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SB-1184 Mental health: involuntary treatment: antipsychotic medication. (2023-2024)

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Senate Bill No. 1184

CHAPTER 643

An act to amend Sections 5325.2, 5332, 5334, 5336, and 5402 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1184, Eggman. Mental health: involuntary treatment: antipsychotic medication.

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary commitment of persons who are a danger to themselves or others, or who are gravely disabled, due to a mental disorder or chronic alcoholism or drug abuse for 72 hours for evaluation and treatment, as specified. If certain conditions are met after the 72-hour detention, the act authorizes the certification of the person for a 14-day maximum period of intensive treatment and then another 14-day or 30-day maximum period of intensive treatment after the initial 14-day period of intensive treatment. Existing law, during the 30-day period of intensive treatment, as specified, also authorizes up to an additional 30 days of intensive treatment if certain conditions are met. Existing law authorizes the administration of antipsychotic medication to a person who is detained for evaluation and treatment for any of those detention periods, except for the second 30-day period.

Existing law establishes a process for hearings to determine a person's capacity to refuse the treatment. Existing law requires a determination of a person's incapacity to refuse treatment with antipsychotic medication to remain in effect only for the duration of the 72-hour period or initial 14-day intensive treatment period, or both, until capacity is restored, or by court determination. Existing law generally requires the capacity hearings described above to be held within 24 hours of the filing of a petition to determine a person's capacity to refuse treatment. Existing law authorizes the hearing to be postponed in certain circumstances, but prohibits the hearing from being held beyond 72 hours of the filing of the petition.

This bill would authorize, except as specified, a person's treating physician to request a hearing for a new determination of a person's capacity to refuse treatment with antipsychotic medication at any time in the 48 hours prior to the end of the duration of the current detention period when it reasonably appears to the treating physician that it is necessary for the person to be detained for a subsequent detention period and their capacity has not been restored.

The bill would require, under exigent circumstances, the hearing to determine a person's capacity to refuse treatment to be held as soon as reasonably practicable and within 24 hours. The bill would require, under exigent circumstances, an order for treatment with antipsychotic medication to remain in effect at the beginning of the 14-day period, or the additional 30-day period after the 14-day intensive treatment period, or the second 30-day period, provided that a petition for a new determination on the question of capacity has been filed, and would require the order to remain in effect until a hearing on that petition for that detention period is held and a decision issued. The bill would specify the factors required to be present in order for there to be exigent circumstances necessitating an expedited hearing, including, among others, that there has been a delay in a hearing to determine a person's capacity to refuse treatment with antipsychotic medication, creating a risk that the existing capacity

determination may expire before a new capacity determination is made, and the person's treating physician executes a specified written attestation of exigent circumstances that is maintained in the person's medical record. The bill would require that, each time one of those attestations is made and an order for treatment with antipsychotic medication remains in effect, the treating facility report specified information to the county behavioral health director in the county in which they operate. The bill would require the county behavioral health directors to provide that information to the department, and would require the department to include that information in an annual report it is required to publish. The bill would make these provisions inoperative on January 1, 2030. By increasing the duties on county behavioral health directors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5325.2 of the Welfare and Institutions Code is amended to read:

5325.2. Any person who is subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth in this chapter.

SEC. 2. Section 5332 of the Welfare and Institutions Code is amended to read:

5332. (a) Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (e) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When a person is subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70 may be treated with antipsychotic medication over the person's objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

SEC. 3. Section 5334 of the Welfare and Institutions Code is amended to read:

5334. (a) (1) Capacity hearings required by Section 5332 shall be heard within 24 hours of the filing of the petition whenever possible. However, if any party needs additional time to prepare for the hearing, the hearing shall be postponed for 24 hours. In case of hardship, hearings may also be postponed for an additional 24 hours, pursuant to local policy developed by the county mental health director and the presiding judge of the superior court regarding the scheduling of hearings. The policy developed pursuant to this subdivision shall specify procedures for the prompt filing and processing of petitions to ensure that the deadlines set forth in this section are met, and shall take into consideration the availability of advocates and the treatment needs of the patient. In no event shall hearings be held beyond 72 hours of the filing of the petition. The person who is the subject of the petition and the person's advocate or counsel shall receive a copy of the petition at the time it is filed.

