

COUNTY PROGRAMS OF LAST RESORT: PUBLIC ADMINISTRATOR, PUBLIC CONSERVATOR AND PUBLIC GUARDIAN

SUMMARY

In every community there are individuals who are a danger to themselves or others or are unable to care for their basic needs as a result of their serious mental illness. California law provides a statutory process prior to initiating involuntary treatment within the Lanterman-Petris Short (LPS) Act, Welfare and Institutions Code sections 5150, et seq., commonly referred to as “5150.”

When a psychiatric health facility where an individual from Mendocino County has been placed through a 5150 or subsequent hold, determines that an individual is gravely disabled due to their serious mental illness and requires conservatorship, the Behavioral Health Department (BHD) receives those referrals, cares for those individuals, and the Public Conservator (Director of the BHD) initiates petitions within the Superior Court for those who have been declared gravely disabled.

Placement of these individuals is difficult since there is a lack of beds available in appropriate facilities close to home. Many placements are made in Southern California far from natural support networks. The construction of a Psychiatric Housing Facility (PHF) in Mendocino County will help with initial hospitalization of psychiatric patients. When an individual is “gravely disabled” due to dementia or serious brain injury (rather than mental illness), and there are not any family members or friends who can be appointed conservator to care for them, the Public Guardian receives referrals for conservatorship under the Probate Code. The Public Guardian, who is the Director of the Social Services Department (SSD) will initiate probate conservatorship proceedings in the Superior Court for these individuals.

Approximately eight individuals within the County die each month without next of kin or with next of kin who decline to take control of their remains or their estate. If no next of kin step forward, the remains of these individuals and their property, if any, is referred to the staff of social services in a program called the Public Administrator.

The administration of these programs often requires the County to initiate actions within the Superior Court and are partially dependent on County General Funds. Per capita spending for these programs exceeds those of neighboring rural counties.

BACKGROUND

The 2021-22 Mendocino County Grand Jury (GJ) received a complaint that a family member, under conservatorship, was placed in an institution in Southern California. Due to COVID-19 restrictions, County staff were unable to make their quarterly visits and update families. The complainant was extremely concerned about the welfare of their family member.

The three County programs which receive referrals as referenced above (for indigent adults) include:

- The Public Administrator (PA), handles the disposition of the financial estate for County citizens who die without any next of kin (if intestate), or executor (if there is a Will), who are able or willing to take action;
- The Public Conservator (PC), serves clients who are unable to care for their basic needs (gravely disabled) due to serious mental illness and require LPS conservatorship, however, with treatment may be able to return to independent living;
- The Public Guardian (PG) serves adult clients who are unable to care for their basic needs (gravely disabled) due to dementia or serious brain injury and require probate conservatorship because they are unable to return to independent living but have no family members who can step in.

The administration of these programs each have a component which requires the County initiate proceedings in the Superior Court. The programs are partially dependent on County General Funds.

METHODOLOGY

The GJ interviewed BHD and SSD administrators and staff and a provider of County contracted services.

The GJ reviewed:

- California Legislative Senate Bill 724-*Guardianships and conservatorships*,
- California Legislative Welfare and Institutions Code-*The Lanterman-Petris-Short Act (LPS) [5000-5556]*,
- California Legislative Senate Bill 221-*Health care coverage: timely access to care*,
- Mendocino and Sonoma County websites,
- Mendocino County Ordinance NO. 4387, "*Mental Health Treatment Act*".

One member of the Grand Jury was recused from participation in the investigation or approval of this report.

DISCUSSION OF FACTS

Department Structure

In October 2021, Mendocino County divided the HHSA into three separate departments: Behavioral Health, Social Services and Public Health. The entire PC Program was placed under the administration of the BHD. The BHD is responsible for placement of LPS Conservator clients. The PG and PA Programs remain under the supervision of the SSD.

Previously, these programs were administered as one unit in HHSA. The HHSA Program Manager and two social workers monitored clients for both PC and PG Programs, as well as performing the function of the PA. The SSD staff serving the PA and PG Programs are classified as social workers. Staff members interviewed by the GJ entered County employment without formal training in social work and were trained on-the-job by senior staff.

Public Administrator

The PA is responsible for closing the estate of persons who die without next of kin and are intestate (or with a will and the Executor is unwilling or unable to act). The PA has approximately eight new cases a month with many cases open for many months. The PA searches for family members to inherit the estate and assume responsibility and pay for cremation. If no willing family member is found, the PA liquidates the estate to pay for cremation and outstanding bills. If personal funds are insufficient to pay for cremation, Social Services pays the bill. The County has a \$70 thousand contract with a local mortuary for cremation services. The remains are stored at the mortuary's memorial site in case a family member is found. If the estate has residual funds after all bills are paid and no beneficiary is found, this money becomes the property of the State. If it is a sizable estate, the State reimburses the County at \$80 per hour up to \$1,000 or four percent of the estates value. County staff reported in the majority of cases, the value of the estate is minimal. Testimony revealed the County recovers approximately \$8,000 from this program annually.

Public Conservator

The Director of Behavioral Health is the Conservator of Record. The functions of the Conservator are delegated to a Program Manager, two newly appointed Program Administrators and an Account Specialist. Testimony to the GJ revealed there was no training manual. Procedures had to be learned by asking SSD staff, who previously performed these functions.

