

April 15, 2022

The Honorable Dr. Richard Pan
Chair, Health Committee
California State Senate
1021 O Street, Room 3310
Sacramento, CA 95814



RE: SB 1338 (Umberg) - OPPOSE

Dear Chair Pan,

Mental Health America of California (MHAC) is a peer-run organization that has been leading the state in behavioral health public policy and advocacy since 1957. The mission of MHAC is to ensure that people of all ages, sexual orientation, gender identity or expression, language, race, ethnicity, national origin, immigration status, spirituality, religion, age or socioeconomic status who require mental health services and supports are able to live full and productive lives, receive the mental health services and other services that they need, and are not denied any other benefits, services, rights, or opportunities based on their need for mental health services. Along these lines, we support efforts which provide voluntary, community-based services.

While we appreciate and support the Legislature's commitment to improving the lives of people with behavioral health conditions, we do not believe that SB 1338 is the proper vehicle to achieve this goal. We oppose SB 1338 for the following reasons:

1. Voluntary, trauma-informed services are more effective than coercive treatment;
2. It does not guarantee stable, affordable housing which is a necessary component to recovery from a behavioral health challenge;
3. Counties are only mandated to provide Medi-Cal specialty mental health services, which effectively eliminates Full Service Partnerships;
4. The bill would expand the Lanterman-Petris-Short (LPS) Act;
5. CARE Court will worsen health disparities and perpetuate institutional racism; and
6. Successful programs are voluntary and incorporate peers throughout the system

1. Voluntary Services are demonstrated to be effective

While SB 1338 includes some elements of self-directed care, the overall foundation of CARE (Community Assistance, Recovery & Empowerment) Court puts accountability on both local governments *and* the individual to comply with court-mandated medication and services from the outset of the CARE process. While the bill attempts to allow an individual to access voluntary services prior to a court order, the "voluntary" case management plan is actually ordered by the court¹.

From the perspective of an individual experiencing a behavioral health challenge, any level of coercion

¹ See SB 1338 Section 5977 (b)(3)(C) If the court finds that the petitioner has submitted prima facie evidence that the respondent meets the CARE criteria, the court shall order the county behavioral health agency to work with the respondent and the respondent's counsel and supporter to determine if the respondent shall engage in a treatment plan.

decreases an individual's trust in the system and in their care providers. Involuntary services are traumatizing and do not take into consideration a person's autonomy or self-determination², and run the risk of violating an individual's civil rights. Furthermore, research has shown that, with appropriate outreach and engagement, people will accept voluntary treatment. Data from the Assisted Outpatient Treatment Program (AOT) shows that 75% of individuals who received AOT services accepted those services voluntarily³. A recent study conducted in Santa Clara found that of 400 people offered a permanent home, only one person refused the offer.⁴

SB 1338 creates a new, costly program that will divert funds away from already underfunded community behavioral health services to fund additional court staff and attorneys without a single dollar to increase services.

2. Stable, affordable housing is a necessary component for decreasing homelessness and promoting recovery from behavioral health conditions

While the CARE Court Framework document claims that CARE Court addresses homelessness⁵, SB 1338 does not mandate that counties provide housing to individuals. The California Health & Human Services Agency (HHS) has stated that \$1.5 billion which was previously appropriated for "bridge housing", will be prioritized for CARE Court participants. However, "bridge housing" generally refers to any sort of temporary housing that would bridge the gap between homelessness and permanent housing, and generally refers to shelters or other temporary housing options.

Although there is no guaranteed right to housing in California, our state has adopted the "Housing First" approach, which recognizes that an unhoused person must first be able to access safe, affordable, permanent housing before stabilizing, improving health, or reducing harmful behaviors⁶. According to state statute, "any California state agency or department that funds, implements, or administers for the purpose of providing housing or housing-based services to people experiencing homelessness or at risk of homelessness, must incorporate the core components of housing first"⁷.

