

22. Receive a presentation from the Tulare County Health & Human Services Agency's, Mental Health Branch regarding deferred implementation of the changes made to Welfare and Institutions Code Section 5008 by Senate Bill 43 (2023-2024) and to take action on one of the following Options:

Option A:

- Pursuant to Welfare and Institutions Code section 5008, subdivision (h)(4), as enacted by Senate Bill 43 (2023-2024), the County of Tulare hereby elects to defer implementation of the changes made by that bill to Welfare and Institutions Code section 5008 until January 1, 2026.
- Allow for an earlier implementation date if Tulare County Health & Human Services Agency's Mental Health Branch establishes infrastructure and training to meet the new mandates associated with Senate Bill 43 (2023-2024).
- This Resolution will go into effect on January 1, 2024.

Option B:

- Opt out of Welfare and Institutions Code section 5008, subdivision (h)(4) and implement the changes made by Senate Bill 43 (2023-2024) to Welfare and Institutions Code section 5008 effective January 1, 2024.



Health & Human Services Agency

COUNTY OF TULARE AGENDA ITEM

BOARD OF SUPERVISORS

LARRY MICARI
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: December 5, 2023

Public Hearing Required	N/A
Scheduled Public Hearing w/Clerk	N/A
Published Notice Required	N/A
Advertised Published Notice	N/A
Meet & Confer Required	N/A
Budget Transfer (Aud 308) attached	N/A
Personnel Resolution attached	N/A
Agreement(s) attached	N/A

CONTACT PERSON: Natalie Bolin, DSW, LCSW PHONE: 559-624-8000

SUBJECT: Authorize the deferred implementation of the changes made to Welfare and Institutions Code Section 5008 by Senate Bill 43 (2023-2024)

REQUEST(S):

That the Board of Supervisors:

1. Receive a presentation from the Tulare County Health & Human Services Agency's, Mental Health Branch regarding deferred implementation of the changes made to Welfare and Institutions Code Section 5008 by Senate Bill 43 (2023-2024) and to take action on one of the following Options:

Option A:

- Pursuant to Welfare and Institutions Code section 5008, subdivision (h)(4), as enacted by Senate Bill 43 (2023-2024), the County of Tulare hereby elects to defer implementation of the changes made by that bill to Welfare and Institutions Code section 5008 until January 1, 2026.
- Allow for an earlier implementation date if Tulare County Health & Human Services Agency's Mental Health Branch establishes infrastructure and training to meet the new mandates associated with Senate Bill 43 (2023-2024).
- This Resolution will go into effect on January 1, 2024.

Option B:

- Opt out of Welfare and Institutions Code section 5008, subdivision (h)(4) and implement the changes made by Senate Bill 43 (2023-2024) to Welfare and Institutions Code section 5008 effective January 1, 2024.

SUBJECT: Authorize the deferred implementation of the changes made to Welfare and Institutions Code Section 5008 by Senate Bill 43 (2023-2024)

DATE: December 5, 2023

SUMMARY:

The Lanterman-Petris-Short (LPS) Act (Welfare and Institutions Code section 5100, et seq.) provides for the evaluation and treatment of a person who is gravely disabled, which is defined to mean a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter, the California Senate sought to expand the definition of gravely disabled with Senate Bill 43 (2023-2024).

On October 10, 2023, Governor Newsom signed Senate Bill 43 Statutes 2023, Chapter 637 (SB 43) into law. The passage of SB 43 expands the definition of gravely disabled and, effective January 1, 2024 includes a person who, as a result of a mental health disorder, a severe substance use disorder (SUD), or a co-occurring mental health disorder and a severe substance use disorder, or 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.

Welfare and Institutions Code section 5008, subdivision (h)(4), as enacted by SB 43, provides that a county, by adoption of a resolution of its governing body, may elect to defer implementation of the changes made to this section by SB 43 until January 1, 2026, thereby postponing implementation of the new definition of grave disability.

