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To: Interested Parties  
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**Using Laura's Law to help fix problems with MHSA**

In spite of recent changes, it is still difficult to use MHSA funds for Laura's Law which by definition, serves the most seriously mentally ill. By clarifying the language of Laura's Law you can make it easier to use MHSA funds for it, which would help address one of the biggest problems with MHSA: the funds not reaching the most seriously ill. This would reduce incarceration, homelessness, hospitalization, crime, violence, and improve treatment for the seriously ill with no additional cost to taxpayers. The legislative process to clarify confusion in Laura's Law is less onerous than the process to amend MHSA. AB59 and AB1193 address some, not all of these issues.

**1. Issues still preventing counties from implementing LL with MHSA funds.**

- LL prohibits counties from cutting failed useless programs to fund LL
- LL can be (mis)read to require needless planning and to exclude LL recipients from existing MHSA services
- LL can be (mis)read to require counties to deliver services needed by the sickest to everyone
- LL sunsets
- LL requires BOS to vote to implement
- LL does not allow families or hospitals discharging 5150d patients to file a petition, or allow programs serving LL individuals to petition for renewal.
- No mandatory evaluation of 5150d patients for inclusion.
- LL faces MHSA-funded challenges from MHA and DRC.

Legislation that clarifies Laura's Law could address these issues. Here are some of the (non legalese) *Findings* the clarifying legislation should be based on. Attached is first draft of rough clarifying language.

**The legislature finds:**

1. MHSA and Laura's Law were both intended to serve those with serious mental illness
2. Research has confirmed that LL reduces hospitalization, incarceration and costs for a small group of the seriously mentally ill
3. Proposition 63 (2004) was passed after AB1421 (2002) and therefore represents incremental funds. Using MHSA for Laura's Law is not a reduction in services.
4. California is committed to not discriminating against citizens based on diagnosis
5. A small group of Californians has serious mental illness, and/or anosognosia, which prevent them from accessing services on a voluntary basis.
6. Prohibiting existing MHSA funded programs from admitting and serving individuals in LL discriminates against them based on their diagnosis and is appropriately prohibited by California Code of Regulations (9 CCR § 3400)
7. Requiring additional planning to allow individuals who are eligible for LL to gain access to MHSA-funded support services that are available to others discriminates against the seriously ill based on diagnosis. People in LL should be served in existing integrated services, not segregated services.
8. The Supreme Court's Olmstead decision requires states to place persons with mental disabilities in the "least restrictive settings" "appropriate to the individual," "taking into account the resources available."
9. Laura's Law enables individuals with mental disabilities to live in the least restrictive setting appropriate to the individual taking into account the resources available.

In order to help individuals with mental illness live in the least restrictive setting appropriate to the individual, taking into account the resources available, and to ensure MHSA meets the requirement to help those with serious mental illness, and to clarify that individuals eligible for Laura's Law may not be discriminated against, the legislature enacts the following.

## Suggested clarifications to Laura’s Law

What’s Unclear in Laura’s Law	Discussion	How to clarify
<p>WIC 5349 can be misread to prohibit counties from cutting failed useless programs to fund LL</p>	<p>MHSA (2004) passed after LL (2002), so MHSA funds are by definition incremental. Using MHSA funds for LL is not a reduction in services to others. The prohibition that was originally inserted in LL is no longer needed now that MHSA funds are available. DRC is still arguing that implementing LL results in a ‘taking’ of services from others.</p>	<p>Eliminate the prohibition on cutting programs so county mental health directors can use funds as they see fit. Counties should not be required to maintain ineffective programs as a quid pro quo for starting effective ones.</p>
<p>WIC 5348, 5349, 5813.5 can be (mis)read to require additional planning and to exclude LL recipients from already existing MHSA funded services</p>	<p>5349 and 5813.5 say LL can be implemented “when included in county plans.” A BOS that wants to implement LL feels compelled to send the proposal to back to the cumbersome MHSA planning council, a long process dominated by those not favorably disposed to LL. This additional planning is not needed. Counties can implement LL by giving eligible individuals equal access to existing already funded services. That should be made clear in LL language. In fact, MHSA was intended to help the most seriously ill not exclude them. The law should be clarified to ensure those eligible for LL are not discriminated against by prevention them from accessing MHSA funded services.</p> <p>5348 (a) lists a whole host of issues the planning process must include. It says “For purposes of subdivision (e) of Section 5346, a county that chooses to provide assisted outpatient treatment services pursuant to this article shall offer assisted outpatient treatment services including, but not limited to, all of the following (and includes a long list)</p>	<p>Codify California Code of Regulation (9 CCR § 3400) within text of Laura’s Law. It says, “Programs and/or services provided with MHSA funds shall...(2) Be designed for voluntary participation. <b>No person shall be denied access based solely on his/her voluntary or involuntary legal status.</b> Ex. insert new 5349(b) “(b) Counties must provide equal access to services for people in assisted outpatient treatment and not discriminate against them based on legal status.” (If the provision above, prohibiting cutting programs is not removed, insert the following. “Providing equal access to services for people in Laura’s Law is not a reduction in services for others.”)</p> <p>In 5813.5 eliminate phrase “When included in county plans pursuant to 5846.5” The fact is plans may not discriminate against those in LL by requiring additional planning.</p> <p>Change 5348(a) so the planning process described applies to the individual in LL that the services are being planned for, not the actual MHSA planning process itself: (a) <u>A person who is determined by the court to be subject to subdivision (a) of Section 5346 shall be entitled to receive as part of their treatment plan, <del>For purposes of subdivision (e) of Section 5346, a county that chooses to provide assisted outpatient treatment services pursuant to this article shall offer</del> assisted outpatient treatment services including, but not limited to, all of the following if needed and available (to prevent the individual from the likelihood of meeting 5150 standards?)</u></p>
<p>WIC 5348 (b) can be (mis)read to require counties to deliver services needed by the sickest to everyone</p>	<p>5348(b) states “ A county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis.” DRC encourages counties to misread to suggest that everyone in the county must be able to get all the services, before they can be given to someone in</p>	<p>Add the words “to individuals who are in assisted outpatient treatment and need the services” to the end of 5348(b).</p>

