

# CITY AND COUNTY OF SAN FRANCISCO

## BOARD OF SUPERVISORS

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## Policy Analysis Report

To: Supervisor Mandelman  
From: Budget and Legislative Analyst's Office  
Re: Review of Lanterman-Petris-Short (LPS) Conservatorship in San Francisco  
Date: July 26, 2019

### SUMMARY OF REQUESTED ACTION

The purpose of this report was to understand the effectiveness of LPS Conservatorships, including whether all individuals who are gravely disabled by mental illness or alcoholism are appropriately referred to and placed in LPS Conservatorship, and if current practices sufficiently evaluate the effectiveness of LPS Conservatorship.

*For further information about this report, contact Severin Campbell at the Budget and Legislative Analyst's Office.*

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### Executive Summary

- The Lanterman-Petris-Short (LPS) Act established a civil process for the conservatorship of people considered gravely disabled due to serious mental illness or chronic alcoholism, and therefore unable to provide for his or her basic personal needs. Individuals are referred to an LPS conservatorship by a psychiatrist; the Public Conservator investigates the referral and makes recommendations to the Court. The Court makes the determination on whether the individual should be placed in a conservatorship.
- Under California law, individuals with a psychiatric emergency may be placed in a 72-hour involuntary hold. The hold may be extended for 14 days and an additional 30 days, if necessary, prior to referral to conservatorship. An individual who is deemed to be gravely disabled may be placed in a 30-day temporary conservatorship by the Court after the initial 72-hour hold, and referred to a permanent conservatorship for up to one year after the end of the temporary conservatorship. The permanent conservatorship is reviewed annually by the Court.
- The number of referrals to LPS conservatorship in San Francisco decreased by nearly 50 percent between FY 2012-13 and FY 2018-19. This contributed to a 13 percent decrease in total LPS conservatorship caseload between those years. San Francisco's permanent LPS

conservatorship caseload is below the statewide average and comparable counties.

- The decrease in LPS conservatorship referrals and caseload in San Francisco was due in part to budget constraints that led to fewer acute inpatient and sub-acute beds, and policy changes that shifted services from residential to community-based mental health services. In addition, retirements and delays in hiring in the Public Conservator's office in 2009 and subsequent years led to reduced staffing and capacity to handle referrals.
- While estimating the population in need of LPS conservatorship is difficult because individuals with severe mental illness or alcohol abuse do not consistently meet the definition of gravely disabled, the population that would benefit from conservatorship may be higher than the number referred each year, especially given San Francisco's low referral and caseload rate compared to other California counties.

### **Policy Consideration**

**The role of LPS conservatorship needs to be part of a broader evaluation of the City's mental health services.** The Mayor appointed a Director of Mental Health Reform to evaluate the City's mental health and substance use services and make recommendations on how to reform the City's mental health system to fill identified gaps and improve design and efficacy.

- In order to better understand LPS conservatorships in the context of mental health reform, the Department of Public Health, and the Public Conservator need to evaluate outcomes for those individuals placed in 30-day psychiatric holds, temporary LPS conservatorship, and permanent LPS conservatorship.
- In order to better evaluate outcomes, the Public Conservator and the Department of Public Health need a Memorandum of Understanding on their respective roles and responsibilities, and a data sharing agreement to allow access and reporting on data for individuals placed in LPS conservatorship.

The City also needs to better understand the population requiring more intensive mental health services, including LPS conservatorship. In particular, the individuals found to be high users of emergency and urgent services are also at risk to be gravely disabled. The City needs a shared protocol on how the City's health and social service system should respond to high users of emergency and urgent services.

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## Lanterman-Petris-Short Conservatorships

The Lanterman-Petris-Short (LPS) Act established a uniform and statewide civil process for the involuntary detention of people considered gravely disabled due to a serious mental illness and/or chronic alcoholism. California’s Welfare and Institutions Code defines “gravely disabled” as individuals who are unable to provide for their basic personal needs for food, clothing, or shelter.<sup>1</sup>

The primary intent of the LPS Act was to end the inappropriate, indefinite, and involuntary commitment of people living with mental illness and chronic alcoholism. The LPS Act specifies that individuals have a right to contest or challenge involuntary treatment at any time during conservatorship.<sup>2</sup> Furthermore, individuals who are enrolled in an LPS conservatorship are expected to improve their mental health over time. To enable this outcome, the LPS Act requires an annual evaluation of all individuals who are conserved to determine readiness for discharge from conservatorship.

The LPS Act authorizes local courts to determine whether individuals are gravely disabled and should be placed in conservatorship. If so, the LPS Act enables local courts to appoint a Public Conservator who would be responsible for decision-making on behalf of the individual and their well-being during the conservatorship period. The LPS Act became effective on July 1, 1969 and does not apply to individuals who suffer primarily from substance use disorders, with the exception of chronic alcoholism.

Appendix I describes the provisions of the LPS Act.

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## San Francisco’s Conservatorship Programs

San Francisco has three conservatorship programs designed to address the needs of individuals with mental illness: LPS conservatorship and two community-based programs available to individuals placed in LPS conservatorship – the Community Independent Participation Program and the Post-Acute Community Conservatorship.<sup>3</sup> All three programs are administered through the Public Conservator, which is housed in San Francisco’s Human Services Agency.

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<sup>1</sup> LPS conservatorships were established by the Lanterman-Petris-Short Act of 1967 and codified in the California Welfare and Institutions Code Section 5000. Section 5008(h)(B)(2) of the Code defines “gravely disabled”.

<sup>2</sup> California Welfare and Institutions Code, Division 5, Section 5003 (WIC § 5003).

<sup>3</sup> Two other conservatorship programs, discussed in Appendix I, are the (1) Murphy conservatorship for individuals who are defendants in criminal cases who have a mental illness and are unable to understand the nature of the proceedings, and (2) Probate conservatorship for individuals who are unable to provide for their basic needs of food, clothing, and shelter and/or manage their personal finances due to dementia or physical disabilities.

## **LPS Conservatorships**

The traditional LPS conservatorship program is for individuals who are deemed by the courts to be gravely disabled by mental illness or severe alcoholism. The LPS program is administered by the Public Conservator, who is responsible for decision-making on behalf of the individual during the conservatorship period. Individuals who are under LPS conservatorship may be placed in a variety of settings but are entitled to placement in the least restrictive, most appropriate level of care. Placements range from the most restrictive levels of care, such as locked facilities (e.g., some skilled nursing facilities) to unlocked facilities (e.g. board and care facilities).

## **San Francisco's Community-Based Conservatorships**

San Francisco has two programs designed to allow individuals with a mental illness to transition from an acute care setting directly to a community-based setting without an interim stay in a sub-acute facility. The programs serve individuals, including those placed in LPS conservatorship, who have access to adequate housing, are enrolled in intensive case management, and are prescribed long-acting anti-psychotic medication. The two programs are overseen by both the Public Conservator and Department of Public Health.

### *Community Independent Participation Program*

The Community Independent Participation Program was implemented in 2012, initially as a pilot. Patients who participate in the Community Conservatorship Independent Participation Program are provided with the support and services they need to maintain independence and stability. To be eligible for this program, participants must already be conserved and give up the right to refuse psychotropic medication.

### *Post-Acute Community Conservatorship*

The Post-Acute Community Conservatorship places individuals in the community. Participants are distinct from those in the Community Independent Participation Program in that they have not voluntarily complied with their medication requirements or have contested their conservatorship. Individuals placed in the Post-Acute Community Conservatorship program are required by the court to comply with medication requirements.

Appendix I provides further details on these programs.

## **Review and Authorization Process for San Francisco LPS Conservatorships**

Placing an individual in an LPS conservatorship is a civil process defined by the California Welfare and Institutions Code. Referrals are initiated by psychiatrists for individuals who present to San Francisco General Hospital

or to other acute care hospitals. Referral and placement in LPS conservatorships in San Francisco involves several key actors including the Public Conservator (Human Services Agency/ Department of Adult and Aging Services), treating psychiatrists, the Department of Public Health's Transition team who are responsible for coordinating placement, the Public Defender, and the City Attorney

The conservatorship process begins at the San Francisco General Hospital's Psychiatric Emergency Services unit or acute inpatient psychiatric units at private hospitals when a patient is placed under a 72-hour involuntary hold, defined by California Welfare and Institutions Code Section 5150 (generally referred to as "5150").<sup>4</sup> Patients who do not stabilize after 72 hours may be held for an additional 14 days under California Welfare and Institutions Code Section 5250. Patients who do not stabilize after the 14-day hold may be held for an additional 30 days under California Welfare and Institutions Code Section 5270.

The referral to conservatorship can be made at any point during or after the initial 5150 hold. The Public Conservator is responsible for evaluating whether the patient meets the definition of gravely disabled for conservatorship proceedings.

