



May 16, 2023

Mr. Joe Stephenshaw, Director
Department of Finance
1021 O Street, Suite 3110
Sacramento, CA 95814

Honorable Nancy Skinner, Chair
Senate Committee on Budget and Fiscal Review
1020 N Street, Room 502
Sacramento, CA 95814

Honorable Phil Ting, Chair
Assembly Committee on Budget
1021 O Street, Suite 8230
Sacramento, CA 95814

RE: May Revision Proposal for CARE Act Funding – CONCERNS

Dear Director Stephenshaw, Chair Skinner, and Chair Ting:

On behalf of the state's 58 counties, the California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), and the County Behavioral Health Directors Association of California (CBHDA) write to express our appreciation for the updated level of funding proposed in the May Revision for counties to implement the Community Assistance, Recovery and Empowerment (CARE) Act. We acknowledge the revised proposal reflects progress made during discussions with our county associations to refine the ongoing impacts of the CARE Act, but we request additional consideration of the following issues outlined below.

Based on county fiscal estimates, the level of ongoing funding for counties proposed in the May Revision by the Administration (\$151.5 million) is inadequate to ensure the successful implementation of the new court process associated with the CARE Act. While the overall impact to counties will depend on factors yet to be determined such as the annual number of CARE Act petitions submitted and the number of qualifying respondents, drawing upon the state's caseload estimates, counties estimate CARE Act process costs upon full implementation will total \$398.4 million annually.

Further, the May Revision proposal lacks clarity about how counties will receive funds. Without an agreed-upon funding mechanism, Cohort 1 counties cannot adequately plan for implementation. The CARE Act process is statutorily required to begin by October 1 of this year for seven counties (Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne), and Los Angeles County is anticipated to begin by December 1 of this year. For Cohort 1 to be ready to implement in less than five months, counties need an allocation methodology that expeditiously distributes funding.

The implementing legislation, SB 1338 (Umberg/Eggman), conditions operation of the CARE Act upon the development of an **allocation**, in consultation with county stakeholders, to provide state financial assistance to counties to implement the “CARE process.” Statute further defines the CARE process as “the court and related proceedings to implement the CARE Act.” The Governor’s Budget proposal included an estimate of funding for county behavioral health agency costs to administer the CARE Act, but the Administration acknowledged in budget documents that the amount was a placeholder and that, “The Administration will continue to work with counties and stakeholders to refine the ongoing program cost estimate.”

The Legislature and county stakeholders have been clear that adequate funding to counties would be required to develop and implement this new process, as counties play a key and substantial role in implementation as the state’s partners in providing critical behavioral health assessments and care, social services, and housing resources. The CARE Act imposes new mandated activities on counties, which include new CARE process workload for county behavioral health agencies, county counsel, and public defenders.

Our county organizations have met with the Administration several times to discuss and provided detailed fiscal estimates outlining the fiscal impacts to affected county agencies. Counties appreciate the adjustments reflected in the May Revision to further support state and county agency costs for planning and implementation, however, counties express the following outstanding concerns with the May Revision fiscal estimate for CARE Act costs:

- **Behavioral health agency costs underestimated:** The May Revision includes \$151.5 million in ongoing support for behavioral health agency costs. In contrast, counties estimate ongoing annual costs to behavioral health agencies *based on the state’s own projected caseload*¹ at \$251 million upon full implementation. However, counties anticipate the number of petitioners and respondents will be greater, especially during the initial years of program implementation, necessitating additional resources.

The county estimate utilizes an evidence-based average hourly rate of \$117, which accounts for various provider types and associated benefits, as well as overhead/administration impacts. Behavioral health agency staff will perform numerous activities throughout the CARE process, and the county estimate includes resource considerations for court appearances, preparation and coordination, noticing, care plan development, case management, housing services/ supports, and outreach/engagement by county behavioral health. Adequate funding for county behavioral health departments is essential to the success of the CARE Act. With additional adjustments to caseload, hourly rates, continued hearings and other adjustments, counties’ own estimates would require \$520 million ongoing at full implementation. The Judicial Council’s recently adopted CARE Act Rules, which require notice of *every single hearing* to be personally served on the respondent (a cost that was not anticipated in with the May Revision or the counties’ estimates) will increase counties’ CARE process costs even further.

- **Funding for counties’ legal representatives must be included:** Troublingly, the May Revision does not include any funding for one critical component of the CARE process: the county’s legal representative (i.e., County Counsel, or the City Attorney’s Office in San Francisco). CARE Court

¹ 14,000 petitions, with 12,000 respondents proceeding to an initial hearing.

is a judicial process, with numerous required filings and multiple evidentiary hearings, in which the county behavioral health agency is a mandatory participant. Moreover, the county has specific legal duties throughout the CARE process – and the central product of this process, the CARE plan, is a legal document that must meet statutory standards, and be approved by a judge.

County counsel will represent county behavioral health at initial appearance and merits hearings, as well as provide pre-court preparation and legal support to behavioral health agencies for the engagement of respondents, supporters, counsel, and other stakeholders to attempt to engage respondents into CARE agreements between eligibility and case management hearings. County counsel will also review CARE plans as well as draft court filings related to clinical evaluations and capacity issues. The CARE process is a court process where representation of all parties is a necessity, and the expectation of any judge. These functions simply cannot be accomplished without the participation of the county's counsel. There is no mechanism for non-attorney employees to represent the county in court – and even were that possible, no responsible public agency would attempt it, and no judge would tolerate it. The CARE Act Rules recently adopted by the Judicial Council repeatedly acknowledge the role of the county behavioral health agency's counsel, and the budget must do likewise. Simply put, as specified in SB 1338, "the court and related proceedings to implement the CARE Act" requires attorneys, and funding for those services is needed for CARE Court to work. (The state's obligation and practice of funding the county's counsel in similar state-mandated legal proceedings is well-established, including child welfare cases, sexually violent predator proceedings, and Individual Education Plan hearings for students with disabilities.)

The May Revision does not include funding support for county counsel activities; however, given the significant and consistent participation of county counsel in the new CARE process, dedicated and ongoing funding support for these activities must be included within county CARE Court funding for this new court process to be implemented. The estimated annual costs to support county counsel activities statewide are \$87 million, based on the Administration's caseload assumptions.

- **Mechanism/timing for public defender support costs unclear:** Although the CARE Act specifies the appointment of, and state funding for, qualified legal services projects to represent respondents in CARE Act proceedings, the provision of legal services projects is contingent on whether a legal services project "has agreed to accept these appointments." To counties' knowledge, no qualified legal services projects have yet indicated such agreement *anywhere in the state*, nor does there appear to be a process in place for this to occur in Cohort 1 counties prior to October. To the extent the capacity, availability, or willingness of legal services projects are insufficient to serve this population, this representation will be handled by public defenders. The May Revision provides funding to the Judicial Council for qualified legal services projects and public defenders through the Legal Services Trust Fund of the State Bar, however it is unclear how the funding mechanism/process will work should these services be largely provided by public defenders. For representation to be available on October 1, 2023, a funding mechanism to reimburse public defenders for cost must be in place. Moreover, the amount of funding must be sufficient for the legal services actually required, regardless of who provides them.

Thank you for your consideration of the concerns outlined above. We look forward to continued engagement with you to discuss funding and implementation updates that will maximize success for the CARE Act, and most importantly, best support the people it intends to serve. Should you have any questions regarding our concerns, please do not hesitate to contact our organizations.

Sincerely,



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