(2) (A) Under exigent circumstances, upon the filing of a petition for a hearing to determine a person's capacity to refuse treatment with antipsychotic medication and an attestation of exigent circumstances being documented in a person's medical

record pursuant to subdivision (b) of Section 5336, a hearing shall be held to determine the person's capacity to refuse treatment with antipsychotic medication on an expedited basis and as soon as reasonably practicable.

(B) This paragraph shall be inoperative on January 1, 2030.

(b) (1) Capacity hearings shall be held in an appropriate location at the facility where the person is receiving treatment, and shall be held in a manner compatible with, and the least disruptive of, the treatment being provided to the person.

(2) Subject to any applicable rules of court, a capacity hearing may be conducted by remote means in an appropriate location at the facility where the person is receiving treatment as authorized pursuant to Section 367.76 of the Code of Civil Procedure, so long as the hearing would be compatible with, and be the least disruptive of, the treatment being provided to the person, as required by paragraph (1).

(c) Capacity hearings shall be conducted by a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer. All commissioners, referees, and hearing officers shall be appointed by the superior court from a list of attorneys unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the department as a facility for 72-hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.

(d) The person who is the subject of the capacity hearing shall be given oral notification of the determination at the conclusion of the capacity hearing. As soon thereafter as is practicable, the person, the person's counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the capacity determination, which shall include a statement of the evidence relied upon and the reasons for the determination. A copy of the determination shall be submitted to the superior court.

(e) (1) The person who is the subject of the capacity hearing may appeal the determination to the superior court or the court of appeal.

(2) The person who filed the original petition for a capacity hearing may request the district attorney or county counsel in the county where the person is receiving treatment to appeal the determination to the superior court or the court of appeal, on behalf of the state.

(3) Nothing shall prohibit treatment from being initiated pending appeal of a determination of incapacity pursuant to this section.

(4) Nothing in this section shall be construed to preclude the right of a person to bring a writ of habeas corpus pursuant to Section 5275, subject to the provisions of this chapter.

(f) All appeals to the superior court pursuant to this section shall be subject to de novo review.

SEC. 4. Section 5336 of the Welfare and Institutions Code is amended to read:

5336. (a) (1) A determination that a person does not have the capacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 during the detention period described in Section 5150 or 5250 shall remain in effect for the duration of the detention period described in Section 5150, and for the duration of the detention period described in Section 5250, or for the duration of both periods together.

(2) Unless otherwise specified, and except as applied to Sections 5150 and 5250, a treating physician may request a hearing for a new determination of a person's capacity to refuse treatment with antipsychotic medication, to be made pursuant to Section 5334, at any time in the 48 hours prior to the end of the duration of the current detention period when it reasonably appears to the treating physician that it is necessary for the person to be detained for a subsequent detention period and the person's capacity has not been restored according to standards developed pursuant to subdivision (c) of Section 5332.

(3) A determination that a person does not have the capacity to refuse treatment with antipsychotic medication pursuant to this section remains in effect until one of the following occurs, whichever occurs first in time:

(A) In the judgment of the person's treating physician, the person's capacity has been restored or the person no longer meets the criteria for involuntary detention, according to standards developed pursuant to subdivision (c) of Section 5332.

(B) The court or hearing officer determines that the person's capacity to refuse treatment with antipsychotic medication is restored.

(C) The time limit for the detention period described in Section 5150, Section 5250, or for the detention period of both periods together, expires.

(b) (1) Under exigent circumstances, an order for treatment with antipsychotic medication made pursuant to Section 5332 shall remain in effect at the beginning of a detention period described in Section 5260, 5270.15, or 5270.70, provided that a petition for a new determination on the question of capacity has been filed pursuant to Section 5334, and shall remain in effect until a hearing on that petition for that detention period is held under the exigent circumstances described by this subdivision and a decision is issued as set forth in Section 5334.