Filing for temporary conservatorship always precedes filing for a permanent conservatorship. When a judge approves a temporary conservatorship, the Public Conservator is granted 30 days to investigate and determine whether the patient meets the legal criteria for a permanent LPS conservatorship. The Public Conservator may petition for extensions of a temporary conservatorship but extensions may not exceed six months. Permanent conservatorship placements are for a period of one year, with a required annual evaluation to determine whether the patient is no longer gravely disabled and should be discharged.

#### **Patients' Rights to Challenge Involuntary Holds**

Psychiatric patients on involuntary psychiatric holds can contest their involuntary holds at any time after the conclusion of a 5150 hold. Attorneys from the Public Defender's Office represent patients who are on a 5150 hold.

The City Attorney represents the Public Conservator and the hospital's treatment team. Probable cause hearings to extend psychiatric holds are held two times per week while court hearings for temporary and permanent LPS conservatorships are held once a week.

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<sup>4</sup> California's Welfare and Institutions Code Section 5150 allows an involuntary psychiatric hold for up to 72 hours, and Section 5250 allows an involuntary psychiatric hold for an additional 14 days after the initial 72-hour hold.

Appendix I provides further details on the LPS conservatorship referral and placement process.

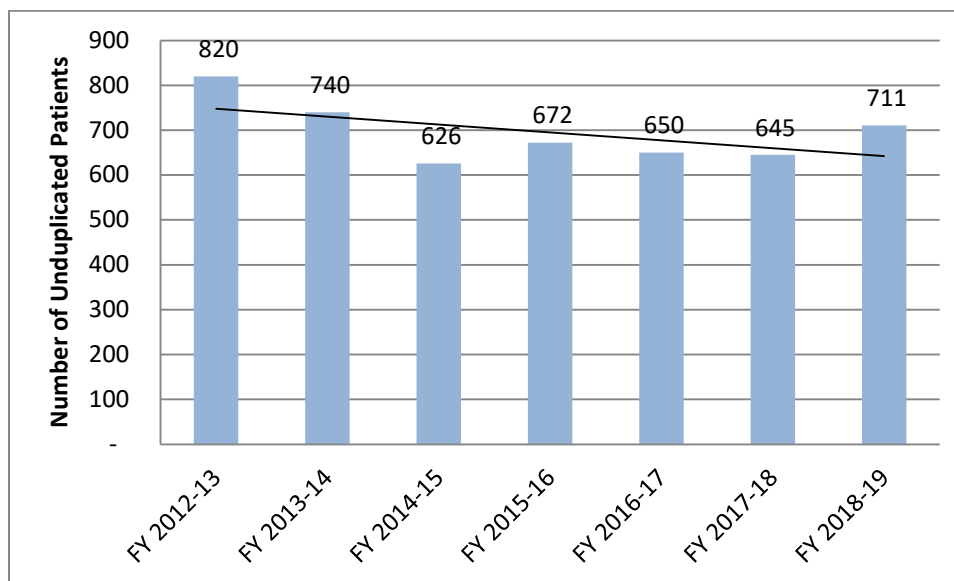
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## San Francisco LPS Conservatorship Caseload

### Reduction in LPS Conservatorship Caseload

The Public Conservator's caseload for individuals placed in LPS conservatorship or Murphy conservatorship<sup>5</sup> decreased by 13 percent from 820 cases in FY 2012-13 to 711 cases in FY 2018-19, as shown in Exhibit 1 below.

**Exhibit 1. San Francisco LPS Conservatorship Program Caseload FY 2012-13 to FY 2018-19**



Source: San Francisco Human Services Agency, Department of Adult and Aging Services

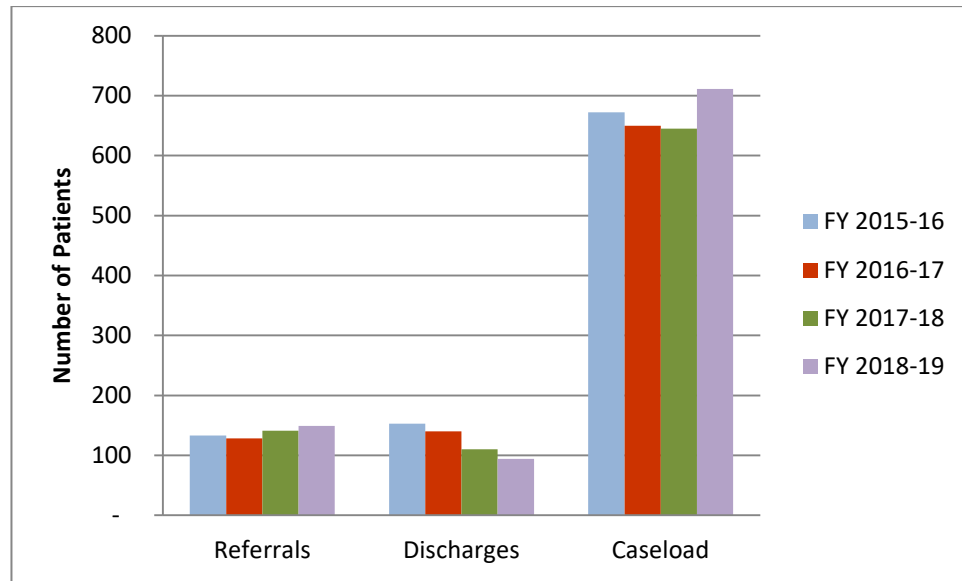
The number of patients discharged from LPS conservatorship exceeded the number of referrals in FY 2015-16 and FY 2016-17, as shown in Exhibit 2 below, contributing to the overall decrease in LPS caseload through FY 2017-18.<sup>6</sup> The number of patients discharged from LPS conservatorship was less than the number of referrals in FY 2017-18 and FY 2018-19, and total caseload increased by more than 10 percent from 645 in FY 2017-18 to 711 in FY 2018-19.

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<sup>5</sup> Defendants in criminal cases who cannot understand the nature of the proceedings due to mental illness are placed in Murphy conservatorships.

<sup>6</sup> Discharge information for earlier years was not available.

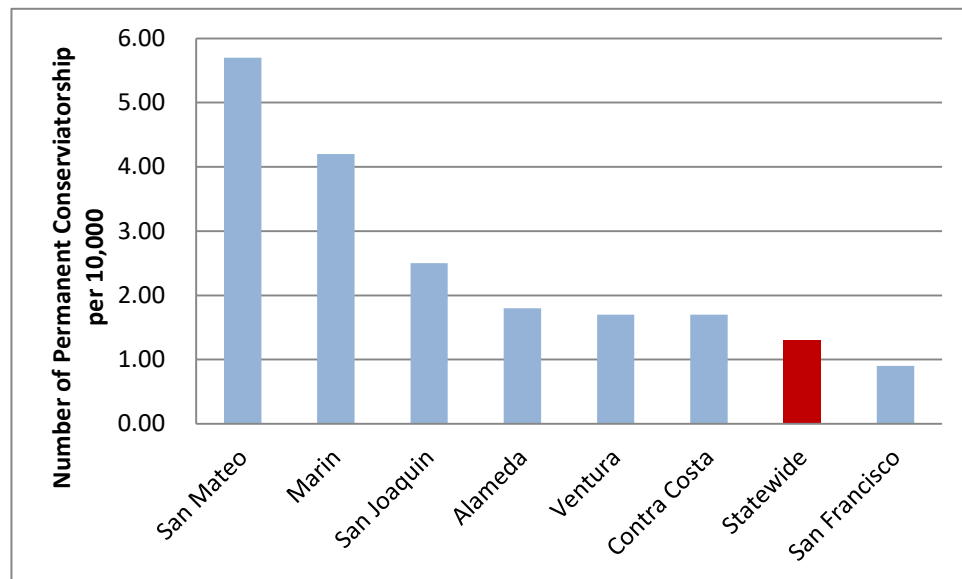
**Exhibit 2. Number of Discharges from LPS Conservatorship Compared to Number of Referrals and Total Caseload FY 2015-16 to FY 2018-19**



Source: San Francisco Human Services Agency, Department of Adult and Aging Services

San Francisco’s permanent LPS conservatorship caseload is below both the statewide average and several comparable counties, as shown in Exhibit 3 below.

**Exhibit 3. Permanent LPS Conservatorship Caseload per 10,000 Residents by California County in FY 2016-17**



Source: California Department of Health Care Services Involuntary Detentions Data Report

The low permanent LPS conservatorship caseload in San Francisco compared to other counties could be due to a number of factors. According to interviews with public conservator staff in other Bay Area counties,



counties have different “tolerances” for referring patients to LPS conservatorship. The LPS Act defines when a patient is gravely disabled, but counties have discretion on when to refer a patient who is gravely disabled. According to City staff, differences between counties in referring individuals who are gravely disabled by mental illness to LPS conservatorship may be due to availability of community treatment programs.

While San Francisco had lower permanent LPS conservatorship caseload in FY 2016-17 compared to the statewide average, San Francisco had higher caseload for shorter-term detentions. San Francisco exceeded the statewide average caseload in FY 2016-17 for 72-hour holds, 14-day holds, and temporary conservatorship. Caseload data for California’s 15 most populous counties is shown in Appendix II.