	LL.	
WIC 5348 a-b can be (mis)read to require counties to deliver every service to the sickest, regardless of the availability of the services, the necessity to the patient, and the cost to the county (5348 a-b)	DRC argues 5348 means counties cannot offer LL, unless all the services listed in 5348 are made available to all individuals in the county and/or all individuals being considered for LL. Nothing in LL was intended to do that. LL was written to provide services to those who need it, not those who don't. Even Olmstead says individuals have a right to services “taking into account the resources available” All services by all departments (mental health, public safety, education, etc.) are provided within a counties available resources and allow counties to allocate services appropriately.	Add the words “If needed and available” to end of 5348(a). This would return to mental health directors their authority to allocate their resources appropriately, rather than requiring them to have every service that is listed.
5349.5 sunsets LL	Because the bill sunsets, many opponents work to stall implementation and BOS are reluctant to implement knowing the law will soon expire	Eliminate the sunset.
5349 requires BOS to vote to implement	Boards already have mechanisms to exercise authority over their mental health departments. The requirement for a BOS to vote on implementation denies equal access to services for the seriously ill and is a form of discrimination based on diagnosis.	Eliminate the requirement of the supervisors to vote to implement.
No appeal mechanism for family or route into LL if MH Director refuses to petition	The legislation says MH directors “may” petition if someone meets the criteria. MH directors may inappropriately refuse.	The law should either require MH directors to petition (“shall”) if the individual meets all the criteria (and won’t sign a voluntary agreement) or allow the person requesting the director to file a petition, to petition directly if the director refuses. At minimum, LL should require MH directors to inform the person requesting the MH director to file a petition whether or not they are filing a petition.
LL only allows MH Director to petition. Does not allow hospitals discharging involuntarily committed to petition directly, or allow the director of a program serving someone in LL to petition for an additional period of LL.	The individuals most likely to become problematic are those previously problematic. Hospitals have an interest in keeping the ill safe in the community, so they should be added to the list of those who can file petitions directly. Likewise, those serving LL recipients should be allowed to petition the court if they feel additional period of LL is needed.	Change 5346(b)(1) to “A petition for an order authorizing assisted outpatient treatment may be filed by the county mental health director, or his or her designee, <u>the director of a hospital to which the person has been involuntarily admitted or his or her designee, the director of a program serving an individual in LL, or the family member</u> in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present. Delete “in whose institution the subject of the petition resides” so non-residential program can request a petition
No mandatory evaluation of 5150d patients for inclusion	Individuals admitted involuntarily should be automatically evaluated to see what services, including <i>possibly</i> LL they need to stay safe in the community and they should be prioritized for treatment in MHSA programs whether or not they are put in LL	
Clarify CA law allows information disclosures that are needed to facilitate evaluation/petitioning	DRC has threatened to sue to stop counties from implementing by claiming LL violates HIPAA. However, HIPAA regs allow “Disclosures required by law” and “Disclosures for judicial and administrative proceedings.”	Codify within LL law (or findings) the information needed to petition is a “Disclosure required by law” and “Disclosure for judicial and administrative proceedings” and state providers may disclose it.