

Date of Hearing: May 7, 2020

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 2174 (Gallagher) – As Amended March 16, 2020

SUBJECT: Homeless multidisciplinary personnel teams

SUMMARY: Permits the Counties of Yuba and Sutter to establish a joint homeless adult and family multidisciplinary personnel team (MDT) in order to facilitate the expedited identification, assessment, and linkage of homeless individuals to housing and supportive services. Specifically, **this bill:**

- 1) Allows Yuba and Sutter Counties to establish a joint homeless adult and family MDT with the goal of facilitating the expedited identification, assessment, and linkage of homeless individuals to housing and supportive services within either Yuba or Sutter County, and to allow provider agencies or MDT members to share confidential information for the purpose of coordinating housing and supportive services to ensure continuity of care.
- 2) Subjects a joint homeless adult and family MDT established between Yuba and Sutter Counties to all requirements and obligations of a homeless adult and family MDT, as established in current law.
- 3) Requires Yuba and Sutter Counties to adopt a joint protocol to govern the sharing of information that is in full compliance with the requirements and obligations for homeless adult and family MDT protocols, as described in current law.
- 4) Requires a joint protocol to be at least as restrictive of the sharing of confidential information as any protocol adopted pursuant to current law, as specified, for the sharing of confidential information by a homeless adult and family MDT comprised solely of members of either county individually.
- 5) Requires, if a city within the Counties of Yuba or Sutter requests to participate in a joint MDT, the counties to allow for the participation of appropriate city personnel, unless the counties determine that participation by the city would hinder compliance with the requirements and obligations set forth in current law, as specified, or would otherwise conflict with the counties' goals and objectives.

EXISTING LAW:

- 1) Allows a county to establish a homeless adult and family MDT in order to facilitate the expedited identification, assessment, and linkage of homeless individuals to housing and supportive services within that county and to allow provider agencies to share confidential information for the purpose of coordinating housing and supportive services to ensure continuity of care. (Welfare and Institutions Code Section [WIC] 18999.8(a))
- 2) Defines "homeless" as any recorded instance of an adult or family self-identifying as homeless within the most recent 12 months, or any element contained in service utilization records indicating that an adult or family experienced homelessness within the most recent 12 months. (WIC 18999.8(b)(1))

- 3) Defines “homeless adult and family MDT” as any team of two or more persons who are trained in the identification and treatment of homeless adults and families, and who are qualified to provide a broad range of services related to homelessness. Further specifies that the MDT shall include, but not be limited to, mental health and substance abuse services personnel, law enforcement entities, legal counsel, and medical personnel, among other entities. (WIC 18999.8(b)(2))
- 4) Defines “homeless service provider agency” as any governmental or other agency that has as one of its purposes the identification, assessment, and linkage of housing or supportive services to homeless adults or families, and further allows a homeless provider agency to share information with certain entities, including social services, health services, probation, and law enforcement, among others. (WIC 18999.8(b)(3))
- 5) Allows members of a homeless adult and family MDT engaged in the identification, assessment, and linkage of housing and supportive services to homeless adults or families to disclose to, and exchange with, one another information and writings that relate to any information that may be confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the identification, reduction, or elimination of homelessness or the provision of services. (WIC 18999.8(c))
- 6) Allows, notwithstanding any provision of law governing the disclosure of information and records, any person trained and qualified to serve on an MDT be deemed a part of the team as necessary, for the purposes of a particular case, provided the reasons for deeming the person a member of the team are specified in writing. (WIC 18964)
- 7) Establishes a pilot program, until January 1, 2025, in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura to allow homeless adult and family MDT’s established in those counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals. (WIC 18999.81(a))
- 8) Defines “individual at risk of homelessness” as an individual who is indigent or receiving or eligible to receive public benefits in the form of cash aid, and who meets all of the following conditions: the individual is exiting, or exited within the most recent 12 months, a state-funded or locally funded detention or treatment setting, as specified, or is aging out, or aged out within the most recent 12 months, of the child welfare system or the juvenile justice system; or, the individual presents with, or received services within the most recent 12 months for, significant health, mental health, or substance use issues. (WIC 18999.81(b))

FISCAL EFFECT: Unknown

COMMENTS:

Homelessness in California: According to the annual Point-in-Time (PIT) count conducted by the United States Department of Housing and Urban Development (HUD), on a single night in January 2019, 151,278 people experienced homelessness in California, which represents a 16% increase in homelessness since January 2018. Nationwide, 396,045 individuals were experiencing homelessness in January 2019; California, therefore, accounts for 33% of the nation’s homeless population. The PIT count also found that, in January 2019, California’s

homeless population included 10,989 veterans, 39,275 individuals experiencing chronic homelessness, 11,993 unaccompanied youth, and 22,501 families with children.

Homelessness can take many forms; federal law speaks to individuals who lack a fixed, regular, and adequate nighttime residence, which can include shared housing with others due to the loss of housing or an economic hardship, living in emergency or transitional shelter, or having a nighttime residence that is not designed as a regular sleeping accommodation for human beings, such as cars.