If the Board approves Option A, Tulare County will postpone implementing the changes made by SB 43 to Welfare and Institutions Code section 5008 until January 1, 2026, effective from January 1, 2024. Additionally, the HHSA Mental Health Branch has requested that the Board be flexible with the implementation date and allow for early implementation if the necessary infrastructure and training are in place to meet SB 43 mandates.

If Option B is approved by the Board, effective January 1, 2024, Tulare County will implement the changes made by SB 43 to Welfare and Institutions Code section 5008.

The Tulare County Health & Human Services Agency's (HHSA), Mental Health Branch is requesting the Board of Supervisors defer the implementation of the changes made to Welfare and Institutions Code section 5008 SB 43 until January 1, 2026. Implementing SB43 will require a significant effort in building and expanding the treatment, workforce, delivery networks, housing capacity and models for locked treatment settings or models of care for involuntary substance use disorder treatment to successfully meet the conservatorship needs of this population. Additionally, delaying implementation would allow HHSA to develop an extensive array of new policies, procedures, workforce, and treatment capacity to implement SB 43. Because SB 43 has not come with dedicated state funding to support these expanded obligations, HHSA will need additional lead-time to arrange the staffing and resources necessary to support implementation.

FISCAL IMPACT/FINANCING:

There is no additional net County cost to the General Fund that would result from the delayed implementation of SB 43.

SUBJECT: Authorize the deferred implementation of the changes made to Welfare and Institutions Code Section 5008 by Senate Bill 43 (2023-2024)

DATE: December 5, 2023

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Quality of Life initiative that encourages innovative provision of quality supportive services for at-risk adults, youth, and children in state and federally-mandated programs. Through this deferral, we seek to increase the ability to fulfill this obligation by improving access to behavioral health services.

ADMINISTRATIVE SIGN-OFF:

/s/Natalie Bolin

Natalie Bolin, DSW, LCSW
Director of Mental Health

Cc: County Administrative Office

Attachments: PowerPoint Presentation
CBHDA Fact Sheet

BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF Authorize the)
deferred implementation of the changes) Resolution No. 2023-1106
made to Welfare and Institutions Code)
Section 5008 by Senate Bill 43 (2023-)
2024))


UPON MOTION OF SUPERVISOR SHUKLIAN, SECONDED BY
SUPERVISOR MICARI, THE FOLLOWING WAS ADOPTED BY THE BOARD OF
SUPERVISORS, AT AN OFFICIAL MEETING HELD DECEMBER 5, 2023, BY THE
FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND
TOWNSEND
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE



ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY:


Deputy Clerk

* * * * *

1. Received a presentation from the Tulare County Health & Human Services Agency's, Mental Health Branch regarding deferred implementation of the changes made to Welfare and Institutions Code Section 5008 by Senate Bill 43 (2023-2024) and selected option:

Option A:

- Pursuant to Welfare and Institutions Code section 5008, subdivision (h)(4), as enacted by Senate Bill 43 (2023-2024), the County of Tulare hereby elects to defer implementation of the changes made by that bill to Welfare and Institutions Code section 5008 until January 1, 2026.
- Allow for an earlier implementation date if Tulare County Health & Human Services Agency's Mental Health Branch establishes infrastructure and training to meet the new mandates associated with Senate Bill 43 (2023-2024).
- This Resolution will go into effect on January 1, 2024.



SB 43 Fact Sheet and Talking Points

Bill Summary:

SB 43 makes several significant changes to the state's involuntary detention and conservatorship laws under the Lanterman-Petris-Short (LPS) Act by:

- Expanding the state's "gravely disabled" criteria to allow for the involuntary detention and conservatorship of individuals on the basis of a standalone "severe" substance use disorder or co-occurring mental health disorder and severe SUD;
- Expanding the definition of grave disability to include individuals who are unable to provide for their basic personal need for personal safety or necessary medical care;
- Defining "necessary medical care" to mean care that a licensed health care practitioner determines to be necessary to prevent serious deterioration of an existing medical condition which is likely to result in serious bodily injury if left untreated;
- Modifying hearsay evidentiary standards for conservatorship hearings in order to expand the array of testimony that can be submitted into conservatorship proceedings without requiring in-person cross examination; and,
- Requiring counties consider less restrictive alternatives such as assisted outpatient treatment (AOT) and CARE Court in conducting conservatorship investigations.

