To: Legislative Ad-Hoc Committee
From: Karen Larsen, HHSA Director
Re: AB2804

I am sending this memo prior to our next meeting to share some thoughts and context related to the Assembly Bill 2804 to highlight areas, as written, that give me concern. I have had several conversations with District Attorney Reisig which lead me to believe we could get to a mutually agreeable solution if that is the will of the Board. I want to be clear that I fully support any effort to offer treatment rather than incarceration for individuals struggling with a substance abuse disorder, which is in line with our Board adopted Stepping Up resolution. I believe that treatment achieves better outcomes when provided in a safe and therapeutic environment and when the individuals receiving treatment acknowledge their illness and want help. This legislation does not allow for these important conditions to be met, as described in the bullets below.

Bill assumptions and stigmatization of people with Substance Use Disorder (SUD): This bill makes several assumptions that I find concerning: that a majority of individuals experiencing homelessness have a SUD; that many individuals with SUDs are homeless; that individuals living with a SUD commit crimes against others; that residential treatment is the only option; and that coerced treatment via the criminal justice system is the only successful option. Each of the assumptions I listed above are incorrect and start from a place of stigma and discrimination against individuals with a health condition. A majority of individuals living with a SUD are not homeless, and vice versa, a majority of those living homeless do not have a SUD. Many people with a SUD can and do successfully engage in treatment that is not coerced or locked and the criminal justice system is not a successful path to wellness and recovery.

- In the Yolo County 2019 homeless point-in-time count, of the 655 individuals experiencing homelessness, 174 individuals had chronic substance use disorder. That is 26.5%; not a majority of the homeless population.
- According to the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration data, nationally about 21.5 million people aged 12 or older had a SUD in the past year (2014). This is much larger than the nationwide population experiencing homelessness, meaning it is wrong to say that the majority of individuals with SUDs experience homelessness too.
- For individuals experiencing homelessness who do have a SUD, treatment must come with housing in order for treatment to be successful. Coercing treatment without wrap around services and stable permanent housing will not solve the root issue of homelessness—a lack of housing.
- Putting someone in the criminal justice system has significant negative outcomes for employment, housing, social relationships, etc. These are critical factors to helping individuals recover from a SUD.

Drug motivated crime: This language includes any crime other than sex crimes, serious felonies and violent felonies. A nonviolent drug possession offense may not be diverted pursuant to this program. If a peace officer arrests a person for a drug motivated crime, and at the time of the arrest has probable cause to believe that the person suffers from a SUD that is in part a cause for the crime committed, the peace officer shall state that belief in the probable cause. If the court determines that the defendant's crime was caused by the persons SUD, as an alternative to jail, the court may divert the individual to confinement in a secure treatment facility in the Yolo County Pilot.

The list of crimes in this bill encompass any crime that is not a non-violent drug possession charge, sex crime, violent offense or serious felony. This is wide encompassing and includes speeding, shoplifting, loitering, illegal camping, etc. It is unclear what crimes are really being targeted by this bill and what problem is trying to be solved. Additionally, putting someone in the criminal justice system has significant negative outcomes for employment, housing, social relationships, etc; which are critical factors in an individual's path to recovery.

No secure SUD treatment facility currently exists. Establishing such a program would be costly and would require new funding.

Court-ordered treatment and length of stay: There is a long history of counties trying to work with local courts and judges on changes to court-ordered treatment and length of stay since the Drug Medi-Cal- Organized Delivery System (DMC-ODS) was established. Let's imagine this program were established as currently written and Medi-Cal reimbursement was theoretically available:

> DMC-ODS requires that level of care and length of stay be dictated by clinical need, as assessed by a licensed clinician. If the person being ordered to treatment does not truly need residential care, the stay will not be reimbursed. If the person is ordered by the court for a certain length of stay in residential care, but the clinician is unable to demonstrate that the person meets the medical necessity criteria to justify that length of stay in accordance with the court order,, there will be no Medi-Cal reimbursement.
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> Setting reimbursement aside, clinicians, with input from clients, should make decisions about the appropriate course of treatment for all people with SUDs. Judges do not have the expertise to order treatment. Treatment outcomes are better when participation is voluntary and not coerced and when treatment is clinically appropriate.

Pilot Program: The bill allows Yolo County to offer a pilot "Secured Residential Treatment Program" for individuals living with SUD that victimize others and are charged with a "drug motivated crime". This program diverts them into a secure residential treatment program determined by a risk and needs assessment.

While the treatment program is intended to be solely based on the findings of the risk and needs assessment, there is judicial discretion and an assumption that individuals need to go to the secured residential treatment setting. The current standard of care in the field and the threshold for Medi-Cal reimbursement as described is medical necessity for each day of treatment or type of service delivered.

Cost and reimbursement: In the current text, it is difficult to tell if the "secure residential treatment" program would be considered custodial (still part of the jail system) or if it would be community-based? It cannot be both from an operations and payment perspective. This is an important question to resolve if Medi-Cal reimbursement would be considered as a funding source, as no Federal Financial Participation (FFP) is currently available for in-custody services.

- If custodial, the whole cost needs to be paid for by the Count General Fund or new funding stream
- If the intent is to have the county establish this program as a community-based program under behavioral health:

- The county would need to establish a type of program that does not currently exist in Yolo's continuum of care, as residential treatment programs are not typically set up as "locked or secured".
- When considering the possibility of Medi-Cal reimbursement, locked or secured residential treatment is not a service that is offered for adults with substance use disorder, outside of jails or prisons. Residential treatment programs are not currently designed this way and would not meet the standards under the American Society of Addiction Medicine (ASAM) criteria, which we are now using in Yolo and statewide.

All services under this program shall be Medi-Cal billable: All of the services that an individual needs to recover from a SUD may not be Medi-Cal billable and this unduly restricts programs from providing dynamic services that meet the needs of the person being served. Individuals may need assistance with transportation, housing, benefits applications, etc. and not all will be Medi-Cal billable. Further:

- Medi-Cal does not fund incarcerated treatment settings. HR 6, the federal SUPPORT Act, has a limited opportunity for 30 days of Medi-Cal payment prior to reentry for an individual eligible for Medi-Cal, however it is unclear if this would be able to fund the program proposed in this bill.
- Medi-Cal funding for SUD services is based upon a medical necessity assessment (ASAM assessment), which determines need for treatment, level of care, and length of care based on the person's needs. Not all individuals will need residential treatment and requiring them to go to residential treatment, followed by a step-down to outpatient treatment is contradictory to the Medi-Cal requirement of determining an individual's level of care based on their needs.

Supervision: The bill requires "informal supervision" by the treatment providers with Yolo County Health and Human Services Agency or a contracted provider.

Requiring treatment providers to do supervision interferes with the therapeutic relationship with clients. It is not the role of a behavioral health treatment provider to do supervision and is putting the role of the court/probation onto behavioral health.

A treatment-focused approach to assisting our residents struggling with a substance abuse disorder has my full support, but I do feel there are a number of key items to address to ensure that the legislation has the intended positive impact on the community. If the important conditions I highlighted are addressed, we can properly and effectively achieve better outcomes and ensure that these efforts are funded properly.

Recommendations:

1. Any pilot project would align with Stepping Up resolution ensuring people with behavioral health conditions receive treatment out of custody wherever possible.

2. Ensure adequate funding to support (Medi-Cal and additional funding streams).

3. Ensure charges dropped upon successful completion to improve outcomes such as employment, housing and relationships.

4. Community supervision would be provided by Probation not HHSA staff.