**Reduction in LPS Conservatorship Referrals in San Francisco FY 2012-13 to FY 2017-18**

The 13 percent reduction in LPS conservatorship caseload from 820 in FY 2012-13 to 711 in FY 2018-19 was due mostly to the reduction in referrals to LPS conservatorship. The total number of referrals to LPS conservatorship decreased by half between FY 2012-13 and FY 2017-18, as shown in Exhibit 4 below.

**Exhibit 4. Outcomes of Referrals to San Francisco LPS Conservatorship**

Outcome	Fiscal Year						Change	%
	12-13	13-14	14-15	15-16	16-17	17-18		
	Number of Individuals							
Permanent	74	40	43	48	50	77	37	4%
Temporary	190	170	136	85	78	64	(126)	(66%)
Declined <sup>a</sup>	20	31	1	0	0	0	(20)	(100%)
<b>Total</b>	<b>284</b>	<b>241</b>	<b>180</b>	<b>133</b>	<b>128</b>	<b>141</b>	<b>(143)</b>	<b>(50%)</b>

Source: San Francisco Human Services Agency, Department of Adult and Aging Services

<sup>a</sup> Outcomes categorized as “declined” refer to cases that were declined by the Public Conservator because the individual was not a county resident, was released from a 5150 hold, the referral was incomplete, or other reasons.

Note: The number of referrals could include individuals who were referred more than one time. The number of referrals includes both LPS conservatorship and Murphy conservatorship for defendants in criminal cases.

The total number of referrals increased to 149 in FY 2018-19, but according to Human Services Agency staff, because individuals may be under temporary conservatorship for up to six months before being referred to permanent conservatorship, it is too early to identify the number of temporary and permanent conservatorship referrals.

*Impact of California Welfare and Institution Code Section 5270*

The number of referrals to temporary conservatorship decreased by 66 percent between FY 2012-13 and FY 2017-18, as shown in Exhibit 4 above. According to discussions with City staff, the reduction in referrals to temporary conservatorship was due largely to the introduction in FY 2014-15 of the 30-day hold for psychiatric patients allowed by the California Welfare and Institution Code Section 5270. The introduction of the 30-day hold allowed hospitals to keep patients for a longer period of time without moving to permanent conservatorship; the mental health condition for many patients improved under the 30-day hold because of the intensive clinical supervision and abstinence from alcohol and drug consumption. Individuals with both mental illness and alcohol abuse were especially likely to improve during the 30-day hold as alcohol and drug abstinence reduced behavioral health symptoms, avoiding referral to conservatorship.

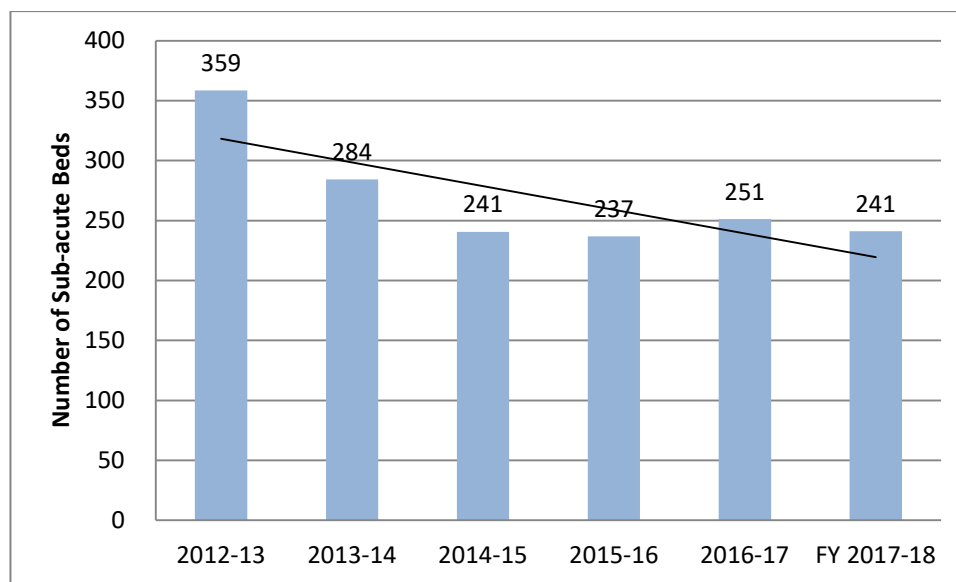
*Impact of Reduction in Available Beds*

Total LPS conservatorship caseload and permanent conservatorship referrals in San Francisco declined prior to the implementation of the 30-day hold under California Welfare and Institution Code Section 5270 in FY 2014-15. According to discussions with City staff, the financial crisis in 2008 and associated budget constraints resulted in less bed capacity. The number of acute inpatient psychiatric beds at San Francisco General Hospital decreased from 88 beds in 2008 to 66 beds in 2009 and 44 beds in 2011 (San Francisco General Hospital continues to have 44 acute inpatient psychiatric beds in 2019).

The number of sub-acute beds also decreased, which was likely due to a combination of budget constraints and policy changes, including a shift to community-based mental health services. According to discussions with City staff, budget constraints changed hospital discharge planning procedures, in which assessments began soon after a patient was admitted to the hospital in order to find community placements and reduce the length of the hospital stay, resulting in more patients being referred to community-based mental health treatment.

Available sub-acute mental health beds in San Francisco decreased by one-third between FY 2012-13 and FY 2017-18, as shown in Exhibit 5 below.

**Exhibit 5: Reduction in Available Sub-Acute Mental Health Beds FY 2012-13 to FY 2017-18**



Source: Department of Public Health and Transitions Team

The reduction in acute and sub-acute beds resulted in long wait times for individuals referred to LPS conservatorship.<sup>7</sup> Wait times for locked sub-acute treatment beds for all patients, including LPS patients, range from 19.6 days (less than one month) for the San Francisco Healing Center<sup>8</sup> to 333.5 days (nearly one year) for state hospitals, as shown in Exhibit 6 below.<sup>9</sup> These wait times are for all patients referred for locked sub-acute treatment, including LPS patients.

<sup>7</sup> Discussions with staff in other counties indicate that bed availability and long wait times impact referrals to LPS conservatorships.

<sup>8</sup> The Healing Center is a 54-bed behavioral health facility located at St. Mary's Medical Center contracted by DPH.

<sup>9</sup> The DPH Transitions team provided average wait times for referrals to the Healing Center, compared to other locked subacute treatment facilities during July 2018 through January 2019.

**Exhibit 6. Average Wait Time in Days for Locked Sub-Acute Treatment Facilities<sup>10</sup>**

	San Francisco Healing Center <sup>a</sup>	Other Locked Subacute Treatment Facilities	Skilled Nursing Facilities	State Hospital
<b>(Step A)</b> From DPH Receiving Request to Place Patient, to DPH Sending Facility a Placement Request <sup>b</sup>	5.5	8.8	24.1	124.0
<b>(Step B)</b> From Date of DPH Request to Provider for Placement, to Provider Sending DPH a Response	8.7	28.5	43.7	10.5
<b>(Step C)</b> From Provider Confirming Patient Acceptance, to Patient's First Day at Facility	5.41	13.87	10.33	199
<b>Average Wait Time in Days (across the steps A to C)</b>	<b>19.6</b>	<b>51.1</b>	<b>78.1</b>	<b>333.5</b>

Source: Department of Public Health and Transitions Team.

<sup>a</sup> The average wait time of 19.6 days for the San Francisco Healing Center is from the date on which the Transitions Team receives a request to place a patient in locked sub-acute treatment facility, and the patient's first day at the San Francisco Healing Center.

<sup>b</sup> According to DPH, the initial wait period in Step A of Exhibit 6 above could in some instances be due to an incomplete referral packet from the requestor.

*Impact of Reduced Public Conservator Staffing*

According to interviews with City staff, retirements and delays in hiring in the Public Conservator's office in 2009 and subsequent years led to reduced staffing and capacity to handle referrals. Public Conservator staff assigned to the LPS Conservatorship program decreased from 12 filled positions on average in FY 2009-10 to 7 filled positions on average in FY 2013-14, and caseload per position increased from 60 in FY 2009-10 to 100 in FY 2013-14, as shown in Exhibit 7 below.

<sup>10</sup> The DPH transitions team provided average wait times for each of the Steps A through C for each type of facility. The Budget and Legislative Analyst calculated the average wait time across these three steps by adding the average time reported for each of the three steps.

**Exhibit 7. LPS Patient Annual Caseload per Filled Position FY 2009-10 to FY 2017-18**

	Caseload <sup>a</sup>	Positions <sup>b</sup>	Annual Caseload per Filled Position
FY 2009-10	752	12.40	60.65
FY 2010-11	713	10.40	68.56
FY 2011-12	720	8.40	85.71
FY 2012-13	820	9.40	87.23
FY 2013-14	740	7.40	100.00
FY 2014-15	626	7.48	83.69
FY 2015-16	672	9.62	69.85
FY 2016-17	650	8.54	76.11
FY 2017-18	645	8.00	80.83

Source: San Francisco Human Services Agency, Department of Adult and Aging Services

<sup>a</sup> Caseload figures reflect unique individuals under conservatorship at any point in the fiscal year.