SB 43 also expands reporting requirements to align with the new criteria and allows counties to delay implementation until January 1, 2026 through adoption of a county board resolution.

What will be needed to implement SB 43?

Counties will need to develop an extensive array of new policies, procedures, workforce, and treatment capacity in order to implement SB 43, which is detailed, in part, below. CBHDA is conducting further analysis to understand the full scope of state and local secondary guidance and other changes that will be required to support full implementation. Because SB 43 has not come with dedicated state funding to support these expanded obligations, counties will need additional lead-time to arrange the staffing and resources necessary to support implementation.

Therefore, CBHDA urges our members to work with their Board of Supervisors to delay implementation of SB 43 until January 1, 2026, as allowed by law.

Key Issues/Concerns:

Expansion of the involuntary treatment and conservatorship criteria in the ways proposed under SB 43 would be unprecedented.

- Counties are already largely responsible for implementation of the LPS Act.
- CBHDA's membership agrees with concerns expressed by the author and sponsors that too many individuals suffer without adequate and appropriate treatment and housing, and we share in the urgency to bring about real change to address the needs of unhoused individuals with serious mental illness and substance use disorders (SUDs).

- By expanding LPS to capture any person who has a severe SUD, this change in policy would significantly expand the portion of the population potentially subject to detention and conservatorship under LPS from around 1% to around 10% of the population.
 - For example, according to the California HealthCare Foundation (CHCF), 16% of young adults have a substance use disorder.
- Under LPS, only peace officers and individuals designated by the county may, with probable cause, detain a person and take them into custody for an assessment.
 - Counties will need to develop criteria for a “severe SUD” grave disability assessment, as no such assessment currently exists.
 - Counties will need to develop criteria and policies, as well as protocols for designating individuals to perform severe SUD grave disability assessments.
 - Counties will need to recruit and hire staff to perform severe SUD grave disability assessments.
- Often, when a person is detained by law enforcement, they are taken to a hospital emergency department or a designated facility for an assessment.
 - Because SB 43 expands LPS criteria to include an assessment of whether an individual is unable to survive safely in community or provide for necessary medical care without involuntary detention, counties will need to develop policies and procedures for how these determinations will be made, along with qualified licensed health care providers.
 - In addition, hospitals will be without qualified designated individuals to perform the assessments needed to remove involuntary holds, when appropriate, or recommend conservatorship when appropriate.
 - CBHDA is concerned that in addition, because there is no locked treatment capacity for individuals with severe SUD, hospitals may be impacted by additional individuals who are boarding (awaiting placement) in the absence of this new treatment capacity.
- Furthermore, there are very few treatment settings that have the capacity to serve individuals with complex co-occurring medical, SUD and mental health treatment needs.
- If conserved on the basis of a severe SUD, clinicians would have no way to determine when a conservatorship should end, since there are no clinical standards to determine when to end involuntary SUD treatment.
- By adding physical health conditions as a basis for conservatorship, the state would require counties to develop a new set of medical services to evaluate and assess physical health risks and status.
- However, under any LPS structure, counties would still only be able to treat the mental health or SUD needs of the individual which are within the county behavioral health system’s scope.

State Investments in Behavioral Health

- Recent state investments in capacity under the BHCIP were not designed to address this policy change, and that capacity will take years to build out.
 - County behavioral health was not the primary recipient of BHCIP funding:
 - They represent 1/3 of grantees in competitive rounds and received less than half of the BHCIP funding
 - Counties will see very little of the \$4.4 billion in CYBHI investments which will primarily benefit IT vendors, CBOs, education partners, and MCPs
- Proposition 1, if passed by the voters in March 2024, could address these issues:
 - The state has been clear that the new step-down capacity could be locked, although preference is given for the least restrictive and least costly settings for treatment and rehabilitation. However, we remain concerned that two years is an inadequate amount of time to build out necessary residential and inpatient SUD treatment capacity to enact this policy change.

