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NEXT REPORT BY THE DIRECTOR OF MENTAL HEALTH EXTENDED TO FEBRUARY 26, 2018

LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH

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September 18, 2017

TO: Supervisor Mark Ridley-Thomas, Chairman
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FROM: Jonathan E. Sherin, M.D., Ph.D.
Director

Mary C. Wickham
County Counsel

SUBJECT: **STANDARD OF CARE FOR MENTALLY ILL (ITEM NO. 5, AGENDA OF APRIL 4, 2017)**

On April 4, 2017, your Board instructed the Department of Mental Health (DMH) in collaboration with County Counsel and other relevant departments to analyze existing State mental health laws and provide recommendations for the humane treatment of people living with mental illness and who are unwilling or incapable of accepting care. Additionally, you asked us to address potential risks to civil liberties if our recommendations triggered them and to assess the potential expansion of necessary mental health resources and housing based on current and future funding streams.

Our departments established a working group to address these issues and to develop recommendations. As part of this process, DMH convened a symposium with a full range of County and community stakeholders to specifically address approaches to engaging and delivering mental health services to chronically homeless populations suffering from serious mental illness. This symposium served as a springboard to review and revisit the application of the Lanterman-Petris-Short (LPS) Act and other related laws to empower the County to better care for this vulnerable population.

As part of an ongoing collaborative effort, the work group's recommendations were shared, developed, and discussed with these stakeholders. This final set of recommendations is a direct product of this collaboration which furthers the collective goal of humanely caring for homeless persons with mental illness.

This report back sets forth a list of recommendations to humanely treat those suffering from mental illness. Most recommendations are supported by existing law; only one requires legislative change. Each recommendation focuses on the engagement, care, and sustainability of care for those in need of involuntary mental health treatment services without infringing upon the civil liberties of those individuals.

BACKGROUND

State and federal law recognizes that every adult with the capacity to make health care decisions has the fundamental right of self-determination over his or her body. While every competent individual has the Constitutional right to refuse any medical treatment, courts have consistently held that this right is not absolute and must yield to compelling State interests. Such interests include the protection of public health and safety from those who present a danger to themselves or others, as well as the protection of persons who cannot care for themselves.

In California, the principal law governing mental health evaluation and treatment is the LPS Act (Welfare and Institutions Code (WIC), § 5000 et seq.). The law sets forth the procedures that law enforcement and health care providers must follow to detain a person for involuntary mental health evaluation and treatment as well as assignment of a surrogate decision-maker. Its purpose is to provide prompt, incremental treatment to persons with mental disorders, to protect public safety, and to safeguard the rights of such persons through judicial review.

We discuss our recommendations and rationales in the context of the key areas of the LPS Act, including the need for resources and housing, through identified funding streams, where applicable. These recommendations address issues relating to detention and conservatorship criteria, transportation, as well as increased access to care.

DISCUSSION/RECOMMENDATIONS

I. <u>LPS Detentions and Conservatorship for Involuntary Treatment Due to Mental Illness</u>

Under the LPS Act, persons who pose a danger to self, pose a danger to others, or are gravely disabled may be detained for varying periods of time in designated mental health facilities for involuntary evaluation and treatment. A person is gravely disabled when he or she is unable to provide food, clothing, or shelter for him or herself due to his or her mental disorder and cannot or will not agree to voluntary treatment. The detention period, also referred to as a *hold*, usually depends on the nature and duration of the person's illness and is subject to judicial review. Typically, such persons are initially detained by first responders or health care

professionals for up to 72 hours, pursuant to WIC § 5150. This 72-hour period is commonly referred to as a *5150 hold*. Persons may be detained for an additional 14-day period for intensive treatment. For persons who present an imminent threat of suicide during the 14-day period or 72-hour evaluation period, a second 14-day period for such treatment may be authorized.