(2) Upon receipt of a petition for a hearing to determine a person's capacity to refuse treatment with antipsychotic medication and attestation of exigent circumstances being documented in the person's medical record pursuant to this subdivision, a hearing shall be held on an expedited basis to determine the person's capacity to refuse treatment with antipsychotic medication as soon as reasonably practicable and within 24 hours.

(3) In any case where an attestation of exigent circumstances is documented in the person's medical record pursuant to this subdivision and an order for treatment with antipsychotic medication made pursuant to Section 5332 remains in effect, the facility where the person is receiving treatment shall report all of the following to the county behavioral health director in the county in which they operate, in a form and manner and in accordance with timelines prescribed by the county behavioral health director:

(A) The date and time when the physician or facility originally filed a petition with the superior court to request a hearing to determine a person's capacity to refuse treatment with antipsychotic medication under this section.

(B) The date when the applicable detention period described in paragraph (1) was scheduled to expire prior to the attestation described in subparagraph (C) of paragraph (6) being documented in the person's medical record.

(C) The date and time when the attestation of exigent circumstances was documented in the person's medical record, as described in subparagraph (C) of paragraph (6).

(D) The reason for the delay of the originally requested capacity hearing, if known, including, but not limited to, the lack of timely scheduling of the hearing, the unavailability of a hearing officer, the unavailability of an attorney or patients' rights advocate to represent the person subject to the petition, court closure, the unavailability of remote hearing technology, the unavailability of the person subject to the petition, or the unavailability of facility staff to present the reasons for the petition.

(E) The date and time when the capacity hearing was held on an expedited basis.

(4) (A) County behavioral health directors shall provide the information specified in paragraph (3) to the State Department of Health Care Services.

(B) Each May 1, beginning May 1, 2026, the State Department of Health Care Services shall compile the information it receives from county behavioral health directors pursuant to this paragraph during the prior calendar year, as well as information about the county where the facility that submitted the information is located, and report the information pursuant to the requirements of Section 5402.

(5) This subdivision does not apply to a person whose capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332 or affect the requirement that a hearing be conducted to determine a person's capacity to refuse treatment with antipsychotic medication within the applicable time limits specified in subdivision (a) of Section 5334, other than to require that such a hearing is held on an expedited basis.

(6) In order for there to be exigent circumstances necessitating an expedited hearing pursuant to this subdivision, all of the following must be true:

(A) A petition for a new determination on the question of capacity pursuant to Section 5334 has been filed prior to the expiration of the current order and in a period of time that provides a reasonable opportunity for a hearing to be held prior to the expiration of the current order and at least eight hours prior to the order's expiration.

(B) There has been a delay in a hearing to determine a person's capacity to refuse treatment with antipsychotic medication made pursuant to Section 5334, creating a risk that the existing capacity determination may expire before a new capacity determination is made.

(C) The person's treating physician documents in a written attestation of exigent circumstances, which shall be maintained in the person's medical record, that one of the following would likely occur if there were a lapse in the person's treatment with antipsychotic medication:

(i) An emergency, as defined in subdivision (m) of Section 5008.

(ii) A serious deterioration or decompensation of the person's mental health condition that could result in significant harm to the person based upon the facts of the person's individual circumstances, which the treating physician documents in their written attestation of exigent circumstances.

(D) The extension of treatment with antipsychotic medication until a new capacity hearing is held on the basis of an attestation of exigent circumstances described in this subdivision shall be invoked for a person only one time during the applicable detention period covered by the existing capacity determination.

(7) This subdivision shall be inoperative on January 1, 2030.

SEC. 5. Section 5402 of the Welfare and Institutions Code is amended to read:

5402. (a) The State Department of Health Care Services shall collect data quarterly and publish, on or before May 1 of each year, a report including quantitative, deidentified information concerning the operation of this division. The report shall include an evaluation of the effectiveness of achieving the legislative intent of this part pursuant to Section 5001. Based on information that is available from each county, the report shall include all of the following information:

(1) The number of persons in designated and approved facilities admitted or detained for 72-hour evaluation and treatment, admitted for 14-day and 30-day periods of intensive treatment, and admitted for 180-day postcertification intensive treatment in each county.