In accordance with LPS, conservatorships are granted when an adult, due to serious mental illness is declared gravely disabled and cannot care for their basic personal needs for food, clothing or shelter. (5150). They may, with treatment, return to independent living. The PC currently serves a daily average of 60 clients in residential facilities spread throughout the State. These facilities vary in levels of care. The levels range from supervised independent living to locked facilities.

The facilities include:

- Independent Living,
- Adult Residential Facility,
- Board & Care Facility,
- Acute Care Facility,
- Intermediate Care Facility,
- Institute for Mental Disease
- Intensive Residential Care,
- Mental Health Rehab Center,
- Residential Care Facility,
- Residential Care Facility for the Elderly,
- Skilled Nursing Facility, Special Treatment Program

Referrals to the PC must be made by a professional person in charge of an agency providing comprehensive evaluation or a psychiatric health facility providing intensive treatment who declares a person in his or her care is gravely disabled due to a mental disorder. A conservatorship, if granted by the Court pursuant to a court or jury trial, has a duration limited to one year, but may be reappointed only upon a subsequent petition, (providing the same process) on an annual basis. The conservatee has a right to court-appointed counsel, provided by the Public Defender. Referrals to the PC must include a diagnosis from two physicians or one physician and one psychiatrist or psychologist. Conservatorships require an annual court review with reports prepared by the County Contracted Psychologist as well as a physician from the treating facility.

Testimony to the GJ revealed approximately 187 individuals are evaluated monthly for 5150 proceedings, with about 34 requiring temporary hospitalization. They are usually detained at the local hospital until an appropriate facility can be found. Most are stabilized with the appropriate medical treatment to return to a functioning status. Only a small portion of people initially hospitalized are determined through the court process to require a conservator. Due to the unavailability of State hospital beds, those persons referred from conservatorship by virtue of being deemed mentally incompetent to stand trial (among other criteria) must remain in the local jail. In addition, people accused of a crime and unable to be tried because of mental illness are especially difficult to place in appropriate facilities. When placed in State hospitals, the cost is approximately \$1,000 per day.

Clients needing minimal care are placed in an unlocked facility and receive room and board. Board and Care Homes receive \$1,079 a month from Social Security, and often provide services such as group therapy. The client receives \$138 a month to cover medical co-pays and personal needs.

For LPS clients, BHD contributes \$140 per day in addition to their Social Security funds. A client placed in a skilled nursing facility will receive Medi-Cal to cover the majority of the expense above their full Medicare benefit. The client will receive \$30 per month for personal needs. The BHD makes up the difference for the facility cost based on the individual's level of needs. The GJ received testimony that Mendocino County hospitalization costs are higher than most small counties. The LPS placements average more than \$3 million annually.

Public Guardian

The PG is granted when the client is considered "gravely disabled" from dementia or brain injury and unlikely to regain the competence needed to be independent. The PG Program, under the SSD, currently serves 12 individuals. The process for the court declaring the need for guardianship is similar to the Conservator Program. Quarterly visits are required by law, however, a staff person from the SSD attempts to visit each client monthly to determine if their needs are being met. Assessing the level of care received by these clients can be very difficult. Many clients are unwilling to be assisted with personal grooming procedures like hair cutting, nail clipping or regular bathing. The cost of care for these clients are covered by Medicare and the sale of their assets.

The PC and PG social worker staff report they often make 20-30 calls before finding a suitable placement for clients. When one is found the client's records are sent to the facility. If the client is acting out or has a record of violence they can be rejected for placement. The social worker then resumes the search for placement. Meanwhile, the client is kept at a local hospital or, if referred through the criminal process, at jail waiting for placement. The facilities being created by Measure B funds will improve this situation.

FINDINGS

F1. The GJ was concerned that no training manual is available regarding conservatorship proceedings. New staff are therefore reliant upon senior staff in SSD for their training.

F2. Due to the lack of a local psychiatric hospital and few nursing homes, patients are often placed far from their families resulting in lack of family support

F3. When the status and conditions of all individuals are not shared with family members regularly, families become concerned about patients' welfare, especially if the patient is placed out-of-the area.

F4. The County is responsible to cover the costs of settling estates of those citizens that die without wills or relatives. The State assumes the remainder of assets with the County receiving only a small portion of the value of an estate. Most cases have minimal assets and the costs to the County are considerable.

F5. There are County general fund costs in all three programs. These costs appear to be mostly unknown to County taxpayers.

F6. The high costs of hospitalizations for 5150 clients to the County justifies re-establishing a PHF with Measure B funds.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. the BHD and SSD establish and regularly update their Policy and Procedure Manuals for these programs. (F1)

R2. the BHD and SSD ensure family members are informed of the status of family members in out-of-county facilities on a quarterly basis. (F2, F3)

R3. the information regarding the three programs and their general fund costs be transparent and available to the public by inclusion in quarterly departmental reports to the BOS. (F4-F6)

RESPONSES

Pursuant to Penal Code § 933.05, responses are required from the following board:

Board of Supervisors (F3-6) and (R3)

Pursuant to Penal Code § 933.05, responses are requested from the following individuals:

Director of Behavioral Health (F1-F3) and (R1, R2)

Director of Social Services (F1-F3) and (R1, R2)

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.