If at the end of the first 14-day hold, the person continues to be in need of care due to a grave disability, an additional 30-day period of intensive treatment may be authorized or a petition for temporary conservatorship may be filed with the court. If a temporary conservatorship is granted, it lasts a maximum of 30 days and must run concurrently with the 30-day period for intensive treatment because a gravely disabled person may not be held involuntarily for more than a total of 47 days from the initial 72-hour hold.

LPS conservatorship is a process in which the court appoints a conservator to manage a conservatee's mental health treatment, including placement and medication. At any time during an LPS hold for evaluation and treatment, if a person is considered to be gravely disabled, a treating physician may recommend the public guardian petition the court to establish a conservatorship over the person. The proposed conservatee has the right to a jury trial, and the jury's determination of gravely disabled must be unanimous and beyond a reasonable doubt. If granted, the conservatorship lasts for a period of one year, and the conservator may petition the court for reappointment each year. During the conservatorship period, the conservatee has the right to request the court rehear the conservatorship decision once every six months.

Although the public guardian must recommend the most suitable person, corporation, or other public or private agency, the court has the sole discretion in appointing the conservator. In making the selection, the court is guided by the best interests of the proposed conservatee, the public guardian's recommendation, and the statutory order of preference when there is more than one conservator recommended. If there is no suitable person or entity willing or able to serve as conservator, the court will appoint the public guardian as conservator. Once appointed, the conservator will have the legal power to make decisions regarding placement and to require the conservatee to receive mental health treatment and psychotropic medications as indicated.

Our analysis of the LPS Act and interaction with stakeholders affirms that a lack of treatment for persons with serious mental illness may result in chronic homelessness and instability for those persons. These recommendations address ways to interrupt the cycle of homelessness through the engagement and care of

those in need of mental health treatment to ensure consistent, lasting care in the least restrictive and most stable placements.

Recommendation 1
Ensure accurate and consistent interpretation of the proper basis for finding probable cause for grave disability, danger to self, and danger to others for purposes of detention and establish a robust, consistent training for first responders and clinicians based.

This recommendation addresses the lack of consistency among first responders, clinicians, and others in determining when to detain persons under the LPS Act. The development of an accurate and consistent interpretation of causes for involuntary detention under the LPS Act will improve access to care. County Counsel, DMH, and Public Guardian can take the lead in this effort. Developing this interpretation can be combined with robust training of first responders and clinicians to consistently assess for the presence of probable cause for detention by finding danger to self, danger to others, or grave disability. Persons deteriorating as a result of their inability to care for their physical health could be considered a danger to self as well as gravely disabled. A key aspect of such training should be more comprehensive assessment of danger or disability resulting from potential or actual deterioration of an individual's condition due to medical or behavioral issues over time, especially under the initial involuntary holds. The training will include consideration of non-imminent harm factors as well as data collection reflecting the historical course of a person's mental disorder. A checklist with concrete elements may be utilized to further ensure consistency.

Such training can be developed through DMH with the Office of the Medical Director, the Public Guardian, and the Office of Patients' Rights. Resources for such efforts may come from a variety of sources, including Mental Health Services Act (MHSA) funding.

Recommendation 2
Transition current Psychiatric Mobile Response Team (PMRT) operations, practice, and policy to grow DMH's real time mobile response capacity in the context of acute and urgent scenarios by: 1) increasing the number of active vehicles as well as personnel (clinician and peer teams) deployed to each Service Area, and 2) expanding the range of activities delivered by each mobile team to include not only outreach and hospitalization under 5150 detention but also real time engagement and triage (with transportation as indicated) for clients needing shelter, respite and/or treatment otherwise.

This recommendation addresses a need for proactive engagement and triage that is better tailored, more humane, timely, cost effective, and efficient with an increased reliance on services and non-inpatient care settings such as Urgent Care Centers (UCC), Crisis Residential Treatment Programs, and other treatment and residential resources.

The need for ambulance and law enforcement assistance, critical in certain scenarios, will be determined in the field by PMRT teams who can leverage these specialized services more selectively as indicated by clinical demand. DMH will utilize MHSA funding for additional clinicians and vehicles needed to implement this recommendation.