(2) The number of persons transferred to mental health facilities pursuant to Section 4011.6 of the Penal Code in each county.

(3) The number of persons for whom temporary conservatorships are established in each county.

(4) The number of persons for whom conservatorships are established in each county.

(5) The number of persons admitted or detained either once, between two and five times, between six and eight times, and greater than eight times for each type of detention, including 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, and 180-day postcertification intensive treatment.

(6) The clinical outcomes for individuals identified in paragraphs (1) to (4), inclusive.

(7) The services provided or offered to individuals identified in paragraphs (1) to (4), inclusive. Data pertaining to services provided or offered to individuals placed on each type of hold shall include, but not be limited to, assessment, evaluation, medication treatment, crisis intervention, and psychiatric and psychological treatment services. Data pertaining to services shall specify the payer information or funding used to pay for services.

(8) The waiting periods for individuals prior to receiving an evaluation in a designated and approved facility pursuant to Section 5150 or 5151 and waiting periods for individuals prior to receiving treatment services in a designated facility, including the reasons for waiting periods. The waiting period shall be calculated from the date and time when the hold began and end on the date and time when the individual received an evaluation or received evaluation and treatment services in a designated facility.

(9) If the source of admission is an emergency department, the date and time of service and release from emergency care.

(10) Demographic data of those receiving care, including age, sex, gender identity, race, ethnicity, primary language, sexual orientation, veteran status, and housing status, to the extent those data are available.

(11) The number of all county-contracted beds.

(12) The number and outcomes of all of the following:

(A) The certification review hearings held pursuant to Section 5256.

(B) The petitions for writs of habeas corpus filed pursuant to Section 5275.

(C) The judicial review hearings held pursuant to Section 5276.

(D) The petitions for capacity hearings filed pursuant to Section 5332.

(E) The capacity hearings held pursuant to Section 5334 in each superior court.

(13) Analysis and evaluation of the efficacy of mental health assessments, detentions, treatments, and supportive services provided both under this part and subsequent to release.

(14) Recommendations for improving mental health assessments, detentions, treatments, and supportive services provided under this part and subsequent to release.

(15) An assessment of the disproportionate use of detentions and conservatorships on various groups, including an assessment of use by the race, ethnicity, gender identity, age group, veteran status, housing status, and Medi-Cal enrollment status of detained and conserved persons. This assessment shall evaluate disproportionate use at the county, regional, and state levels.

(16) An explanation for the absence of any data required pursuant to this section that are not included in the report.

(17) Beginning with the report due May 1, 2025, the report shall also include the progress that has been made on implementing recommendations from prior reports issued under this subdivision.

(18) Beginning with the report due May 1, 2024, the number of persons admitted or detained, including 72-hour evaluations and treatment, 14-day and 30-day periods of intensive treatment, and 180-day postcertification intensive treatment, for each of the following conditions:

(A) Danger to self.

(B) Danger to others.

(C) Grave disability due to a mental health disorder.

(D) Grave disability due to a severe substance use disorder.

(E) Grave disability due to both a mental health disorder and a severe substance use disorder.

(19) (A) Beginning with the report due May 1, 2026, all of the information reported by facilities to county behavioral health directors pursuant to paragraph (3) of subdivision (b) of Section 5336.

(B) This paragraph shall be inoperative on January 1, 2030.

(b) (1) (A) Each county behavioral health director shall provide accurate and complete data to the department in a form and manner, and in accordance with timelines, prescribed by the department.

(B) County behavioral health directors shall provide the data specified in paragraphs (1) to (11), inclusive, of subdivision (a), and any other information, records, and reports that the department deems necessary for the purposes of this section.

(C) Data shall be submitted on a quarterly basis, or more frequently, as required by the department. The department shall not have access to patient name identifiers.

(2) (A) Each designated and approved facility that admits, detains, or provides services to persons pursuant to this part and Part 1.5 (commencing with Section 5585) and each other entity involved in implementing Section 5150 shall collect and provide accurate and complete data to the county behavioral health director in the county in which they operate to meet the reporting obligations specified in paragraphs (1) to (11), inclusive, of subdivision (a) and any other information, records, and reports that the county or the department deems necessary for the purposes of this section.

