URBAN COUNTIES
OF CALIFORNIA

Special Legislative Update ▪ July 31, 2020

Results of LPS Audit Released

This week, the State Auditor released its report on the Lanterman-Petris-Short Act (LPS), which focused on the implementation of the LPS Act in the City and County of San Francisco, as well as Los Angeles and Shasta Counties. The audit also examined how the LPS Act functions within those counties' broader mental health systems. Prior to the pandemic, this report was anticipated to spur legislative action. However, the Legislature's truncated schedule and more narrowed focus on COVID-related bills means that a policy discussion on LPS-related issues will likely not occur until 2021.

The report findings include the following:

- **Criteria in the LPS Act is sufficient.** Some organizations expressed concerns that the criteria in the LPS Act for involuntary treatment are inadequately defined and that counties have inconsistently applied those criteria, preventing some individuals from receiving necessary involuntary treatment. However, based on the auditor's review of 60 short-term involuntary holds and 60 conservatorship cases in the three counties, they found that the LPS Act's criteria appropriately enabled the designated professionals and courts to place people who needed involuntary treatment on LPS Act holds or conservatorships. Further, the designated professionals in the three counties generally interpreted and applied LPS Act criteria similarly when making decisions about involuntary treatment. Expanding the LPS Act's criteria to add more situations in which individuals would be subject to involuntary holds and conservatorships could widen their use and potentially infringe upon people's liberties, and the auditors found no evidence to justify such a change.

- **Inadequate care exists for individuals with serious mental illness.** The auditor found significant issues related to care that they believe warrants action. For example, when the auditor looked at the availability of treatment options for individuals on conservatorships, they found that people who were on the waitlist for specialized care in state hospital facilities had been waiting an average of one year to receive that care because of a shortage of available treatment beds. While they waited, some of the individuals received other care that did not fully meet their needs and did not fully protect them or others around them. Similarly, at the county level, Los Angeles and Shasta reported that they have a shortage of available treatment beds for a variety of

types of care. However, only Los Angeles showed a robust understanding of its current capacity and need for additional treatment beds. Neither Shasta nor San Francisco has taken the steps necessary to ensure that they fully recognize their needs for additional resources.

Additionally, in Los Angeles and San Francisco individuals exiting involuntary holds have not been enrolled consistently in subsequent care that could help them live safely in their communities. Further, Los Angeles and San Francisco did not always identify individuals who had been on multiple short-term holds or ensure that these individuals received the ongoing care they needed. One reason for this gap in care is that counties do not have access to confidential state-managed data about the specific individuals who have been placed on holds in the past.

- **Assisted Outpatient Treatment is underutilized.** The Auditor notes that fewer than a third of California's counties have adopted assisted outpatient treatment (AOT), even though it is an effective treatment option that could help prevent individuals from cycling through involuntary holds and conservatorships.

Both Los Angeles and San Francisco disputed some of the auditor's findings. Shasta did not submit comments on the report. Additionally, the report includes the following recommendations for state law changes:

- Adjust reporting requirements for LPS Act holds to ensure that counties can access existing state-managed data about the specific individuals placed on holds.
- Require the Department of State Hospitals to report the costs of increasing state hospital facility capacity to care for individuals treated under the LPS Act.
- Require counties to adopt AOT. Further, the Legislature should explicitly allow for medication requirements as a part of court-ordered assisted outpatient treatment and change the eligibility requirements for assisted outpatient treatment programs so that they do not exclude individuals who have recently left conservatorships.
- Assign the Mental Health Services Act Oversight Commission primary responsibility for developing, implementing, and overseeing a comprehensive framework for reporting mental health spending across all major fund sources, as well as program-specific and statewide mental health outcomes.
- Direct counties to spend MHSA funds for the purpose of connecting individuals leaving LPS Act holds or conservatorships to community-based services.