Recommendation 3
Develop guidelines and outreach programs for law enforcement assistance when DMH crisis teams (PMRT) determine the presence of probable cause for a 5150 hold of individuals who resist assessment or transport to an LPS designated facility.

This recommendation addresses the need to engage and assist persons who are resistant or assaultive but in need of hospitalization. Law enforcement may hesitate to physically restrain such persons due to concerns about preserving the individual's civil rights and the reasonable basis for restraint. Absent assistance by personnel trained and equipped to detain and transport individuals who are likely to physically resist or who are potentially assaultive, DMH teams are forced to leave such people in the field even though they meet criteria for detention under section 5150. This restricts access to care and heightens the risk of harm to both the community and those not detained. Under collaboratively developed guidelines, DMH and County Counsel will work with law enforcement to coordinate efforts responding to such situations.

Recommendation 4
Develop consistency among LPS designated facilities and their medical staffs in submitting referrals for conservatorship.

This recommendation addresses the lack of consistency among various LPS designated facilities in determining when to refer a person to the Public Guardian for LPS conservatorship. Such consistency is expected to ensure greater access to care by promoting the congruous application of LPS referral practices among LPS designated facilities. DMH will review the practices of these facilities to identify any differences in their conservatorship referral processes which are inconsistent with best practices or DMH's LPS Designation Guidelines. If any inconsistencies or irregularities are identified such that individuals are not properly held and

conserved, DMH will re-train these facilities, create a corrective action plan, or take other necessary action.
Since conservatorship referrals are made by individual doctors affiliated with LPS designated facilities, DMH, as a long-term goal, will explore the possibility of the LPS designation of individual doctors in addition to the current designation of hospitals and facilities. This will enable DMH to hold not only the facility accountable for its referral decisions but also the treating doctors. As a result both may be subject to corrective action plans, the doctor may lose his or her ability to make LPS referrals, and the facility may lose its LPS designation.

Recommendation 5
Support legislation which defines "grave disability" to include a person's inability to provide medical care for him or herself due to a mental disorder.

Persons in need of involuntary care often have complex medical and substance use issues which are not sufficiently addressed with the existing definition of gravely disabled. This recommendation will address the issue by expanding the definition of gravely disabled to include a person's inability to care for his or her physical health. Assembly Member Phillip Chen introduced Assembly Bill No. 1539 (2017-2018 Reg. Sess.) to expand the definition of grave disability to include instances where an individual is unable to provide for his or her medical care due to his or her mental disorder. This legislation appears to have stalled and has little momentum in the Legislature. We propose that your Board make all efforts to revisit this legislation at the appropriate time or support others akin to this legislation.

Recommendation 6
In order to increase access to the current inventory of acute psychiatric beds, facilitate the movement of individuals on LPS conservatorships from acute settings to other levels of care by increasing capacity and quality of care at licensed facilities [Board and Care, Enhanced Residential Service (ERS), Institute for Mentally Diseased (IMD)].

This recommendation addresses the need to increase access to care and support for those in need of involuntary treatment. In addition to the 2,300 acute psychiatric beds in the County, there are 550 ERS beds and 1,054 IMD beds. ERS beds are a board-and-care-type facility with intensive treatment and additional support services. IMD beds are long-term locked facilities. The County would benefit from an expansion of ERS and IMD beds and the development of alternative care facilities to provide a more robust continuum of care.

This recommendation may be accomplished through supplemental funding for board and care providers and developing a Temporary Conservatorship Alternative Care facility. Supplemental payments to board and cares will improve living arrangements and services provided to clients while incentivizing facilities to take clients with complex needs.