(B) A county may establish policies and procedures for this paragraph to ensure compliance with the requirements of this section. These facilities and entities shall collect and report data to the county behavioral health director consistent with the county's policies and procedures, if established.

(C) Data shall be submitted to the county behavioral health director on a quarterly basis, or more frequently, as required by the county.

(3) A county behavioral health director shall provide the accurate and complete data it receives pursuant to paragraph (2) to the department pursuant to paragraph (1).

(4) All data submitted to the department by each county behavioral health director shall be transmitted in a secure manner in compliance with all applicable state and federal requirements, including, but not limited to, Section 164.312 of Title 45 of the Code of Federal Regulations.

(c) Information published pursuant to subdivision (a) shall not contain data that may lead to the identification of patients receiving services under this division and shall contain statistical data only. Data published by the department shall be deidentified in compliance with subdivision (b) of Section 164.514 of Title 45 of the Code of Federal Regulations.

(d) The Judicial Council shall provide the department, by October 1 of each year, with data from each superior court to complete the report described in this section, including the number and outcomes of certification review hearings held pursuant to Section 5256, petitions for writs of habeas corpus filed pursuant to Section 5275, judicial review hearings held pursuant to Section 5276,

petitions for capacity hearings filed pursuant to Section 5332, and capacity hearings held pursuant to Section 5334 in each superior court. The department shall not have access to patient name identifiers.

(e) The department shall make the report publicly available on the department's internet website.

(f) (1) The department may impose a plan of correction or assess civil money penalties, pursuant to paragraph (3), or both, against a designated and approved facility that fails to submit data on a timely basis or as otherwise required by this section.

(2) The department may impose a plan of correction or assess civil money penalties, pursuant to paragraph (3), or both, against a county that fails to submit data on a timely basis or as otherwise required by this section.

(3) The department may assess civil money penalties against a designated and approved facility or county in the amount of fifty dollars (\$50) per day from the date specified in the notice to impose civil money penalties from the department.

(4) (A) A designated and approved facility or county may submit an informal written appeal of a civil money penalty to the department within 30 calendar days of the date of issuance of a notice to impose civil money penalties.

(B) The designated and approved facility or county shall include any supporting documentation and explain any mitigating circumstances.

(C) The department shall make a determination on the appeal within 60 calendar days of receipt of the informal written appeal.

(5) (A) A designated and approved facility or county may request a formal hearing within 30 calendar days following the issuance of the department's final determination on the appeal pursuant to paragraph (4).

(B) All hearings to review the imposition of civil money penalties shall be held pursuant to the procedures set forth in Section 100171 of the Health and Safety Code.

(C) Civil money penalties imposed upon a designated and approved facility or county shall continue to accrue until the effective date of the final decision of the department.

(g) (1) The Lanterman-Petris-Short Act Data and Reporting Oversight Fund is hereby created in the State Treasury.

(2) The Lanterman-Petris-Short Act Data and Reporting Oversight Fund shall be administered by the State Department of Health Care Services.

(3) Civil money penalties assessed and collected pursuant to subdivision (f) shall be deposited into this fund.

(4) (A) Notwithstanding Section 13340 of the Government Code, moneys deposited in the Lanterman-Petris-Short Act Data and Reporting Oversight Fund shall be continuously appropriated, without regard to fiscal year, to the State Department of Health Care Services for the purposes of funding its oversight activities and administrative costs associated with implementing this section.

(B) Notwithstanding any other law, the Controller may use the moneys in the Lanterman-Petris-Short Act Data and Reporting Oversight Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code.

(h) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section, in whole or in part, by means of information notices, provider bulletins, or other similar instructions, without taking any further regulatory action.

(i) The department may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis for purposes of administering or implementing the requirements of this section. Contracts entered into or amended pursuant to this section shall be exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, and Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and shall be exempt from the review or approval of any division of the Department of General Services.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.