<sup>b</sup> Position count is for Behavioral Health Clinician and Protective Service Worker classifications, adjusted for vacancy rates. Vacancy adjustments reflect vacancies at the time of each fiscal year-end.

Two new positions were added to the Public Conservator’s budget in FY 2019-20, including one new supervisor position, that will be used to create a specialized unit staffed by clinicians with low caseloads to provide high intensity services with the goal of promoting recovery and independent living in the community.

*Impact of the Court on Referrals*

Under the California Welfare and Institutions Code, an individual must be determined by the court to be gravely disabled, which is defined as a person suffering from a mental health disorder who is presently unable to provide for his or her needs for food, clothing, or shelter. Severe mental illness is not sufficient for a finding of grave disability<sup>11</sup>. If an individual can survive without involuntary detention with the help of others, the individual is not considered to be gravely disabled. While psychiatrists initiate the referral to LPS conservatorship, only the county’s designated conservatorship investigation officer (the Public Conservator in San Francisco) may file and prosecute a petition to establish an LPS conservatorship.<sup>12,13</sup> According to our discussions with City staff, the court has limited discretion in its findings of gravely disabled.

<sup>11</sup> According to the Judicial Council of California 2017 Civil Jury Instructions, the court can consider if an individual did not take prescribed medication in the past or if the individual lacks insight into his or her condition. The court cannot consider the likelihood of future deterioration or relapse of a condition.

<sup>12</sup> Central California Appellate Program, “Mental Health at a Glance”, Procedure for Appointing a Conservator.

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## Population in Need of Conservatorship

According to discussions with City staff, estimating the population in need of LPS conservatorship is difficult because individuals with severe mental illness or alcohol abuse do not consistently meet the definition of gravely disabled. As noted above, individuals with combined mental illness and alcohol or drug use may stabilize after being held for 30 days under California Welfare and Institutions Code Section 5250 due to abstinence from alcohol or drugs, and therefore not be referred to LPS conservatorship. Further, the goal of the LPS conservatorship is for patients to improve and leave conservatorship; nearly two-thirds of individuals referred to LPS conservatorship in FY 2016-17 left conservatorship within one year (see Exhibit 12 in Appendix III). However, San Francisco's low referral rate to LPS conservatorship in FY 2016-17 (below the statewide average), and increase in referrals in FY 2017-18 and FY 2018-19 suggests that more individuals could be referred to LPS conservatorship than are currently referred. According to the Public Conservator, the increase in referrals in FY 2017-18 and FY 2018-19 was in response to outreach, education, and systems improvement efforts by the Public Conservator.

As an example of the population at risk, in FY 2017-18, 212 high users of emergency and urgent services<sup>14</sup> had been admitted to Psychiatric Emergency Services at least eight times and placed on a 72-hour hold at least three times during the year. According to discussions with City staff, being a high user of emergency and urgent services may indicate that the individual meets the definition of grave disability, but a clinical assessment would be necessary to determine if the individual met the definition.

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## Interdepartmental Cooperation

The Department of Public Health and the Public Conservator do not have a current memorandum of understanding (MOU) on respective roles and responsibilities for the LPS conservatorship program, although, according to the Public Conservator, the two departments have begun preliminary planning. An important component of an MOU would be to re-establish multi-service meetings, in which staff responsible for LPS conservatorships and treatment could review the cases of individuals in LPS conservatorship to ensure that the appropriate resources and treatment are provided,

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<sup>13</sup> Patients who are placed in a 14-day hold under the California Welfare and Institutions Code Section 5250 must have a probable cause hearing within four working days. The patient may request a full judicial review within the 14 days. The standard for the 14-day hold is broader than gravely disabled, and includes "danger to self" and "danger to others".

<sup>14</sup> "High users" are the top one percent of individuals accessing emergency and urgent services during the year, which in FY 2017-18 were 470 individuals. Of these 470 individuals, 14 were currently assigned to a conservator and 39 had any history of conservator assignment.

establish clinical assessment standards, and development accountability metrics to ensure clients are served in the least restrictive setting.

The MOU should also provide for a data sharing agreement, allowing for both agencies to share and report data on individuals placed in LPS conservatorships. Due to privacy restrictions imposed by the Health Insurance Portability and Accountability Act (HIPAA), patient data on can only be accessed by other agencies with a formal agreement.

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## Measures of Performance

Performance measures recommended by the California Association of Public Administrators, Public Guardians, and Public Conservators (see Appendix VI) focus on caseload standards and patient contact, education and training of staff, and promoting individual patient's health and well-being. Neither the performance measures recommended by the California Association of Public Administrators, Public Guardians, and Public Conservators, nor performance measures used by the San Francisco Public Conservator are able to measure aggregate outcomes, because outcome goals vary significantly based on individuals' care plans.

The Public Conservator's performance measures in FY 2018-19 include<sup>15</sup>:

- Number of new referrals
- Number of unique individuals with an active case
- Percent of referrals that had a previous conservatorship within the prior year

The percent of new referrals that had a previous conservatorship within the prior year measures how successful individuals are in living outside of the conservatorship. In FY 2017-18, 20 percent of individuals referred to LPS conservatorship had been previously been conserved within the year, which reduced to 15 percent in FY 2018-19.<sup>16</sup>

Another potential measure of how successful individuals are in living outside of the conservatorship is measuring how many are current users of emergency and urgent care. In 2017-18, of the 470 individuals who were in the top one percent of all users of emergency and urgent care, 14 were currently assigned to a conservator and 39 had any history of conservator assignment.

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<sup>15</sup> According to the Public Conservator, an additional measure – the number of discharges due to no longer being gravely disabled – was recently added.

<sup>16</sup> According to the Public Conservator, only the mid-year measure of 10 percent is available in FY 2018-19; the Mayor's Proposed FY 2019-20 Budget reported a *projected* measure in FY 2018-19 of 15 percent, which was below the target measure in FY 2018-19 of 25 percent. The proposed measure in FY 2019-20 is 20 percent.

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## Policy Consideration

### **The role of LPS conservatorships needs to be part of a broader evaluation of the City's mental health services**

The Mayor appointed a Director of Mental Health Reform to evaluate the City's mental health and substance use services and make recommendations on how to reform the City's behavioral health system, including both mental health and substance use, to fill identified gaps and improve design and efficacy. The role of LPS conservatorship in the City's overall behavioral health system needs to be part of this evaluation, including the reasons that San Francisco has a low permanent LPS conservatorship caseload compared to other California counties.

Our evaluation suggests that the low permanent LPS conservatorship caseload is a combination of budget constraints and policy changes, shifting mental health services from residential to community-based mental health services. The City has begun to take some steps towards addressing the role of conservatorships in the City's behavioral health system. The FY 2019-20 budget added resources to the Public Conservator's office to form a new specialized unit to provide more intensive services to individuals with mental illness who are placed in the community-based programs, including adding two new positions. The FY 2019-20 and FY 2020-21 budgets also added funding for 390 sub-acute behavioral health beds over two years, in addition to the 100 sub-acute behavioral health beds added in FY 2018-19.

➤ **The Director of Public Health, and Public Conservator need to evaluate the outcomes for individuals placed in 30-day psychiatric holds, temporary LPS conservatorship, and permanent LPS conservatorship**

While the City's caseload for permanent LPS conservatorship is lower than comparable California counties, caseload for short-term psychiatric holds is higher. The City needs to better understand the extent to which individuals stabilize during a 30-day hold due to intensive management and abstinence from alcohol or other substances but then deteriorate after discharge.

The number of individuals referred to LPS conservatorship who had previously been conserved within one year decreased from 20 percent in FY 2017-18 to 15 percent projected in FY 2018-19. The reason for this decrease needs to be part of the City's evaluation of LPS conservatorships, including if the decrease was due to better management of the individual's mental illness.

The number of individuals placed in the City's two community based programs – the Community Independent Participation Program and Post-Acute Community Conservatorship Program – increased from 10 in FY



2015-16 to 41 in FY 2018-19. The outcomes for these individuals also need to be part of the City's evaluation.

*In order to better evaluate outcomes for individuals placed in temporary psychiatric holds or conservatorship, the Public Conservator and the Department of Public Health need an MOU on their respective roles and responsibilities, and a data sharing agreement to allow access to and reporting on data for individuals placed in LPS conservatorship.*

➤ **The City needs to better understand the population requiring more intensive mental health services, including LPS conservatorship**

While estimating the population in need of LPS conservatorship is difficult because individuals with severe mental illness or alcohol abuse do not consistently meet the definition of gravely disabled, the population that would benefit from conservatorship may be higher than the number referred each year. In particular, the individuals found to be high users of emergency and urgent services are also at risk to be gravely disabled. The City needs a shared protocol on how the City's health and social service system should respond to high users of emergency and urgent services. The Department of Public Health's Whole Person Care team is currently creating a service design plan specifically tailored to high users, but it has not yet been finalized and approved. This service design could be used as a tool for a citywide discussion on how to better serve high users of emergency medical and psychiatric services, and should be part of the City's discussion on how to reform the mental health system.