DMH will consider developing a Temporary Conservatorship Alternative Care facility. This program would be limited to a certain population at hospitals that is non-violent and is not a flight risk, but has a history of non-compliance with discharges to open settings without conservatorship. It would provide an enriched environment for those who need a locked facility but, with extra support, could be conserved in a less restrictive, open setting. This innovative idea of placing a person on temporary conservatorship directly in the community from an acute setting is not without its challenges. To ensure compliance with the intent of the LPS Act while still placing the conservatee in the least restrictive environment, this program would require the addition of DMH psychiatrists who would be involved in acute and lower levels of care. These psychiatrists could provide testimony at conservatorship hearings, overcoming any evidentiary challenges that may arise with a referring doctor differing from the treating doctor at the lower level of care. The facilities and the treatment plans would need to provide sufficient evidence for supervision and involuntary medication, two hallmarks necessary to establish a LPS conservatorship.

Recommendation 7

Develop new Full Service Partnership (FSP) models, including "FSP on steroids," "Street FSP," and Public Guardian FSP that are more flexible and provide intensive services, including housing and 24-hour access.

This recommendation is intended to increase the intensity of FSP services to avoid the unnecessary hospitalization of individuals in crisis and increase services to conservatees. Several ideas and projects are in process or under consideration which will increase services to the homeless and increase the use of FSP programs countywide. For instance, DMH is releasing a Statement of Eligibility and Interest for new Homeless FSPs that will be funded by MHSA at a higher rate than the current FSPs and that could meet the interest of the "FSP on steroids." As part of increasing intensive services, Measure H is funding 16 new multidisciplinary outreach teams now which will expand to 25 in Fiscal Year (FY) 2017-2018 and then 36 in FY 2018-2019. These outreach teams, composed of team members with expertise in health, mental health, substance use, outreach and engagement, and peer support will be engaging the most vulnerable homeless persons throughout the County.

DMH is also expanding interim housing beds which will allow for quicker access to temporary housing while we work on a long-term housing plan. Assembly Bill No. 727 (2017-2018 Reg. Sess.) (AB 727), a County co-sponsored bill, may also assist with housing. If it passes, AB 727 will allow counties to spend MHSA funds on housing assistance for MHSA target populations regardless of whether the person participates in an FSP. This population includes persons who are mentally ill or who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention.

DMH is working on two additional proposals, Public Guardian FSP and DMH LPS Case Management Services, both of which would increase services to Public Guardian and conservatees.

The Public Guardian FSP will be a dedicated FSP program for Public Guardian clients. While Public Guardian clients have had some access to FSP programs, this FSP will be dedicated to Public Guardian conservatees who are high-utilizers of emergency rooms; frequently transition back and forth from locked to open settings; frequently abscond from facilities; are at risk of incarceration; and who have complex medical, substance use, and mental health issues. This program will be funded through MHSA.

DMH LPS Case Management Services, while still in development, will establish a dedicated team of clinicians and case managers from DMH to work with a dedicated unit of Public Guardian deputies and conservatees. The target population will be conservatees moving from locked facilities to community-based settings who require 24/7 support and services to maintain them in the least restrictive setting. These conservatees are anticipated to receive nearly daily visits from clinicians and a peer to ensure a smooth transition and ongoing stability in the community. This program will be funded through MHSA.

Recommendation 8
Develop a pilot program using private entities to serve as LPS conservators.

This recommendation will increase the capacity of the pool of conservators in the County but would not change the Public Guardian's responsibility of evaluating and recommending the most suitable conservator to the court. By building upon existing relationships, it would expand the County's ability to care and advocate for the seriously mentally ill. Specifically, DMH seeks to establish a pilot program with private advocacy groups to provide conservatorship services. Possible advocacy groups include the National Alliance on Mental Illness (NAMI), the Hollywood Business Improvement District, and related medical and case management service providers to the homeless. These advocacy groups may be able to serve as

suitable conservators because of their existing relationships with the proposed conservatees, which will further enhance and support their involvement. This type of relationship may allow these conservatees to be good candidates for the Temporary Conservatorship Alternative Care Facility project (Recommendation 6). DMH would commit support services to these conservators encouraging greater success. Support service ideas could include expansion of the Public Guardian-private conservator liaison program, access to clinicians, peer support, assistance with filing reappointment forms, benefit assistance. These conservators, if appointed by the court, would have to comply will all laws applicable to LPS conservators.