Research has demonstrated that unhoused individuals with behavioral health needs who can access permanent supportive housing have decreased psychiatric emergency visits and increased voluntary mental health care visits than individuals without access to stable housing.⁸ Research has also shown that individuals, even those with chronic homelessness, remain housed long-term in permanent supportive

² Paksarian, D., Mojtabai, R., Kotov, R., Cullen, B., Nugent, K. L., & Bromet, E. J. (2014). Perceived trauma during hospitalization and treatment participation among individuals with psychotic disorders. *Psychiatric services (Washington, D.C.)*, 65(2), 266–269. <https://doi.org/10.1176/appi.ps.201200556> accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4039016/>

³ Laura's Law: Assisted Outpatient Treatment Project Demonstration Project Act of 2002 Report to the Legislature, Department of Health Care Services, May 2021 accessed at: <https://www.dhcs.ca.gov/formsandpubs/Documents/Legislative%20Reports/Lauras-LawLegRpt-July2018-June2019.pdf>

⁴ Maria C. Raven MD, MPH, MSc, Matthew J. Niedzwiecki PhD, Margot Kushel MD, Human Health Research, *A randomized trial of permanent supportive housing for chronically homeless persons with high use of publicly funded services*, September 25, 2020. Available at <https://doi.org/10.1111/1475-6773.13553>

⁵ See California Health and Human Services Agency, CARE Court A New Framework for Community Assistance, Recovery & Empowerment. P. 1 accessed at: https://www.chhs.ca.gov/wp-content/uploads/2022/03/CARE-Court-Framework_web.pdf

⁶ Welfare and Institutions Code § 8255

⁷ Welfare and Institutions Code § 8255 (e) and § 8256 (a)

⁸ Raven MC, Niedzwiecki MJ, Kushel M. A randomized trial of permanent supportive housing for chronically homeless persons with high use of publicly funded services. *Health Serv Res.* 2020 Oct;55 Suppl 2(Suppl 2):797-806.

housing⁹. In a New York program, individuals with prior jail and shelter stays were offered permanent supportive housing through a state program. At 12 months 91% of these people were housed in permanent housing compared to 28% in the control group who were not offered housing through the program¹⁰. In a Denver supportive housing program, 86% of participants remained housed after one year, and experienced notable reductions in jail stays¹¹.

According to the Legislative Analyst's Office, lack of affordable housing is a key driver of homelessness in California¹². The United States Interagency Council on Homelessness estimates that 161,548 individuals in California experience homelessness on a given day¹³. Yet the CARE Court program is estimated to serve only 7,000-12,000 individuals statewide, only some of which are unhoused. We encourage the Legislature to invest in stable, affordable housing throughout California before initiating new involuntary treatment programs.

3. The county mandate should not be limited to Medi-Cal specialty mental health services

While SB 1338 recommends that individuals in the CARE Court program have access to all necessary community-based services, for Medi-Cal beneficiaries, the bill only mandates the counties to provide all medically necessary specialty mental health and substance use disorder treatment services as defined in the Medi-Cal program.

Full Service Partnerships (FSPs) are designed for the highest need individuals—the same individuals that CARE Court intends to help. FSPs provide wrap-around services with a “whatever it takes” approach to improve peoples’ lives¹⁴. FSPs services include the Full Spectrum of Community Services which are comprised of, among other things: supportive employment services, wellness centers, family education services, food, clothing, housing, and more¹⁵. Many of these FSP services are MHSA services, and not covered under Medi-Cal specialty mental health services.

Full Service Partnerships have been consistently demonstrated to be highly effective in reducing emergency visits¹⁶, reduce homelessness and criminal justice system involvement¹⁷. We believe that any program intended to improve the lives of our most vulnerable citizens, the full range of community behavioral health services should be included.

⁹ Davidson, C., et al. (2014) “Association of Housing First Implementation and Key Outcomes Among Homeless Persons With Problematic Substance Use.” *Psychiatric Services*. 65(11), 65(11): 1318-24

¹⁰ Aidala, A.; McAllister, W; Yomogida, M; and Shubert, V. (2013) Frequent User Service Enhancement ‘FUSE’ Initiative: New York City FUSE II Evaluation Report. Columbia University Mailman School of Public Health.

¹¹ Urban Institute (2021) “Breaking the Homelessness-Jail Cycle with Housing First, accessed at https://www.urban.org/sites/default/files/publication/104501/breaking-the-homelessness-jail-cycle-with-housing-first_1.pdf

¹² Legislative Analyst's Office. California's Homelessness Challenges in Context. January 21, 2021. P.1 accessed at: <https://lao.ca.gov/handouts/localgov/2021/Homelessness-Challenges-in-Context-012121.pdf>

¹³ See: <https://www.usich.gov/homelessness-statistics/ca/>

¹⁴ See Department of Health Care Services. Mental Health Services Act Expenditure Report – Governor's May Revise Fiscal Year 2018-19. P. 10 accessed at: https://www.dhcs.ca.gov/formsandpubs/Documents/Legislative%20Reports/Mental%20Health/MHSA_Expenditure_Report-May2018.pdf

