted the additional steps announced today. The new attestation criteria should assist higher-population counties that can demonstrate stable or declining hospitalization as well as positive test rates, among other factors. CDPH will begin accepting second variance attestations *starting today*.

LAO Suggests Legislature Guard Its Authority in Budgeting

Over the weekend, the Legislative Analyst’s Office (LAO) released its [initial thoughts](#) on the Governor’s proposed May Revision. Overall, the LAO indicates that the proposal is well-balanced in terms on a mix of solutions, but suggests that the Legislature may wish to evaluate the proposals and make different choices. While the LAO believes the proposed revenue solutions are a reasonable starting point for conversations, the LAO is concerned that the Administration’s estimates of revenue generated by these approaches are on the high side. Finally, the LAO notes that the Administration’s proposed spending reductions in many instances are appropriately targeted and, in others, are more blunt (10 percent reductions to universities, judicial branch, and state employee compensation). On these, the LAO suggests the Legislature may wish to be more surgical in its approach.

The LAO also points out the Administration’s continued use of Section 36 control language for expenditure of \$2.9 billion for a COVID response bypasses – from its perspective – appropriate legislative authority. Recall that Section 36 control language was included in [SB 89](#), passed by the Legislature prior to its mid-March adjournment due to the stay-at-home order, authorized the Administration to expend funds up to \$1 billion with a 72-hour notice to the Joint Legislative Budget Committee. Of course, the Legislature has been critical of some of the Administration’s expenditures and remains concerned about having adequate information about the plans for expenditure. (During the Senate’s overview hearing today, Senate Budget and Fiscal Review Committee Chair Holly Mitchell reiterated her concerns about expanding the control section language while the Legislature is in session.)

Some of the proposals that the Administration is maintaining from the January budget may need to be put off, according to the LAO, as the Legislature hasn’t had sufficient time to evaluate them and must do so while managing a complex budget crisis. Some proposals of a policy nature – like proposals to create new or reorganizing existing departments – remain in the May Revision and have not yet been vetted by subcommittees and likely will not, given the time constraints of budget subcommittee hearings occurring over the next two weeks.

Assembly Takes its Turn to Consider Health-Focused Legislative Proposals

Assembly Health Committee held its only spring policy committee today to hear Assembly bills introduced in 2020, hearing approximately 20 bills for discussion, with another estimated dozen on consent. All bills on today's agenda passed out of Committee; Assembly Members asked very few questions on the bills discussed today, likely a function of the length of the agenda and the compressed process. The following provides a summary of some of bills and issues of note before the Committee.

[AB 2830 \(Wood\)](#) — Health Care Payments Data Program

This measure would create the Health Care Payments Data Program at the Office of Statewide Health Planning and Development. The author took amendments in Committee to change the date of implementation to 2023, which had been a concern for hospitals and health plans.

[AB 2037 \(Wicks\)](#) — Health Facilities: Obligations before Changes in Service

This measure would change the notification requirements for hospital closure or reductions or elimination of services. The author took amendments in committee to attempt to address the concerns raised by the hospital industry. The bill passed out of committee.

[AB 2164 \(Rivas\)](#) — Telehealth

This bill would expand the use of telehealth at health care clinics by establishing the E-Consult Services and Telehealth Assistance Program within the State Department of Health Care Services (DHCS) to award grants to eligible specified health clinics to conduct projects to implement and test the effectiveness of e-consult services and related telehealth services; it passed out of committee on consent.

[AB 1994 \(Holden\)](#) — Eligibility

AB 1994 would extend the duration during which Medi-Cal benefits are suspended when an individual is an inmate of a public institution for three years or until the individual is no longer an inmate or is no longer eligible, whichever occurs sooner, instead of the shorter time-limited suspension of benefits under existing law. The bill also permits the county welfare department to suspend Medi-Cal benefits to an eligible juvenile, defined as an individual under 21 years of age or a former foster youth under 26 years of age. AB 1994 also prohibits, during the period that the eligible juvenile is an inmate of a public institution, their Medi-Cal eligibility from being terminated. The measure passed out of Assembly Health Committee on consent.

