
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 998 (Lackey) - Incarcerated persons: health records

Version: March 30, 2021

Urgency: No

Hearing Date: August 16, 2021

Policy Vote: PUB. S. 5 - 0

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: AB 998 would require the transfer of mental health records between the Department of Corrections and Rehabilitation (CDCR), the Department of State Hospitals (DSH), and county agencies within seven days of a transfer of custody between the entities of an incarcerated person.

Fiscal Impact:

- County facilities: Unknown, potentially-major ongoing workload costs in the millions of dollars annually to counties to disclose mental health records as would be required by this bill. Local costs to comply with this measure would be subject to reimbursement by the state to the extent that the Commission on State Mandates determines that this bill imposes a state-mandated local program. Additionally, local costs associated with this measure may be subject, in part, to Proposition 30 funding-service conditions for county jails to comply with the information sharing mandate. Actual costs would vary by county facility and would be dependent on the number of incarcerated individuals who receive mental health treatment in a county facility,¹ the volume of records to be shared, and the infrastructure in place and method used by each county facility to transmit mental health records. Moreover, regardless of if a local agency, at its own option, incurs costs for practices that later are required by the state, the state nonetheless must reimburse the agency for those costs once the mandate becomes operative. (General Fund, local funds)
- CDCR: Unknown workload costs to the department to provide hard copies of records to county agencies that have the capability to receive electronic health records when transferring individuals to those facilities. Conversely, this measure could result in unknown savings to the extent that the California Correctional Health Care Services (which has authority over healthcare services for CDCR facilities that have not been delegated to the department) or CDCR would not need to perform full diagnostic testing to determine a person's current mental health conditions at intake. (General Fund)
- DSH: Negligible costs, as existing processes in place comply with the provisions of this bill. (General Fund)

Background: The Confidentiality of Medical Information Act (CMIA) generally prohibits the sharing of a patient's medical information but allows health care providers, service

¹ Considering that many individuals incarcerated in county jails receive mental health treatment—about one-third in Los Angeles County (See Westervelt at al., *America's Mental Health Crisis Hidden Behind Bars*, NPR (Feb. 25, 2020) < <https://www.npr.org/2020/02/25/805469776/americas-mental-health-crisis-hidden-behind-bars> [as of Aug. 11, 2021].)—counties may be required to transmit records for a large proportion of their jail populations that are transferred to a state facility or a different county's facility.

plans, contractors, or other health care professionals or facilities to disclose medical information for purposes of diagnosis or treatment.

Additionally, existing law requires CDCR to transmit electronically to a county agency, if the information is available, an incarcerated person's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the person transitions onto post-release community supervision for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency must be in compliance with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and the implementing federal privacy and security regulations, as specified.

With respect to Mentally Disordered Offender (MDO) commitments, according to the analysis of this bill by the Senate Committee on Public Safety:

The Mentally Disordered Offender (MDO) commitment is a post-prison civil commitment and was "created to provide a mechanism to detain and treat inmates with a severe mental health disorder who reach the end of a determinate prison term and are dangerous to others as a result of a severe mental disorder." MDO is a two-phase commitment. First, the person is certified as a mentally disordered offender by the Chief Psychiatrist of CDCR and a parole condition is imposed by BPH. Then, CDCR paroles the inmate to the supervision of the state hospital for involuntary treatment. Existing law mandates inpatient treatment at a state hospital unless DSH certifies that the person can be safely and effectively treated in an outpatient setting. Penal Code section 2970 provides for the continued involuntary treatment of the person for one year upon termination of parole. Finally, a petition for recommitment may be filed prior to the termination of the one-year continued treatment. [Citations omitted.]

For purposes of conducting an MDO evaluation of individuals under the jurisdiction of CDCR who are temporarily housed at a county correctional facility, a county medical facility, or a state-assigned mental health provider, existing law requires a practicing psychiatrist or psychologist from DSH, CDCR, or BPH be afforded prompt and unimpeded access to the person and their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment.

Proposed Law: This bill would:

- Require CDCR, DSH, and county agencies that are caring for incarcerated individuals to disclose, by electronic transmission when possible, the mental health records for any transferred inmate who received mental health services while in the custody of the transferring facility.
- Require the disclosure of the mental health records at the time of transfer or within seven days of the transfer.
- Require the disclosure of the records between the entities to ensure sufficient mental health history is available for the purpose of satisfying the MDO evaluation

requirements before BPH makes a parole determination and to ensure the continuity of mental health treatment of a person being transferred between those facilities.

- Specify “mental health records” for purposes of this bill include, but are not limited to, the following:
 - Clinician assessments, contact notes, and progress notes.
 - Date of mental health treatment and services.
 - Incident reports.
 - List of an inmate’s medical conditions and medications.
 - Psychiatrist assessments, contact notes, and progress notes.
 - Suicide watch, mental health crisis, or alternative housing placement records.
- Allow the mental health records specified immediately above to be disclosed by a county correctional facility, county medical facility, state correctional facility, or state hospital under the CMIA.
- Require all transmissions made pursuant to this bill comply with the CMIA, HIPPA, the HITECH Act, and the corresponding implementing regulations relating to privacy and security.

Related Legislation: SB 591 (Galgiani, Ch. 649, Stats. 2019) requires a practicing psychiatrist or psychologist from CDCR, DSH, or BPH to be afforded prompt and unimpeded access to a person temporarily housed at a county jail and their records for purposes of conducting a MDO evaluation. An earlier version of SB 591 included provisions that, similar to this bill, would have required the transfer of records between the entities. These provisions were stricken from SB 591 by this Committee.

SB 350 (Galgiani, 2017-2018 Reg. Sess.) and SB 1443 (Galgiani, 2015-2016 Reg. Sess.) would have required the transfer (electronically, with respect to SB 1443) of medical, dental, and mental health information for the same population as this bill. SB 350 and SB 1443 were held on the Suspense File of this Committee.

Staff Comments: This bill seeks to improve prisoner healthcare and provide continuity of care through the disclosure of mental health records of an incarcerated person when jurisdiction is transferred from or between state and county correctional facilities, county medical facilities, and state hospitals, while complying with all federal and state laws regarding confidentiality and security. The CMIA authorizes the disclosure of medical information by health care providers, contractors, service plans, and health care professionals or facilities for the purposes of diagnosis and treatment. As a result, it appears the state and local agencies specified in this measure currently have the authority to disclose this information to each other. Further, by mandating the local agencies to disclose this information, which would include sharing the information between county agencies themselves, this bill likely creates a significant state-mandated local program, potentially requiring reimbursement from the state for these costs.

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