II. LPS Detentions and Conservatorship for Involuntary Treatment Due to Use of Controlled Substance

WIC § 5340 et seq. provides legal procedures for the custody, evaluation, and treatment of users of controlled substances, including narcotic drugs as defined in Health and Safety Code section 11019. If any person is a danger to others or to him or herself or is gravely disabled as a result of the use of controlled substances, then that person may be subject to an LPS hold or conservatorship.

Recommendation 9

Establish a workgroup with support from the Health Agency and various stakeholders to explore the development of a program authorized under WIC § 5340 et seq.

This recommendation serves as an opportunity to care for homeless individuals who are a danger to self, are a danger to others, or are gravely disabled due to substance use disorders, a population for which there could be greater access to mental health treatment through the LPS Act. Since these legal provisions have not been used in the County, DMH will evaluate potential challenges. A main challenge will be to qualitatively identify the subject population intended by this legislation and ensure that federal regulations have not made this program obsolete. Other challenges include determining the level of training and expertise required by those designated with section 5150 powers; determining and preparing for the potential impact on the Public Guardian, the Superior Court, County Counsel, the Public Defender, placements and treatment providers; as well as the ramifications related to SAPC (Substance Abuse Prevention and Control) and Public Health responsibilities and mandates.

III. Court-Ordered Evaluation Due to Mental Illness

WIC § 5200 et seq. provides that *any individual* who alleges that another person is, due to a mental disorder, a danger to self, a danger to others, or gravely disabled, may request a person or agency designated by the county (i.e., DMH) and

approved by the State Department of Health Care Services to file a petition with the superior court to order an evaluation of the subject person's condition. This legal procedure is rarely used but provides an alternate method to compel an evaluation to treat or, if applicable, conserve a person who requires treatment. The designated person or agency must file a petition if it determines there is probable cause to believe the initial allegations and the subject person refuses to voluntarily receive an evaluation or crisis intervention. If the court orders an evaluation and it determines that the subject person is a danger to self or to others or is gravely disabled, he or she may be detained and involuntarily treated for up to 72 hours. Thereafter, the person will be released, referred for care and treatment on a voluntary basis, detained further for intensive treatment, or recommended for LPS conservatorship.

Recommendation 10

Explore, through the establishment of a workgroup, the use of the court-ordered evaluation process for treating those who are a danger to self, danger to others, or gravely disabled due to mental illness. The workgroup shall explore the practical implications of implementation of these court-ordered evaluations including the demand for services, required staffing, and impacts on the Mental Health Court.

This recommendation utilizes an existing legal process that allows *anyone* to request a petition for evaluation of a mentally ill person's condition be filed with the superior court. This process may be commenced without the initiation of an involuntary 5150 hold by first responders or health care providers. It would allow friends and family members to request the County-designated agency to investigate and determine whether a court-ordered evaluation is warranted and, if so, to file the appropriate petition. This process would also allow the designated agency, as part of its assessment, to engage and offer crisis intervention services to these subject persons while they are in the community. As a legal process, a person's individual rights continue to be protected. False allegations that a person is a danger to self or others or gravely disabled may result in civil and criminal penalties. The person may remain within the community prior to the court-ordered evaluation and reasonable efforts must be made to safeguard the person's personal property while he or she is undergoing the evaluation.

IV. Assisted Outpatient Treatment (Laura's Law)

WIC § 5345 et seq., also known as Laura's Law, provides for assisted outpatient treatment (AOT). It allows counties to pursue court-ordered outpatient treatment for people with serious mental illness while ensuring individual's due process rights are recognized. AOT has been shown to be effective in reducing re-

hospitalizations, incarcerations, victimizations, episodes of violence, and homelessness.

