

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 998 (Lackey) – As Amended March 30, 2021

Policy Committee: Public Safety

Vote: 8 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill requires the electronic transmission of an inmate's mental health records when the inmate is transferred from or between the California Department of Corrections and Rehabilitation (CDCR), the California Department of State Hospitals (DSH), and county jail facilities. Specifically, this bill:

- 1) Provides that mental health records shall be disclosed at the time of transfer or within seven days of the transfer of custody between those facilities.
- 2) Defines "mental health records" to include:
 - a) Clinician assessments, contact notes, and progress notes;
 - b) Date of mental health treatment and services;
 - c) Incident reports;
 - d) List of medical conditions and medications;
 - e) Psychiatrist assessments, contact notes, and progress notes; and
 - f) Suicide watch, mental health crisis, or alternative housing placement records.
- 3) Requires the transmission of inmate records comply with existing state and federal medical privacy laws.

FISCAL EFFECT:

- 1) Possibly reimbursable costs to counties (General Fund/Local Funds/Proposition 30) in the low hundreds of thousands of dollars in additional staff workload and possible new infrastructure across all counties to electronically transmit inmate mental health records to CDCR or DSH. Smaller counties may not have sufficient information technology to provide mental health records via electronic transmission, so they would require requiring additional resources to facilitate the scanning and transmission of mental health records. GF costs will depend on whether the Commission on State Mandates determines this bill imposes local reimbursable costs. Pursuant to Proposition 30 (November 2012), any legislation enacted

after September 30, 2012, that has an overall effect of increasing costs already borne by a local agency for programs or levels of service mandated by realignment (including management of local jails, child welfare services and foster care) only applies to local agencies to the extent that the state provides annual funding for the cost increase. This bill may have significant costs to local agencies and as a result, may require the state to reimburse counties for the costs of electronically transmitting inmate mental health records. Proposition 30 has never been litigated and as a result, it is unclear what constitutes a reimbursable state-mandated local program pursuant to Proposition 30.

- 2) Possibly significant cost savings (GF) to CDCR and DSH to the extent this bill reduces staff workload associated with contacting and coordinating the transfer of inmates' mental health records to county agencies, since records would automatically follow the inmate between facilities. Additionally, since this bill requires mental health records follow an inmate between state and county facilities, it reduces the likelihood of unnecessary treatment or duplicate mental health testing because CDCR or DSH do not have the inmate's mental health records.
- 3) Likely minor and absorbable costs to DSH since it currently has processes and infrastructure in place to transmit and receive mental health records.

COMMENTS:

- 1) **Purpose.** According to the author:

When health professionals do not have the required information on a patient to provide care, it hurts the patient and wastes time and money spent on another diagnosis. AB 998 will ensure that medical records follow an inmate when transferred, guaranteeing that they can get the care they need.

- 2) **Background.** Existing law requires mentally disordered inmates (i.e., inmates with a severe mental disorder) to receive mental health evaluations prior to release on parole to determine if the inmate should be referred to DSH. That process includes reviewing the inmate's mental health treatment plan and behavior over the most recent 12-month period. However, at the time of the required evaluation, not all inmates have been in state custody for 12-months. so As a result, psychologists performing the evaluations do not have the required records and need the records from other facilities where the inmate was prior to CDCR or DSH.

- 3) **Argument in Support.** According to American Federation of State, County and Municipal Employees (AFSCME):

In accordance with Penal Code section 2962, prior to releasing a prisoner on parole, an evaluation of the prisoner must be conducted by specified clinicians. The purpose of this evaluation is to both ensure society is protected from prisoners with dangerous mental disorders and to provide further treatment if it is necessary. The lack of adequate mental health records creates a situation that is not safe for our communities if prisoners are released on parole without proper mental health evaluations.

4) Prior Legislation.

- a) SB 350 (Galgiani), of the 2017-2018 Legislative Session, would have required the disclosure of medical, dental, and mental health information between a county correctional facility, a county medical facility, a state correctional facility, a state hospital, or a state-assigned mental health provider when an inmate is transferred from or between state and county facilities. SB 350 was held in the Senate Appropriations Committee.
- b) SB 1443 (Galgiani), of the 2015-2016 Legislative Session, would have permitted the sharing of medical, mental health and dental information between correctional facilities, as specified. SB 1443 was held in the Senate Appropriations Committee.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081