- Proposition 1 also allows for MHSA to be used for SUD treatment , but this would draw from funding already dedicated to mental health treatment services, and would not augment, but rather replace existing dollars going to county mental health services.
- The SUD workforce is significantly impacted: a recent UCSF analysis found that the state of California is facing a significant workforce gap, particularly for SUD counselors.¹ Despite the fact that SUD counselors account for close to 70% of the SUD workforce in the county behavioral health safety net, graduates of certificate and associate degree programs for SUD counselors based at colleges and universities have decreased significantly in the last five years.

Fiscal Impacts

- LPS law changes do not trigger new state funding. The state pays nothing toward public guardians, funding for designated individuals to conduct assessments, or the Patient's Rights Advocates needed to make determinations and conduct investigations and manage conservatorships. In fact, county behavioral health often funds these functions within their existing resources.
- It also would not require funding for expanded treatment services, including SUD, mental health, or new physical health providers necessary to evaluate grave disability on the basis of failing to meet basic medical needs.
- The federal and state governments provide no reimbursement for long-term residential and inpatient drug treatment under Medi-Cal.
 - The Drug Medi-Cal ODS waiver allows for limited Medi-Cal coverage (up to 30 days only) of these services.²
- Commercial insurance plans often deny counties' requests for reimbursement for mobile crisis, crisis, and inpatient residential SUD treatment services.
- If courts were to order involuntary SUD treatment, they would not be bound by what Medi-Cal or other insurance payers would cover, leaving counties with a significant unfunded mandate.
- This structural lack of reimbursement, across our major public and private insurance payers has directly led to the scarcity of SUD residential and inpatient treatment capacity.
- Addressing reimbursement for involuntary long-term inpatient and residential care, which would not be reimbursed through Medi-Cal or other payers, particularly those in locked settings, would need to be addressed in order to ensure adequate access to humane treatment.
- California needs to invest more in consistent, sustainable reimbursement for longer-term residential and inpatient SUD treatment to both prevent the deterioration of individuals and to assist with long-term treatment and recovery. Unfortunately, this policy allows for policymakers to side-step that larger structural need, along with the need to address long-term housing needs for Californians.

¹ Coffman, Janet and Fix, Margaret, Building the Future Behavioral Health Workforce: Needs Assessment: Executive Summary, Healthforce Center at UCSF, February 2023: https://static1.squarespace.com/static/5b1065c375f9ee699734d898/t/63e695fee785253f65f4b6f0/1676056064594/CBHDA_Needs_Assessment_Executive_Summary_FINAL_2-23.pdf

² The 37 counties that have opted into the ODS waiver can only receive reimbursement if they maintain a 30-day average length of stay for residential and inpatient treatment.



SB 43 LPS Changes

Dr. Natalie Bolin, DSW, LCSW

Director of Behavioral Health, HHSA



Agenda

- Changes to LPS Act
- Implementation Requirements
- Challenges
- Recommendation and Request

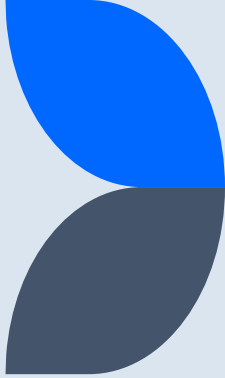
SB 43 Updates to LPS ACT

- Passed October 10, 2023
- Expands the state's "gravely disabled" criteria to allow for involuntary detention and conservatorship of individuals for "severe" substance use disorder or co-occurring mental health disorder and severe SUD
- Definition of grave disability now includes individuals who are unable to provide for their basic personal need for personal safety or necessary medical care;
 - "Necessary medical care" defined to mean care that a licensed health care practitioner determines to be necessary to prevent serious deterioration of an existing medical condition which is likely to result in serious bodily injury if left untreated
- Hearsay evidentiary standards modified for conservatorship hearings to expand the array of testimony that can be submitted into conservatorship proceedings without requiring in-person cross examination
- Requires counties to consider less restrictive outpatient treatment alternatives such as assisted outpatient treatment (AOT) and CARE Court in conducting conservatorship investigations.