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## Appendix I: Conservatorships in California and San Francisco

### Lanterman-Petris-Short (LPS) Conservatorship

The Lanterman-Petris-Short (LPS) Act of 1967 implemented Section 5000 of the State of California's Welfare and Institutions Code, establishing a uniform and state-wide civil process for the involuntary detention of people considered gravely disabled due to a serious mental health diagnosis and/or chronic alcoholism. California's Welfare and Institutions Code defines "gravely disabled" as individuals who are unable to provide for his or her basic personal needs for food, clothing, or shelter.<sup>17</sup> The LPS Act authorizes local courts to determine whether individuals are gravely disabled and would benefit from conservatorship, and to appoint a public conservator who would be responsible for decision-making on behalf of the individuals placed into conservatorship and for their well-being during the conservatorship period. The LPS Act became effective on July 1, 1969 and does not apply to individuals who suffer primarily from substance use disorders, with the exception of chronic alcoholism.

LPS is widely considered the precedent for modernizing procedures for the commitment of gravely disabled individuals with serious mental health diagnoses and/or chronic alcoholism in the United States.<sup>18</sup> The primary intent of the LPS Act was to:

- End the inappropriate, indefinite, and involuntary commitment of people living with mental illness, developmental disabilities, and chronic alcoholism;
- Establish a procedure for civil commitment involving graduated periods of involuntary detention and due process rights to allow individuals to contest their confinement;
- Provide prompt evaluation and treatment of persons with serious mental health diagnoses and/or chronic alcoholism;
- Protect public safety;
- Provide individualized treatment, supervision, and placement services;
- Encourage the full use of all existing agencies, professional personnel and public funds to accomplish objectives and to prevent duplication of services and unnecessary expenditures; and
- Protect individuals with severe mental health diagnoses from criminal acts.

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<sup>17</sup> State of California, Welfare and Institutions Code, Division 5, Section 5008(h)(B)(2).

<sup>18</sup> The LPS Act was co-authored by California State Assemblyman Frank Lanterman and California State Senators Nicholas C. Petris and Alan Short.

The LPS Act specifies that individuals have a right to contest or challenge involuntary treatment at any time during conservatorship.<sup>19</sup> Furthermore, individuals who are placed in an LPS conservatorship are expected to improve their mental health over time. To enable this outcome, the LPS Act requires an annual evaluation of all individuals placed in conservatorship to determine readiness for discharge from conservatorship.

#### *Murphy Conservatorship*

Under the California Penal Code and the LPS Act, the Superior Court is authorized to order an investigation into whether a defendant is gravely disabled<sup>20</sup>, if the defendant is deemed incompetent to stand trial and they served their maximum term of commitment, or are found to be unlikely to regain trial competency.

A defendant can be placed under a Murphy Conservatorship if (1) charged with felonies involving death, great bodily harm or a serious threat to the physical well-being of another person; and (2) there has been a finding of probable cause that as a result of a mental health disorder the person is unable to understand the nature and purpose of proceedings taken against him or her and to assist counsel in the conduct of their defense in a rational manner; and (3) the person represents a substantial danger of physical harm to others by reason of a mental disease, defect or disorder.

#### **Probate Conservatorship**

LPS conservatorships differ from probate conservatorships. The California Probate Code<sup>21</sup> authorizes the Superior Court to appoint a conservator for adults who are unable to provide for their basic needs of food, clothing, and shelter, and/or manage their personal finances due to dementia or physical disabilities.

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<sup>19</sup> State of California, Welfare and Institutions Code, Division 5, Section 5003 (WIC § 5003).

<sup>20</sup> Murphy Conservatorship's standard for "gravely disability" comprise: 1) a criminal defendant who has been found mentally incompetent; 2) an indictment or information that charges a felony involving death, great bodily harm, or serious threat to the physical well-being of another and that has not been dismissed; 3) defendant's Inability to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational way as a result of a mental disorder; and 4) by reason of a mental disease, defect, or disorder the person represents a substantial danger of physical harm to others

<sup>21</sup> State of California, Probate Code, Division 4, Part 3, Section 1800.

## **San Francisco's Conservatorship Programs**

San Francisco has three conservatorship programs designed to address the needs of individuals with mental illness: LPS conservatorship and two community-based programs available to individuals placed in LPS conservatorship – the Community Independent Participation Program and the Post-Acute Community Conservatorship. All three programs are administered through the Public Conservator, which is housed in San Francisco's Human Services Agency.

### **LPS Conservatorships**

The traditional LPS conservatorship program is for individuals who are deemed by the courts to be gravely disabled by mental illness or severe alcoholism. The LPS program is administered by the Public Conservator, who is responsible for decision-making on behalf of the individual during the conservatorship period. Individuals who are under LPS conservatorship may be placed in a variety of settings but are entitled to placement in the least restrictive, most appropriate level of care. Placements range from the most restrictive levels of care, such as locked facilities (e.g., some skilled nursing facilities), to unlocked facilities (e.g. board and care facilities).

### **San Francisco's Community-Based Conservatorships**

San Francisco has two programs designed to allow individuals with a mental illness to transition directly from an acute care setting directly to a community-based setting, without an interim stay in a sub-acute facility. The programs serve individuals, including those placed in LPS conservatorship, who have access to adequate housing, are enrolled in intensive case management, and are prescribed long-acting anti-psychotic medication. The two programs are overseen by both the Public Conservator and Department of Public Health.

#### *Community Independent Participation Program*

San Francisco launched its Community Independent Participation Program in 2012, initially as a pilot. Patients who participate in the Community Conservatorship Independent Participation Program are provided with the support and services they need to maintain independence and stability. To be eligible for this program, participants must already be conserved and give up the right to refuse psychotropic medication.

Program eligibility is based on an assessment that the individual is generally stable when adhering to psychotropic medication regimen. The Public Defender, City Attorney (formerly the District Attorney), Public Conservator, and/or service providers must reach consensus to include a person in the program. The service provider and the Public Defender explain participation requirements to the individual. The program is

voluntary and subject to the due process prescribed by the California Welfare and Institutions Code.

*Post-Acute Community Conservatorship*

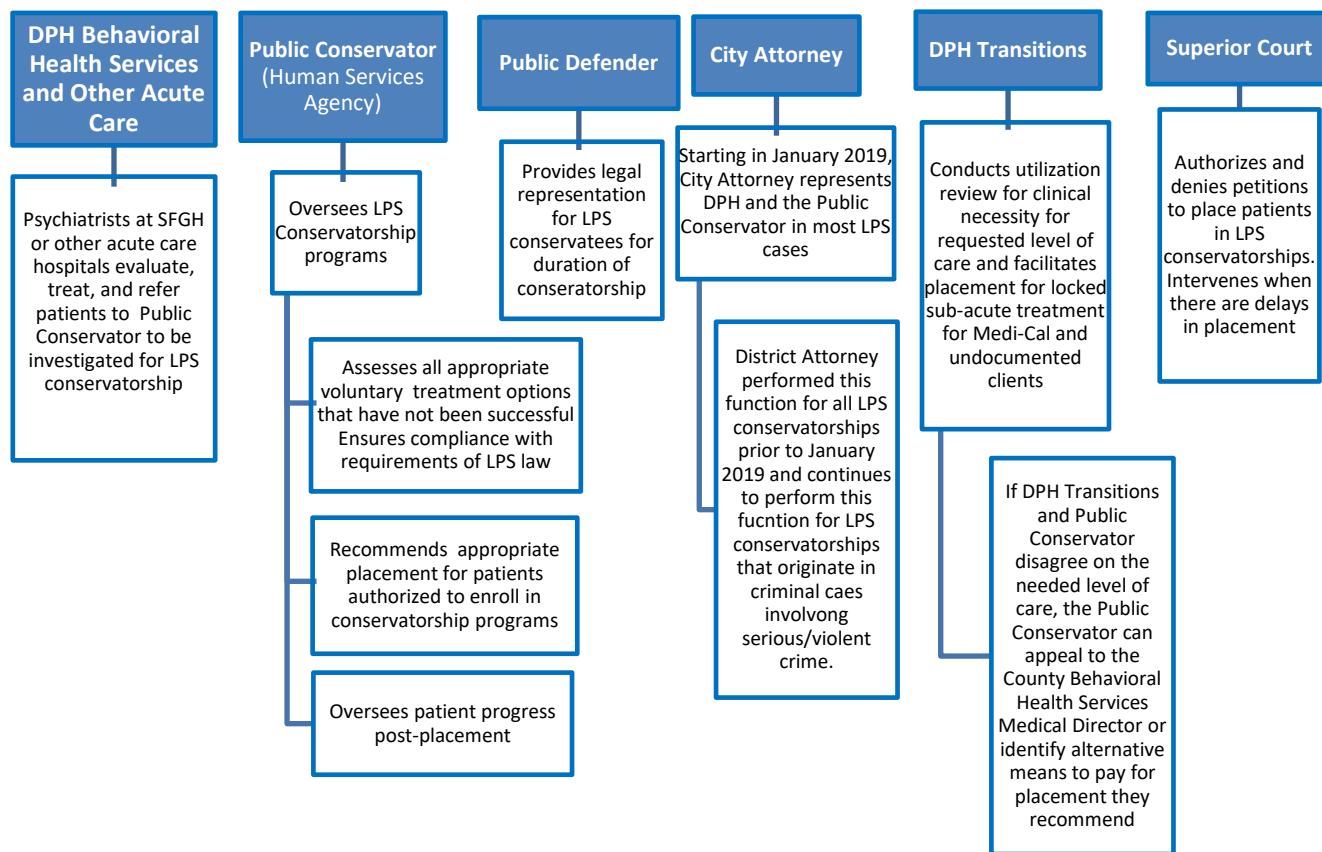
Post-Acute Community Conservatorship is another program specific to San Francisco that places individuals in the community. Participants are distinct from those in the Community Independent Participation Program in that they have not voluntarily complied with their medication requirements or have contested their conservatorship. However, clinicians recognize that when compliant with their medication requirements, these individuals can successfully reside in a community-based setting. For these reasons, the Public Conservator recommends that the Superior Court require medication compliance for patients enrolled in the Post-Acute Community Conservatorship program. Without this program, these participants would be placed in a locked or secured mental health facility.