¹⁵ Title 9 California Code of Regulations Section 3620

¹⁶ Brown TT, Chung J, Choi SS, Scheffler R, Adams N. The impact of California's full-service partnership program on mental health-related emergency department visits. *Psych. Serv.* 2012 Aug;

¹⁷ Nicholas C. Petris Center on Health Care Markets and Consumer Welfare, School of Public Health, UC Berkeley. May 2010

Additionally, it is unclear what services would be provided to individuals in CARE Court who are uninsured or covered through traditional health insurance regulated by the Department of Insurance. Medi-Cal can be a complicated system, especially for unhoused individuals. People who are eligible for Medi-Cal are not always enrolled in the county system because they have moved counties, or failed to complete requisite paperwork, and are therefore considered uninsured. Similarly, while health care service plans would be required to reimburse counties for CARE Court services, there is no similar requirement in the bill for private insurers.

4. SB 1338 will further expand the LPS Act

The LPS Act includes protections intended to protect the civil rights of the individual, including referral, evaluation, multiple certification hearings, an investigation, and a court hearing to determine whether the individual is a danger to themselves or others, or is gravely disabled. Gravely disabled is defined as an inability to provide for his or her basic personal needs for food, clothing, or shelter. If, after a hearing, a person is found to meet one of these requirements, and if the court finds that they should be detained, they are first placed on 72-hour hold, and then may continue to be placed on successively longer holds, after a certification hearing at each stage, until and if a referral to conservatorship is eventually ordered. A referral to conservatorship requires a comprehensive investigation by an officer, and a determination by the court that a person is gravely disabled, they refuse to accept treatment voluntarily *and* that no reasonable alternatives to conservatorship exist.

The creation of a new presumption in the CARE Court program, that noncompliance with *any* aspect of the individual's court-mandated plan may result in referral for conservatorship with the new presumption that no alternatives exist¹⁸, effectively bypasses the entire LPS process in a number of ways including, but not limited to:

- A presumption that no alternatives exist could be construed to include the implicit presumption that the person is gravely disabled. Nothing in the CARE Court framework indicates that grave disability is a requirement for referral to conservatorship from the program;
- An individual who complies with the majority of their court-mandated plan could still be referred for fast-track conservatorship for refusing to comply with a single element of their plan, even if they are receiving services voluntarily;
- This process eliminates the 72-hour, 14-day, and 30-day holds which are created in statute to give the individual a chance to stabilize;
- The presumption does not allow for investigation into other alternatives that may exist.

In a recent comprehensive State Audit of LPS protocols and procedures at the county-level was conducted last year, the auditor states: "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 we found no evidence to justify such a change"¹⁹.

5. The bill will worsen health disparities and perpetuate systemic racism

In California, Black individuals are disproportionately impacted by homelessness. While they represent only 5.5% of the population in California, they make up about a quarter of the homeless population²⁰. This is due

¹⁸ See CARE Court FAQ #8, page 3 https://www.chhs.ca.gov/wp-content/uploads/2022/03/CARECourt_FAQ.pdf

¹⁹ Ibid. page 1

²⁰ California Budget and Policy Center. Who is Experiencing Homelessness in California? February, 2022. Accessed at: <https://calbudgetcenter.org/resources/who-is-experiencing-homelessness-in-california/>

in large part to a long history of racial discrimination in housing, policing, banking, and healthcare. In addition, law enforcement strategies are more likely to be targeted to people of color, and are more likely to be traumatic to people of color, especially Black men, who are likely to be disproportionately involved with the court system.

In California, Black, indigenous, and people of color (BIPOC) are also more likely to be diagnosed with a serious mental illness than white Californians. Adult American Indian and Alaska Native Californians (AIAN) and Black adults have the highest rate of diagnosis, with 6.8 percent of AIAN adults and 5.3% of Black adults diagnosed with a serious mental illness²¹.

CARE Court's focus on individuals with psychotic disorders and on the unhoused will further existing racial bias, and disproportionately subject people of color to court-ordered treatment.

6. Successful programs are voluntary and include peers actively involved throughout the system

Peer support is an evidence-based practice that has been shown to reduce re-hospitalization²², reduce the number of homeless days²³, and improve quality of life, among many proven benefits. Trained and certified peers with lived experience of homelessness and/or behavioral health conditions are uniquely positioned to provide support and build a trusting relationship with people who are currently unhoused and/or people living with behavioral health conditions.