The Committee also had 10 behavioral health related bills on its agenda today, including:

[AB 1976 \(Eggman\)](#) — Mental Health Services: Assisted Outpatient Treatment

AB 1976 makes a number of changes to Assisted Outpatient Treatment (AOT), or Laura's Law. Under existing law, counties can opt to provide AOT. Under the provisions of AB 1976, counties would be required to implement AOT or to opt out via a resolution passed by the Board of Supervisors. The measure would also allow a county, in combination with one or more counties, to implement an AOT program. Finally, AB 1976 would repeal the January 1, 2022 sunset date of

Laura's Law. The California State Association of Counties and County Behavioral Health Directors have a support if amended position on the bill. The California Behavioral Health Planning Council, Cal Voices, and California Association of Mental Health Peer Run Organizations oppose the bill. Disability Rights California raised concerns and asked for amendments ensuring additional protections for AOT participants.

[AB 2015 \(Eggman\)](#) — Certification for Intensive Treatment: Review Hearing

This measure would address evidence presented at Lanterman-Petris Short Act hearings. Specifically, AB 2015 would authorize the evidence presented in support of certification of an individual for involuntary detention under a 5250 hold to include information regarding the person's medical condition and how that condition bears on the certification. The measure is sponsored by the California Psychiatric Association and is supported by the California Psychological Association. The California Behavioral Health Planning Council and Cal Voices also oppose this measure.

Amendments were taken in committee to address issues around medical treatment only for the duration of the mental health hold and the need for ongoing medical care.

[AB 2025 \(Gipson\)](#) — Mental Health and Substance Use Disorder Restorative Care Program: Pilot Projects

This Los Angeles County specific bill would allow the county to establish a pilot project for up to six years to develop a Restorative Care Program for the provision of community-based care and treatment that addresses the interrelated and complex needs of those individuals suffering from mental illness and substance use disorder (SUD), along with other medical comorbidities, and homelessness. This measure passed out of committee on consent.

[AB 2112 \(Ramos\)](#) — Suicide Prevention

This bill would establish the Office of Suicide Prevention within the Department of Public Health (DPH) to address suicide and suicide prevention. The bill has a long list of supporters, but was opposed by the California Right to Life Committee. The bill passed out of committee with amendments.

[AB 2265 \(Quirk-Silva\)](#) — Mental Health Services Act (MHSA): Use of Funds for Substance Use Disorder Treatment

AB 2265 also passed out of Committee today on consent. The bills would authorize expenditure of MHSA funds to be used to treat a person with co-occurring mental health and substance use disorders when the person would be eligible for treatment of a mental health disorder under MHSA.

[AB 2360 \(Maienschein\)](#) — Maternal and Child Mental Health: Telepsychiatry Pilot Project

This bill would require health plans and health insurers, by January 1, 2021, to establish a telehealth consultation program for maternal and child mental health. The California Association of Health Plans and the California Chamber of Commerce oppose the bill.

[AB 2464 \(Aguiar-Curry\)](#) — Project ECHO Grant Program

AB 2464 would require the California's Health and Human Services Agency to establish the Project ECHO™ Grant Program, upon appropriation by the Legislature. The grants would be used by primary care clinicians, other health care clinicians, and educators to meet the health care needs of children and adolescents stemming from the COVID-19 pandemic at a teleECHO clinic. The ECHO model is not traditional "telemedicine" where the specialist assumes care of the patient, but is instead telementoring, a guided practice model where the participating clinician retains responsibility for managing the patient. The measure passed out of committee.

[AB 2576 \(Gloria\)](#) — MHSA Reversion

AB 2576 passed out of Assembly Health Committee on consent. The measure would change the MHSA reversion provisions to require the reverted funds to be reallocated to other counties for the purposes of providing services to individuals with mental illness who are also experiencing homelessness, or who are involved in the criminal justice system, and providing early intervention services to youth.

[AB 2876 \(Waldron\)](#) — Narcotic Treatment Medication Assisted Treatment

AB 2876 was also on the consent calendar today. The bill would require DHCS to report to the Legislature on or before January 10, 2022, specified information regarding the California Medication Assisted Treatment Program Expansion Project, including the number of patients, by county, treated through the program.

[AB 3242 \(Irwin\)](#) — Mental Health: Involuntary Commitment

AB 3242 also met the criteria for consent in Assembly Health Committee. The measure would authorize an examination, assessment, or evaluation that relates to the involuntary commitment and treatment of individuals under the Lanterman-Petris-Short Act, to be conducted using telehealth or other audio-visual technology.