Governor Newsom Extends Assessment Appeals Deadline

Today, Governor Gavin Newsom signed Executive Order N-72-20, extending the deadline for any assessment appeal that was filed on or before March 4, 2020 to January 31, 2021. This action creates some space for county assessment appeals boards facing appeals cases that were nearing the two-year deadline without the ability to conduct appeals hearings in person.

California Supreme Court Rules in Alameda County Pension Case

This week, the California Supreme Court ruled 7-0 that the so-called "California Rule," the precedent that retirement benefits promised to a worker at the outset of a job can only be reduced if they are replaced with something of equal value, does not apply when an employer attempts to prevent abuse of the pension system. In this case, the Alameda County Deputy Sheriffs Association sued the County of Alameda when the county excluded certain forms of bonus pay and overtime when calculating pension payments to current employees. So-called "pension spiking," artificially boosting retirement benefits by using sick leave or running up overtime just before retirement, has long been a complaint of pension critics. In an opinion drafted by Chief Justice Tani Cantil-Sakauye, the court found that "closing loopholes and preventing abuse of the pension system" was consistent with state law that otherwise makes it exceedingly difficult to renege on promised pension benefits for future work. The opinion can be found here.

Update on "Hot" Bills

SB 1159 (Hill): Workers' Compensation: COVID-19: critical workers
SB 1159, by Senator Jerry Hill, would codify Governor Newsom's Executive Order relating to workers' compensation presumptions related to COVID-19 and would establish two distinct types of workers' compensation presumptions for COVID-19 infections that would be effective only after the expiration of Executive Order N-62-20.

The bill establishes a rebuttable presumption for COVID-19 for some classifications of police, fire, and health care workers. The presumption maintains many of the provisions that were included in the Executive Order, including a 30-day decision-making window, a requirement to test positive, and more. These provisions would take effect 7/6/2020 and sunset on 7/1/2024.

Additionally, SB 1159 contains a rebuttable presumption for COVID-19 for all employees and places of employment that are not covered by the section of the bill described above. These provisions include a presumption when there was a cluster of positive tests at any "specific place of employment". The size of the cluster needed to trigger the presumption changes based on the size of the specific place of employment. For employers with fewer than five employees, no presumption is applicable. For employers with 6-100 employees, a presumption is triggered when five employees test positive for COVID-19 at the specific place of employment within any 14-day period. For employers with over 100 employees, the presumption turns on when 5 percent of the employees test positive for COVID-19 at the specific place of employment within any 14-day period. These provisions take effect 7/6/2020 and sunset on 7/1/2024.

SB 1159 is scheduled for hearing in Assembly Insurance Committee on August 11.

SB 275 (Pan) – Health Care and Essential Workers Protection Act: Personal Protective Equipment

This week Assembly Labor and Employment Committee passed Senator Pan's SB 275, which creates several requirements on the state and providers related to personal protective equipment (PPE) purchasing and stockpiling.

Many health care organizations remain "oppose unless amended" and are seeking additional amendments to make the bill workable for different sectors, including changing the implementation date until after the current pandemic, providing the California Department of Public Health with the oversight and enforcement authority (rather than the Department of Industrial Relations and CalOSHA), reducing the 90-day stockpile requirement, further refinements to the fine provisions. Senator Pan expressed openness to continuing to work with opponents and acknowledged that even if his bill was in place facilities would still be facing PPE shortages.

Additionally, Senator Pan noted that Assembly Member Rodriguez has a similar bill (AB 2537) being sponsored by the California Nurses Association. Based on the comments in the committee and other conversations, it appears that there may be an effort to add some of the provisions from AB 2537 into SB 275 so that there is one vehicle to address PPE. It is unclear at this time which provisions would be incorporated into SB 275 and what the timeline is for additional amendments.

SB 275 will be heard next in Assembly Appropriations Committee.

AB 1611 (Chiu): Emergency Hospital Costs

AB 1611 is Assembly Member Chiu's effort to curb the practice known as "surprise billing." Negotiations on this measure had continued from last year. However, Senate Health Committee will not hear AB 1611 on August 1. Sponsors were not able to come an agreement on amendments to allow the bill to move forward this year.