Unhoused, and particularly unsheltered individuals have been subject to extreme levels of trauma that most of us cannot conceive. Not only does early trauma play a role in many individuals becoming unhoused²⁴, but the process of becoming unhoused, and the situations leading up to homelessness are traumatic. Furthermore, unhoused individuals are exposed to a multitude of traumatic events, including being victims of personal violence²⁵, witnessing serious violence²⁶, and frequent encounters with police which are often unrelated to criminal activity²⁷.

Every person can achieve improvements in their mental wellness but, for our most vulnerable citizens who have been unhoused for longer periods of time, extensive outreach and engagement by a trained peer is necessary to build a trusting relationship. Because peers have "been there," there is less fear of stigma and

²¹ California Healthcare Foundation. California Health Care Almanac, Health Disparities by Race and Ethnicity in California. October 2021. Accessed at: <https://www.chcf.org/wp-content/uploads/2021/10/DisparitiesAlmanacRaceEthnicity2021.pdf>

²² Bergeson, S. (2011). Cost Effectiveness of Using Peers as Providers. Accessed at: <https://www.nyaprs.org/e-news-bulletins/2013/bergeson-cost-effectiveness-of-using-peers-as-providers>

²³ Van Vugt, M. D., Kroon, H., Delespaul, P. A., & Mulder, C. L. (2012). Consumer-providers in assertive community treatment programs: associations with client outcomes. *Psychiatric Services*, 63(5), 477–481. doi:10.1176/appi.ps.201000549.

²⁴ Alison B. Hamilton, Ines Poza, Donna L. Washington, "Homelessness and Trauma Go Hand-in-Hand": Pathways to Homelessness among Women Veterans, *Women's Health Issues*, Volume 21, Issue 4, Supplement, 2011, Pages S203-S209, ISSN 1049-3867, <https://doi.org/10.1016/j.whi.2011.04.005>.

²⁵ Kagawa, R.M.C., Riley, E.D. Gun violence against unhoused and unstably housed women: A cross-sectional study that highlights links to childhood violence. *Inj. Epidemiol.* 8, 52 (2021). <https://doi.org/10.1186/s40621-021-00348-4>

²⁶ Buhrich, N., Hodder, T., & Teesson, M. (2000). Lifetime Prevalence of Trauma among Homeless People in Sydney. *Australian & New Zealand Journal of Psychiatry*, 34(6), 963–966. <https://doi.org/10.1080/000486700270>

²⁷ Rountree, J., Hess, N., Lyke A. Health Conditions Among Unsheltered Adults in the U.S.. California Policy Lab. Policy Brief. (10/2019) p.7 Accessed at: <https://www.capolicylab.org/wp-content/uploads/2019/10/Health-Conditions-Among-Unsheltered-Adults-in-the-U.S.pdf>

judgment from those who they are helping. Peer support builds relationships that are based upon mutuality, shared power, and respect²⁸. When a trusting relationship which is built on shared power and respect is created between a peer and a person with a behavioral health challenge, that individual will receive services voluntarily, which leads to self-empowerment for the individual. Self-empowerment, in turn, has been shown to improve quality of life, self-esteem, and reduce mental health symptoms²⁹, and is therefore a key variable of success.

Conclusion

We are grateful to the longstanding commitment of the Legislature for your ongoing dedication to improve the lives of people with behavioral health conditions. However, we do not believe that CARE Court is the appropriate tool to accomplish this goal. MHAC firmly believes that adequate state investments into accessible, appropriate, voluntary services and stable, affordable housing must be made prior to implementation of coercive programs, especially involuntary programs that do not increase available services.

A program as significant as CARE Court, or any program that threatens civil liberties, requires extensive consideration, research, and stakeholder input to be effective. CARE Court is being rushed through the legislative process which does not allow for the consideration and debate that a change this significant requires. Our letter to the Administration detailing our initial recommendations for CARE Court is attached (Attachment A).

We appreciate the opportunity to provide comment on SB 1338, and we would welcome the opportunity to work with you to develop voluntary programs that improve the lives of Californians who live with mental health challenges.

In Community,



Heidi L. Strunk
President & CEO

Attachment

²⁸ Mead S. *Google Docs*. PO Box 259, West Chesterfield, NH 03466: Intentional Peer Support; 2001. [2020-02-28]. Peer Support as a Socio-Political Response to Trauma and Abuse

https://docs.google.com/document/d/1trJ35i4dXX5AIWRnbg78OaT7-RfPE9_DbPm5kSST9_Q/edit

²⁹ Patrick W Corrigan, Dale Faber, Fadwa Rashid, Matthew Leary,

The construct validity of empowerment among consumers of mental health services, *Schizophrenia Research*, Volume 38, Issue 1,1999