Implementation of SB 43

- All counties will need time and resources to develop an extensive array of:
 - Policies & Procedures
 - Workforce
 - Increased referrals for conservatorship referrals
 - Increased participation in outpatient county programs such as Assisted Outpatient Treatment, CARE Court, and step-downs to lower levels of care as treatment progresses
 - Treatment & Bed Capacity: including build-out of sites and programs for higher acuity beneficiaries
 - Implementation can be delayed, with BOS approval, until January 1, 2026
 - **There is no additional or dedicated funding associated with SB 43**

SB 43 Challenges



- Counties are already largely responsible for implementation of the LPS Act.
- Counties agree and acknowledge the intent of the bill such that too many individuals suffer without adequate and appropriate treatment and housing, and we share in the urgency to bring about real change to address the needs of unhoused individuals with serious mental illness and substance use disorders (SUDs).
- This change in policy would significantly expand the portion of the population potentially subject to detention and conservatorship under LPS from around 1% to around 10% of the population.
 - For example, according to the California HealthCare Foundation (CHCF), 16% of young adults have a substance use disorder.
- Under LPS, only peace officers and individuals designated by the county may, with probable cause, detain a person and take them into custody for an assessment.
 - Counties will need to develop criteria for a “severe SUD” grave disability assessment, as no such assessment currently exists.
 - Counties will need to develop criteria and policies, as well as protocols for designating individuals to perform severe SUD grave disability assessments.
 - Counties will need to recruit and hire staff to perform severe SUD grave disability assessments.

SB 43 Challenges Cont.

- Often, when a person is detained by law enforcement, they are taken to a hospital emergency department or a designated facility for an assessment.
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 - In addition, hospitals will be without qualified designated individuals to perform the assessments needed to remove involuntary holds, when appropriate, or recommend conservatorship when appropriate.
 - Because there is no locked treatment capacity for individuals with severe SUD, hospitals may be impacted by additional individuals who are boarding (awaiting placement) in the absence of this new treatment capacity.
- There are very few treatment settings that have the capacity to serve individuals with complex co-occurring medical, SUD and mental health treatment needs.
- If conserved on the basis of a severe SUD, clinicians would have no way to determine when a conservatorship should end, since there are no clinical standards to determine when to end involuntary SUD treatment.
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Fiscal Impacts

- LPS law changes do not trigger new state funding.
- The state pays nothing toward public guardians, funding for designated individuals to conduct assessments, or the Patient's Rights Advocates needed to make determinations and conduct investigations and manage conservatorships. County behavioral health often funds these functions within their existing resources.
- It does not provide funding for expanded treatment services, including SUD, mental health, or new physical health providers necessary to evaluate grave disability on the basis of failing to meet basic medical needs.
- The federal and state governments provide no reimbursement for long-term residential and inpatient drug treatment under Medi-Cal.

Fiscal Impacts Cont.

- If courts were to order involuntary SUD treatment, they would not be bound by what Medi-Cal or other insurance payers would cover, leaving counties with a significant unfunded mandate.
 - This structural lack of reimbursement, across our major public and private insurance payers has directly led to the scarcity of SUD residential and inpatient treatment capacity.
- Addressing reimbursement for involuntary long-term inpatient and residential care, which would not be reimbursed through Medi-Cal or other payers, particularly those in locked settings, would need to be addressed in order to ensure adequate access to humane treatment.
- California needs to invest more in consistent, sustainable reimbursement for longer-term residential and inpatient SUD treatment to both prevent the deterioration of individuals and to assist with long-term treatment and recovery. Unfortunately, this policy allows for policymakers to side-step that larger structural need, along with the need to address long-term housing needs for Californians.

Recommendation and Request

The behavioral health branch requests that the Board of Supervisors consider and approve the recommendation that Tulare County delay implementation of SB 43 until January 1, 2026 as allowed by law.

Additionally, the HHSA Mental Health Branch has requested that the Board be flexible with the implementation date and allow for early implementation if the necessary infrastructure and training are in place to meet SB 43 mandates.





Thank you

Dr. Natalie Bolin, DSW, LCSW

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