San Francisco was the first jurisdiction in the State to pilot the Community Independent Participation Program and Post-Acute Community Conservatorship Program. Alameda County is currently replicating the Community Independent Participation Program.

**Review and Authorization Process for San Francisco LPS Conservatorships**

Placing an individual in an LPS conservatorship is a civil process defined by the California Welfare and Institutions Code. Referrals are initiated by psychiatrists for individuals who present to San Francisco General Hospital or to other acute care hospitals. Referral and placement in LPS conservatorships in San Francisco involves several key actors including the Public Conservator (Human Services Agency/ Department of Adult and Aging Services), treating psychiatrists, the Department of Public Health's Transition team who are responsible for coordinating placement, the Public Defender, and the City Attorney, as shown in Exhibit 8 below.

### Exhibit 8. Key Actors in the Lanterman-Petris-Short Act (LPS) Conservatorship Review & Authorization Process



Source: Interviews with the Public Conservator (Human Services Agency), the Public Defender, Department of Public Health, City Attorney, and District Attorney.

The conservatorship process begins at the San Francisco General Hospital’s Psychiatric Emergency Services unit or acute inpatient psychiatric units at private hospitals when a patient is placed under a 72-hour involuntary hold, defined by California Welfare and Institutions Code Section 5150 (generally referred to as “5150”).<sup>22</sup> Exhibit 9 below shows the steps prior to the LPS conservatorship.

<sup>22</sup> California’s Welfare and Institutions Code Section 5150 allows an involuntary psychiatric hold for up to 72 hours, and Section 5250 allows an involuntary psychiatric hold for an additional 14 days after the initial 72-hour hold.

## Exhibit 9. Mandatory Civil Process to Initiate LPS Conservatorship

*Patients can contest holds at any time & be placed at lower levels of care at any time, if appropriate*

Psychiatric Emergency Services (PES) or other acute setting initiates or receives patients on **5150 Hold (72 hours)**

- 5150 hold: for patients deemed to be gravely disabled and a danger to themselves and/or others
- If patient stabilizes within 72 hours, patient is discharged.

Acute inpatient initiates **5250 Hold (Additional 14 days)**

- If 5150 hold expires & treating psychiatrist determines patient is still gravely disabled, can initiate 5250 hold for up to an additional 14 days. Patients who appear to need a 5250 hold are scheduled for admission to the acute inpatient unit.

Acute inpatient initiates **5270 Hold (Additional 30 days)**

- If patient stabilizes, patient is discharged.
- If 5250 hold expires and patient has not stabilized, can initiate 5270 hold for up to 30 days
- Can refer patients to Public Conservator for temporary conservatorship at this stage or at any point during or after the initial 5150 hold
- If patient stabilizes, patient is discharged.

If psychiatrist determines patient is still gravely disabled, refers patient to the Public Conservator to determine if a temporary conservatorship is appropriate (**5352.1 status**)

- If 5270 has expired or close to expiration and patient has not stabilized, can refer to Public Conservator for temporary conservatorship determination
- Public Conservator investigates whether patient meets gravely disability criteria
- If patient stabilizes or does not meet grave disability criteria, patient is discharged.

**(5352.1)** Public Conservator investigation finds grave disability. District Attorney petitions the Superior Court to grant temporary conservatorship (**Additional 30 days**)

- If Superior Court agrees, Court grants temporary conservatorship of 30 days, and can extend up to six months. The patient can be placed in the clinically appropriate level of care pending the permanent conservatorship hearing.
- If Superior Court denies petition for temporary conservatorship, patient is discharged.

5008(h)(1)(a) hearing for one-year conservatorship establishes permanent conservatorship

- If Superior Court denies petition for permanent conservatorship, patient is discharged.
- If Superior Court approves petition, the patient is placed in the clinically appropriate level of care
- Public Defender represents patients at hearings for permanent conservatorship and City Attorney represents Public Conservator & DPH
- Annual psychiatric evaluation to determine readiness for discharge.

Source: State of California, Welfare and Institutions Code and interviews County staff from the Department of Public Health, Public Conservator (Human Services Agency), District Attorney, City Attorney, and Public Defender.

According to the Department of Public Health, the Transitions team can assess and authorize the clinically-appropriate level of care for the individual at any point in the process.<sup>23</sup>

According to the Public Conservator, the referral to conservatorship can be made at any point during or after the initial 5150 hold. The Public Conservator is responsible for evaluating whether the patient meets the definition of gravely disabled for conservatorship proceedings. The Public Conservator monitors the patient's clinical status, and can initiate proceedings to terminate conservatorship at any time that the clinicians determine the patient is no longer gravely disabled. As noted above, the LPS conservatorship status is evaluated and renewed at least annually.

### **Patients' Rights to Challenge Involuntary Holds**

Psychiatric patients on involuntary psychiatric holds can contest or challenge their involuntary holds at any time after the conclusion of a 5150 hold. The Public Defender's Office represents patients who are on a 5150 hold. The City Attorney represents the Public Conservator when a referral has been sent to the Public Conservator for temporary conservatorship. When a patient wishes to contest a psychiatric hold or a referral to conservatorship, the Public Defender's Mental Health Unit represents the patient's expressed wishes in court proceedings. The City Attorney represents the Public Conservator and the hospital's treatment team. The patient is released if the presiding judge rules in his/her favor. Probable cause hearings to extend psychiatric holds are held two times per week while court hearings for temporary and permanent LPS conservatorships are held once a week.

### **Public Conservator Investigations & Superior Court Authorization Prior to LPS Conservatorship**

While patients can be referred to temporary conservatorship at any point during or after the 5150 hold, the Welfare and Institution Code provides for patients to be held for an additional 14 days (5250) to allow stabilization. Patients who do not stabilize can be referred by the acute in-patient psychiatrists to the Public Conservator to be considered for a 30-day temporary conservatorship.<sup>24</sup> When a judge approves a temporary conservatorship, the Public Conservator is granted 30 days to investigate and determine whether the patient meets the legal criteria for a permanent LPS conservatorship. Filing for temporary conservatorship

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<sup>23</sup> Transitions is responsible for ongoing utilization review and monitoring of facilities for compliance with State and local requirements.

<sup>24</sup> According to the Deputy Public Defender, the treating psychiatrist generally notifies the individual on the 9th day of the 5250 hold and then files for Justification and Recommendation for LPS Conservatorship prior to the expiration of the 14-day hold.



always precedes filing for a permanent conservatorship. The Public Conservator may petition for extensions of a temporary conservatorship but extensions may not exceed six months. Permanent conservatorship placements are for a period of one year, with a required annual evaluation to determine whether the patient is no longer gravely disabled and should be discharged.

The State of California's Welfare and Institutions Code states that "the goals of the treatment plan shall be equivalent to reducing or eliminating the behavioral manifestations of grave disability."<sup>25</sup> Therefore, the purpose of the conservatorship period is to improve patient health outcomes.

#### **Limitations on Involuntary Medication**

While LPS conservatorship allows for the involuntary confinement of gravely disabled individuals, it does not automatically allow the involuntary administration of psychiatric medications. The Public Conservator must request and receive an Affidavit B from the Superior Court prior to any involuntary psychiatric medication treatment of individuals placed in LPS conservatorship. Under the California Welfare and Institutions Code, an Affidavit B is subject to renewal at the time of the annual LPS renewal.

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<sup>25</sup> State of California, Welfare and Institutions Code Section 5352.6.