On July 15, 2014, your Board voted to implement Laura's Law countywide as a tool for making treatment possible for persons with severe mental illness who are too ill to seek help for themselves. Laura's Law authorizes the Director of DMH, after exploring all other voluntary methods of treatment, to petition for court-ordered outpatient treatment. Such treatment may be ordered if the court finds, by clear and convincing evidence, that the subject person satisfies all of the statutory AOT eligibility criteria. This criteria includes, but is not limited to, the person: having a serious mental illness, being unlikely to survive safely in the community, having a history of treatment non-compliance, continuing to refuse offered mental health services, and being at substantial risk for deterioration or detention on an LPS hold.
Through the AOT process, the subject person is afforded all due process protections. If, however, that person fails to comply with court-ordered AOT, rejects efforts made to solicit compliance, and needs to be involuntarily detained for evaluation, the subject person may be placed on a 5150 hold for up to 72 hours. He or she may be further detained for evaluation and treatment only if the subject person meets the applicable criteria under the LPS Act.

Recommendation 11
Further expand the use of AOT to maximize both voluntary treatment and increase court-ordered treatment as applicable.

Recommendation 12
Explore court-ordered administration of antipsychotic medication for AOT candidates.

These recommendations support the increased filing of AOT petitions as well as seeking court orders to involuntarily administer medication in order to provide necessary stabilizing treatment for persons affected by mental illness.

Implementation of Laura's Law countywide started in May 2015 and allows DMH to serve seriously mentally ill persons at substantial risk of deterioration or detention under an LPS hold as a direct result of poor psychiatric treatment compliance. AOT has been enhanced since 2015 with the inclusion of services from FSPs.

In an effort to further maximize AOT, DMH will evaluate its referral review process by qualitatively examining the AOT eligibility criteria; expand its use to all aspects of the continuum of care, explore solutions to challenges raised by private health insurance; and analyze other relevant issues impacting the program.

Additionally, where appropriate, DMH will seek court-ordered medication for those individuals who are candidates for AOT to stabilize those individuals, to encourage successful AOT, and potentially to reduce the need for future detention or conservatorship. Laura's Law does not expressly authorize or prohibit the use of involuntary medication. Rather, it provides that a separate order must be obtained prior to the involuntary administration of antipsychotic medication in accordance with existing law. Thus, a medication capacity (*Riese*) hearing petition should be filed concurrently with an AOT petition to obtain a judicial determination that an individual lacks the capacity to rationally decide whether to refuse or consent to medication.

These recommendations will require additional County Counsel and DMH staff including DMH psychiatrists.

V. Court-Ordered Medical Treatment

Probate Code section 3200 et seq. allows a third-party to petition the superior court to make health care decisions and provide informed consent related to a specific medical procedure on behalf of a patient that lacks capacity to make his or her own health care decisions. After determining a patient lacks capacity based on a doctor's declaration, a court may grant decision-making authority to a third party, who can then authorize medical treatment on the patient's behalf. The County uses this process in its hospitals for patients who are incapacitated in order to perform non-emergency but life-saving procedures. In addition to the County's efforts, these petitions may also be filed by a friend, relative, or other interested person on the patient's behalf. The authority granted by these petitions is limited to a particular treatment or procedure identified by the patient's treating physician and authority to continue making long-term medical decisions should be pursued by a petition for conservatorship.

Recommendation 13

Create a workgroup with support from the Health Agency and stakeholders to explore the feasibility of using "treating street doctors" associated with advocacy groups to file Probate Code section 3200 petitions to provide involuntary medical treatment to those found to lack the capacity to make their own healthcare decisions.

This recommendation may serve as a temporary solution pending any legislative change to the definition of "gravely disabled." It will allow street doctors with existing relationships with homeless individuals to seek necessary medical attention for those who lack the capacity to seek treatment for themselves. Since the person would typically not be an existing patient in a hospital, the process to file and obtain an order from the court may take longer than one week. This may

cause a work impact for the superior court and the Public Guardian with a possible increase in the number of petitions filed as well as referrals to the Public Guardian for probate conservatorships. Increased probate conservatorships will further exacerbate the lack of sufficient care facilities available for this population and will require the development and funding of new placement resources.

JES:tld

c: Executive Office, Board of Supervisors
Chief Executive Office