To address its homelessness crisis, California has undertaken a number of strategies to move people off of the streets and into permanent housing, including, but not limited to:

- Adopting a “Housing First” approach with the enactment of SB 1380 (Mitchell), Chapter 847, Statutes of 2016, which prioritizes moving people quickly into permanent, affordable housing without pre-condition, and then offering supportive services to individuals;
- Providing over \$1 billion in funding to local jurisdictions, including Continuums of Care, counties, and cities to implement the Homeless Emergency Aid Program (HEAP) and the Homeless Housing, Assistance and Prevention (HHAP) Program, to provide rental assistance, operate subsidies for shelters and supportive housing, and increase outreach and coordination, among other uses; and,
- Enacting the Homeless Youth Act of 2018, authorized by SB 918 (Wiener), Chapter 841, Statutes of 2018, which required the Homeless Coordinating and Financing Council to set and measure progress towards goals to prevent and end homelessness among youth, among numerous other policy and non-policy related approaches to solving the homelessness crisis.

Multidisciplinary personnel teams: AB 1049 (Bader), Chapter 353, Statutes of 1987, permitted the use of MDTs to allow for a coordinated interagency response to elder and child abuse cases. Prior to that, MDTs were a relatively new concept and had primarily existed as pilot projects administered at the county level. Specifically, child abuse MDTs were formed and operated at the county level and were enabled to share certain confidential information among team members in order to prevent, identify, and treat child abuse. MDTs also serve to facilitate coordination among the different participating agencies and entities to ensure decisions are made through a team decision-making process.

In 2017, AB 210 (Santiago), Chapter 544, Statutes of 2017, allowed counties to develop homeless adult and family MDTs in order to identify and assess individuals experiencing homelessness and link them to housing and supportive services. AB 210 also allowed certain entities, including mental health service providers, law enforcement, schools, and social services representatives, to participate in homeless adult and family MDTs. In 2019, AB 728 (Santiago), Chapter 337, Statutes of 2019, established, until January 1, 2025, a pilot program in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura, to allow homeless adult and family MDTs established in these counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals.

Need for this bill: The provisions of this bill seek to build upon previous efforts to address California’s homelessness crisis, including the enactment of AB 210 and AB 728, which allowed

counties to form homeless adult and family MDTs in order to link individuals who are homeless, or who are at risk of homelessness, to housing and supportive services. Specifically, this bill would permit the Counties of Yuba and Sutter to establish a joint homeless adult and family MDT to allow MDT members to share certain confidential information in order to quickly link people experiencing homelessness with housing and supportive services.

According to the author, “Unfortunately, current law limits the utilization of homeless MDTs to providers within a single county. This can be problematic for counties that wish to better coordinate services across county lines for their homeless populations, like Yuba and Sutter counties. Coordination makes a lot of sense for these counties, as they share homeless service providers, have a bi-county health department, and created a bi-county homeless consortium. However, under current law, MDTs may only be formed within a single county. This hinders current efforts to provide housing and supportive services to homeless individuals, which are especially critical to containing COVID-19.

“Authorizing Yuba and Sutter counties to establish a joint MDT would help with the identification, assessment, and linkage of homeless individuals to housing and supportive services. This will create cost savings and improve government efficiency by preventing duplicative efforts through better coordination, while enhancing the continuity of care for homeless individuals and families.”

Double referral: This bill was originally double-referred with the Assembly Privacy and Consumer Protection Committee; however, due to the Legislature’s unanticipated recess in response to the COVID-19 pandemic and the truncated timeframe in which committees may hear bills, this bill has been single-referred to the Human Services Committee. Below is a statement provided by the Assembly Privacy and Consumer Protection Committee in response to the provisions of this bill:

“The Assembly Committee on Privacy and Consumer Protection recognizes and supports the intent of [this bill] to facilitate the provision of critical housing and supportive services to homeless individuals. However, increased discussions related to how we provide supportive services to homeless individuals (i.e. authorized sharing of confidential health information between agencies) warrants renewed scrutiny on any erosion to the explicit informed consent of the homeless individual for the sharing of their confidential and sensitive health information.

Though it is true that existing law permits the sharing of confidential information within MDTs for homeless individuals without explicit consent, this bill presents a paradigm shift by permitting the sharing of confidential information between municipal governments rather than within them. In the case of Yuba and Sutter counties, unique circumstances arguably necessitate a joint approach to combatting homelessness, but this expansion of permissible disclosure of confidential health information without consent nonetheless begs the question of where to draw the line. The Privacy Committee is concerned that passage of this bill without solidifying privacy protections for homeless individuals may lead the Legislature down a path that continues to expand legal authority to share the sensitive information of homeless individuals without their consent across broader and broader public networks, threatening their privacy.