## Appendix II. California Involuntary Detention Rates per 10,000 by County (FY 2016-17)

San Francisco exceeded the statewide average for 72-hour psychiatric holds, 14-day psychiatric holds, and temporary conservatorships in FY 2016-17. Among California's most populous counties for which data was available in FY 2016-17, San Francisco ranked third for 72-hour holds, second for 14-day holds, and third for temporary conservatorships.

San Francisco was below the statewide average for permanent conservatorships in FY 2016-17. Among California's most populous counties for which data was available in FY 2016-17, San Francisco ranked ninth.

### Exhibit 10: Involuntary Detention Rates per 10,000 for California's 15 Most Populous Counties FY 2016-17

County	Population	Evaluation/ Treatment	Intensive Treatment		Conservatorship	
		72 hour	14 day	30 day	Temporary	Permanent
LOS ANGELES	10,105,722	69.7	17.4	1.7	n/a	n/a
SAN DIEGO	3,283,665	48.0	7.7	0.7	1.1	3.4
ORANGE	3,155,816	33.5	11.8	0.9	1.1	2.1
RIVERSIDE	2,355,002	n/a	n/a	n/a	n/a	n/a
SAN BERNARDINO	2,121,220	61.8	21.4	n/a	0.2	2.2
SANTA CLARA	1,911,226	14.9	3.2	n/a	n/a	0.1
ALAMEDA	1,629,615	162.5	46.6	n/a	2.4	1.8
SACRAMENTO	1,495,400	5.3	0.5	0.1	n/a	n/a
CONTRA COSTA	1,123,678	n/a	n/a	n/a	0.6	1.7
FRESNO	971,616	57.9	5.5	0.2	0.3	0.7
KERN	878,744	50.6	11.3	0.2	n/a	n/a
SAN FRANCISCO	864,263	64.7	31.1	n/a	1.4	0.9
VENTURA	847,834	20.5	7.7	n/a	0.4	1.7
SAN MATEO	763,450	22.6	9.4	n/a	1.6	5.7
SAN JOAQUIN	724,153	32.5	18.7	n/a	0.8	2.5
<b>Statewide Average</b>		<b>46.0</b>	<b>13.1</b>	<b>0.7</b>	<b>1.0</b>	<b>2.1</b>

Source: Referral data - California Department of Health Care Services Involuntary Detentions Data Report; Population data from U.S. Census Bureau American Community Survey

## Appendix III: Profile of LPS Conservatorship

### Length of Stay

Many LPS patients are conserved for more than ten years, as shown in Exhibit 11 below. As of December 2018, 213 patients or 37 percent of the total active LPS caseload had been conserved for more than ten years, and another 130 (23 percent) had been conserved for five to 10 years. This means that 60 percent of the current LPS caseload has been conserved for at least five years.

**Exhibit 11. Length of Stay in San Francisco LPS Conservatorship Caseload as of November 29, 2018**

Length of Stay	< 1 year	1-2 years	2-5 years	5-10 years	> 10 years
Traditional LPS	97	66	57	127	210
Murphy	3	4	2	3	3
<b>Total LPS and Murphy Conservatorship</b>	100	70	59	130	213
<b>Percent of Total</b>	17%	12%	10%	23%	37%
Community Independent Participation Program	3	5	1	1	0
Post-Acute Program	25	5	0	0	0
<b>Total Community Programs</b>	28	10	1	1	0
<b>Percent of Total</b>	70%	25%	2.5%	2.5%	0%

Source: San Francisco Human Services Agency, Department of Adult and Aging Services

While many LPS patients are conserved long term, many individuals are under LPS conservatorship for a short period. Exhibit 12 below shows the length of stay as of November 29, 2018 for all individuals who were referred to the LPS conservatorship program at any time during FY 2016-17. Nearly two-thirds of the individuals referred to the LPS conservatorship program during FY 2016-17 remained in the program for less than one year. All patients referred during FY 2016-17 were placed in the LPS conservatorship program.

**Exhibit 12. Length of Stay for Patients Referred to LPS Conservatorships during FY 2016-17**

<b>Total Days in Conservatorship</b>	<b>Number of Individuals</b>	<b>Cumulative % of Individuals</b>
Less than 30 days	29	22.7%
30 - 59 days	21	39.1%
60 - 89 days	8	45.3%
90 - 119 days	10	53.1%
120 - 149 days	4	56.3%
150 - 179 days	1	57.0%
180 - 209 days	3	59.4%
210 - 239 days	2	60.9%
240 - 269 days	1	61.7%
270 - 299 days	0	61.7%
300 - 329 days	0	61.7%
330 - 359 days (under one year)	1	62.5%
360 - 389 days	0	62.5%
390 - 419 days	0	62.5%
420 - 449 days	1	63.3%
450 - 479 days	0	63.3%
480 - 509 days	0	63.3%
510 + days	47	100.0%
<b>All Referrals, FY 2016-17</b>	<b>128</b>	

Source: San Francisco Human Services Agency, Department of Adult and Aging Services

**Placement in Locked and Unlocked Settings**

More than one third (217) of individuals in LPS conservatorship were in an unlocked as of February 7, 2019, as shown in Exhibit 13 below. Individuals placed in an LPS conservatorship are entitled to placement in the least restrictive, most appropriate level of care, and can transition from “locked” to “unlocked” settings as their mental health improves.

Of the 217 individuals in unlocked settings, 43 are currently living in their families’ homes, an apartment, or a single resident occupancy (SRO) hotel, including supportive housing. The remaining 174 are housed in other unlocked facilities, which can include skilled nursing facilities, board and care facilities, supportive housing, social rehabilitation facilities, and residential substance use programs.

Individuals placed in locked settings may be in acute care hospital beds, State psychiatric hospitals, mental health rehabilitation centers, locked skilled nursing facilities, and regional centers for people with developmental disabilities and co-occurring mental health issues.

**Exhibit 13. Placements of LPS Patients as of February 7, 2019** <sup>26</sup>

	No. of Patients	Percentage of Total Patients
<b>Locked settings:</b>		
Acute care hospital beds	42	7.1%
Locked facilities in County jails	13	2.2%
Other locked facilities/institutions <sup>27</sup>	316	53.7%
<i>Subtotal locked settings</i>	<i>371</i>	<i>63.1%</i>
<b>Unlocked settings:</b>		
Personal home: family home, independent living (an apartment, or an SRO)	43	7.3%
Other unlocked facility/institution <sup>28</sup>	174	29.6%
<i>Subtotal unlocked settings</i>	<i>217</i>	<i>36.9%</i>
<b>Total</b>	<b>588</b>	<b>100.0%</b>

Source: San Francisco Human Services Agency, Department of Adult and Aging Services

**Increase in Number of Placements in Community Programs**

More individuals placed in LPS conservatorship were placed in San Francisco's community programs – Community Independent Participation Program and Post-Acute Community Conservatorship – in FY 2017-18 and FY 2018-19 than in the prior two years, as shown in Exhibit 14 below.

**Exhibit 14. Annual Caseload of LPS Conservatorships in San Francisco**

Annual caseloads	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Traditional LPS Conservatorship	660	634	630	695
Murphy Conservatorship	12	16	15	15
<b>Total LPS and Murphy Conservatorship</b>	<b>672</b>	<b>650</b>	<b>645</b>	<b>711</b>
<u>Community Programs</u>				
Community Independent Participation Program	10	17	20	15
Post-Acute Community Conservatorship	n/a	3	20	29
<b>Total Community Programs</b>	<b>10</b>	<b>20</b>	<b>40</b>	<b>41</b>

Source: San Francisco Human Services Agency, Department of Adult and Aging Services

Note: Number of unique individuals at any point in the fiscal year

<sup>26</sup> While the total number of unique individuals in the LPS caseload during FY 2018-19 was 711, the number of individuals on February 7, 2019 was 588.

<sup>27</sup> Other facilities/institutions can include State psychiatric hospitals, mental health rehabilitation centers, locked skilled nursing facilities, and Regional Center placements for people with developmental disabilities.

<sup>28</sup> Unlocked facilities can include skilled nursing facilities, nursing homes, board and care facilities, assisted living facilities/adults residential facilities as well as mental/behavioral health facilities such as social rehabilitation facilities and residential drug or alcohol programs.