In 2019, Governor Newsom signed into law AB 728 (Santiago, Ch. 337, Stats. 2019), which created a limited pilot program to permit the use of homeless MDTs to provide housing and supportive services to ‘individuals at risk of homelessness.’ In reviewing that bill, the Privacy Committee requested that the author include provisions ensuring an attempt to establish

affirmative consent of the subject, and the author sensibly complied. The law authorizing this pilot program requires that the MDT member who first establishes contact with an individual at risk of homelessness notify the individual that their confidential information may be shared for the purposes of coordinating housing and supportive services to ensure continuity of care, and attempt to obtain consent. The statute also provides that confidential information may only be shared without affirmative consent, subject to the right to opt-out, in order to identify individuals at risk of homelessness, and to coordinate housing and supportive services to ensure continuity of care for a period not to exceed 30 days, or until the individual opts out, whichever comes first. The Privacy Committee believes similar provisions would help protect against severe infringements on personal privacy and civil liberties if applied to all homeless MDTs, including those specifically addressing the needs of presently homeless individuals and the joint MDTs established by [this bill].

The approach taken in AB 728 is entirely consistent with current HIPAA guidance provided by the Office for Civil Rights of the United States Department of Health and Human Services specifically addresses the issue of whether ‘a health care provider can refer a homeless patient to a social services agency, such as a housing provider, when doing so may reveal the basis for eligibility is related to mental health.’ This guidance indicates that ‘health care providers who believe that the disclosures to certain social services entities are a necessary component of, or may help further, the individual’s health or mental health care may disclose *the minimum necessary PHI* to such entities without the individual’s authorization.’ (Emphasis added.) The guidance also specifies that ‘[a] covered entity may also disclose PHI to such entities pursuant to an authorization signed by the individual.[...] Thus, providers could in one authorization identify a broad range of social services entities may receive or use the PHI.’ The same guidance document also reiterates the same ‘minimum necessary’ requirement for the sharing of information when ‘a patient is not present or is unable to agree or object to a disclosure due to incapacity or emergency circumstances,’ and notes that these circumstances ‘may include circumstances in which a patient is suffering from temporary psychosis or is under the influence of drugs or alcohol.’

Individuals presumed to be of sound mind to make rational decisions are generally afforded the opportunity to provide or withhold consent for the sharing of their personal information. California law provides a rigorous legal process for formally designating an individual incompetent to make decisions, and absent such a designation, policy should operate on the presumption that adults, regardless of station in life, may consent on their own behalf. The Privacy Committee urges Members to keep this in mind if and when this bill moves forward.

Staff comments: The provisions of this bill seek to further the ongoing efforts to address California’s homelessness crisis by allowing Yuba and Sutter Counties to establish a joint homeless adult and family MDT and allow MDT members to share information and link individuals who are experiencing homelessness to supports and services. This bill expands upon the efforts of previous legislation, including AB 210 (Santiago) and AB 728 (Santiago) to increase collaboration between local entities to prevent and address homelessness on California’s streets. This committee’s analysis of AB 210 and AB 728 raised issues related to the sharing of private and confidential information and what impact, if any, legislation allowing information sharing would have on the rights of an individual. Neither current law, nor the provisions of this bill allow for an individual to consent to having their information shared or discussed. This bill also does not allow for an individual to opt out of having their information shared. While California is facing a homelessness crisis and it is imperative that the state provide for the

housing, health, and mental health needs of these individuals, it is equally important to maintain an individual's right to privacy, as well as their ability to make informed decisions for themselves. *Should this bill move forward, the author may wish to consider the balance between maintaining the confidentiality of information and protecting the privacy rights of individuals experiencing homelessness, and providing services and supports to those individuals.*

RELATED AND PRIOR LEGISLATION:

AB 2718 (Limón) of 2020 would allow a county that has established a homeless adult and family MDT to enter into an agreement with surrounding counties that have also established a homeless adult and family MDT to share confidential information for purposes of coordinating housing and supportive services to ensure continuity of care across county lines. AB 2718 is currently in the Assembly Human Services Committee.

AB 728 (Santiago), Chapter 337, Statutes of 2019, established a pilot program in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura to allow homeless adult and family MDTs established in those counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals.

AB 210 (Santiago), Chapter 544, Statutes of 2017, allowed counties to develop homeless adult and family MDTs in order to facilitate identification and assessment of homeless individuals, and link homeless individuals to housing and supportive services, and to allow service providers to share confidential information to ensure continuity of care.

AB 2229 (Brownley), Chapter 464, Statutes of 2010, established time-limited authority for counties to create two-person MDTs engaged in the investigation of suspected child abuse or neglect.

AB 2322 (Feuer & Bass), Chapter 551, Statutes of 2010, broadened the scope of information that may be included in a county MDT computerized database to include information regarding nonrelatives living in the home of a child.

AB 1518 (Soto), Chapter 919, Statutes of 1999, established a three-year, three county pilot in Alameda, San Bernardino, and Ventura counties to create an integrated coordinated case management system using MDTs for CalWORKs families with multiple barriers to employment.

AB 1049 (Bader), Chapter 353, Statutes of 1987, authorized the use of MDTs for both child and elder abuse.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Sutter
County of Yuba

Opposition

None on file

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