## Appendix IV: High Users of Emergency Urgent Services

### Exhibit 15: Number of Clients Using Urgent/ Emergency Services in FY 2017-18

	Top 100 Users	Top 1 Percent of Users	Top 2 - 5 Percent of Users	Bottom 95 Percent	Total Users
Number of patients	100	470	1,672	45,574	47,716
Number of patients who were in top 5% of users for 5 or more years since FY 2007-08	43	159	237	200	596
<b>Psychiatric Emergency Services (PES)</b>					
Number of patients using Psych Emergency Services (PES)	63	264	571	2,840	3,675
Average number of visits to PES per patient	16.3	8.3	3.0	1.3	12.6
Total PES patients with 5150 hold	49.0	212.0	412.0	2,043	2,667
Number of 5150 holds per patient experiencing hold	5.0	3.6	2.2	1.2	7.0
<b>Conservatorships</b>					
Number of patients assigned to conservator	7.0	14.0	26.0	151.0	191.0
Number of patients assigned to conservator at any time in their history	12.0	39.0	96.0	617.0	752.0
<b>Severe Mental Illness</b>					
Number of patients diagnosed with psychoses	78.0	322.0	826.0	5,947	7,095
<b>Homelessness</b>					
Number of patients homeless within past year	96.0	385.0	991.0	7,669	9,045

Source: Department of Public Health Whole Person Team Coordinated Case Management System

<sup>a</sup> Average episodes per client with experience of 72-hour or 14-day hold

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## Appendix V: Sub-Acute Beds

### Delays in Placement for SFGH Acute Psychiatry Inpatients

Patients admitted to acute psychiatric inpatient beds at San Francisco General Hospital often wait for weeks, and sometimes months, for placement in less acute facilities. According to discussions with the Interim Chief of SFGH Psychiatry, if adequate placements were promptly available for non-acute patients, the total 44 psychiatric inpatient beds<sup>29</sup> at the San Francisco General Hospital are adequate to meet acute psychiatric care requirements. However, the backlog of patients waiting for locked sub-acute treatment, including LPS patients, puts a strain on hospital resources, delaying admission of new acute patients from Psychiatric Emergency Services. Additionally, each day a patient, whether LPS or otherwise, is no longer acute but still on the psychiatric inpatient unit, the hospital receives limited Medi-Cal reimbursement for those non-acute day stays.<sup>30</sup>

Between Calendar Year (CY) 2016 and CY 2018, less than one-quarter of the days that patients occupied acute psychiatric beds were for acute services and more than three-quarters of the days were for less than acute care services (“denied” days) or for waiting placement in another facility or program (“administrative” days). The number of acute inpatient days increased in CY 2018 compared to denied days and administrative days, as shown in Exhibit 16 below, but still accounted for only 27 percent of total inpatient days.

#### *Denied and Administrative Days*

Medi-Cal and third party payers deny reimbursement for inpatient days for a number of reasons. The first day of admission is a covered day under Medicaid (Medi-Cal in the state of California) for eligible patients. Reimbursement denial can result from billing or medical coding errors, ineligible diagnosis or treatment, patients who no longer need acute care and are waiting for placement, such as board and care, or other causes. While we did not have information on the specific reasons for denied days, according to the Interim Chief of SFGH Psychiatry, most denied days are due to patients who no longer need acute care but are still too symptomatic to be discharged to the lower level of care beds that are available on their first non-acute day.

Medi-Cal administrative days are inpatient stay days for recipients who no longer require acute hospital care and are waiting placement in a subacute

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<sup>29</sup> The 44 total psychiatric inpatient beds do not include the six rooms designated for individuals in custody. These six rooms have a maximum capacity of 12, with two individuals per room.

<sup>30</sup> If a person is waiting for locked subacute treatment (LSAT) the hospital is paid for administrative days.

facility.<sup>31</sup> Medi-Cal pays a partial reimbursement to the hospital for administrative days.

**Exhibit 16. Acute Inpatient Days Compared to Total Inpatient Days**

<b>SFGH Psychiatric Inpatient Unit</b>	<b>CY 2016</b>	<b>CY 2017</b>	<b>CY 2018</b>	<b>Percent of Total Three Year Average</b>
Acute Inpatient Days	2,590	3,097	4,200	21%
Denied Days	12,868	12,155	9,620	73%
Administrative Days	143	1,155	1,856	7%
<b>Total</b>	<b>15,601</b>	<b>16,407</b>	<b>15,676</b>	<b>100%</b>

Source: Community Behavioral Health Services, Department of Public Health.

The denied days at the acute psychiatric inpatient unit at San Francisco General Hospital translated to an estimated \$21.4 million in unreimbursed days in CY 2018, as shown in Exhibit 12 below. In contrast, the average DPH expenditures for all-long term care placements averaged \$21.8 million per year between FY 2014-15 to FY 2017-18, according to the DPH Transitions team.

**Exhibit 17. Estimated Lost Reimbursement Revenues to DPH in CY 2018 for Denied and Administrative Days**

<b>Type of Bed Days:</b>	<b>Inpatient Days</b>	<b>Reimbursement</b>	<b>Estimated Cost to SFGH</b>
<i>Third Party Reimbursements<sup>a</sup></i>			
Unreimbursed ("denied days")	9,620	\$0	\$21,366,020
Acute inpatient days	4,200	7,635,617	\$9,328,200
Administrative days	1,856	635,526	\$4,122,176
Subtotal, Reimbursements	15,676	\$8,271,143	\$34,816,396
<i>Other Funding</i>			
California Department of Health Care Services - Global Payment Program		\$1,928,852	
2011 Mental Health Realignment		1,655,409	
Subtotal, Other Funding		\$3,584,261	
<b>Total</b>	<b>15,676</b>	<b>\$11,855,404</b>	<b>\$34,816,396</b>

Source: Budget and Legislative Analyst, based on information provided by the San Francisco Department of Public Health.

<sup>a</sup> Medicare, Medi-Cal, and other third party payer

<sup>b</sup> Based on estimated cost of patient care per day of \$2,221

<sup>31</sup> Administrative days differ from denied days, in that patients on administrative days are waiting for placement to sub-acute facilities that provide treatment; and patients on denied days are waiting for placement to board and care or other facilities that provide personal care but not treatment.



### *Waiting for Placement*

According to the 2016 report by the Joint Conference Committee of the San Francisco Health Commission, the average length of stay in SFGH's acute psychiatric inpatient unit for patients waiting for discharge to:

- Locked skilled nursing facilities or Laguna Honda Hospital was 116 days;
- Residential care facility was 66 days;
- Napa State Hospital locked sub-acute treatment unit was 37 days;
- Home or shelter was 18 days; and
- Acute diversion unit was 6 days.

The 2016 report concluded that length of stay in SFGH's acute psychiatric inpatient unit resulted from decreased patient flow through the inpatient units and too few lower-level of care placement options, especially locked subacute facilities and residential care.<sup>32</sup> Recommendations by the report included continuing and expanding lower level of care outreach and communications, and continuing to consider the pros and cons of expanding downstream placement options.

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<sup>32</sup> The 2016 report did not define the clinically optimal length of stay, which depends on individual patient characteristics.

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## Appendix VI: Benchmarking and Standards for Conservatorship Programs

The Budget and Legislative Analyst conducted research on practices and standards for conservatorship programs nationally.

### “Conservatorship” and “Guardianship” Terms are Synonymous

The terminology used to refer to conservatorships can vary across states.<sup>33</sup> In some states, conservatorships are called adult guardianships, but the terms refer to roughly the same concept, the court appointment of a third party entity or individual (the conservator or public guardian) to make decisions on behalf of another individual (the conservatee).

### Administration of Conservatorships Varies from State to State

The administration of conservatorships and guardianships varies from state to state because not all states have statewide, statutory provisions or uniform procedures for conservatorships and guardianships.<sup>34, 35</sup> In 2005, two University of Kentucky Professors, a Professor of Health Policy and Administration of Washington State University and an Assistant Director of the American Bar Association conducted a national-level study on public guardianships. This 2005 study was the first national-level study since the late 1970s study completed by lead author Winsor C. Schmidt when public guardianships were still a new practice.<sup>36</sup> The authors of the 2005 study identified four forms of public conservatorship including:

- 1) **Court model:** the public guardianship office structured as a part of the court. Delaware, Hawaii, and Mississippi had this model at the time of this study;
- 2) **Independent State Office:** the public guardianship office does not provide direct services for wards and is positioned within the executive branch at the State level as an independent office. Alaska, Kansas, and New Mexico structured their guardianship programs in this manner at the time of this study;
- 3) **Within Social Service Agency:** the public guardianship office is housed in the agency that provides direct services. Most states had structured public guardianships in this way at the time of this report.

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<sup>33</sup> Pamela Teaster, Erica Wood, Naomi Karp, Susan Lawrence, Winsor Schmidt & Marta Mendiondo, *Wards of the State: A National Study of Public Guardianship* (Apr. 2005) (available at <http://www.abanet.org/aging/publications/docs/wardofstatefinal.pdf>) [hereinafter *Public Guardianship Study*]

<sup>34</sup> *Public Guardianship, In the Best Interests of Incapacitated People*; Appendix A: Pamela B Teaster, Winsor C Schmidt Jr., Erica Wood, Susan A Lawrence, Marta S. Mendiondo. Published by Praeger 2010

<sup>35</sup> Pamela Teaster, Erica Wood, Naomi Karp, Susan Lawrence, Winsor Schmidt & Marta Mendiondo, *Wards of the State: A National Study of Public Guardianship* (Apr. 2005)

<sup>36</sup> Winsor Schmidt, Kent Miller, William Bell & Elaine New, *Public Guardianship and the Elderly* (Ballinger Publ. Co. 1981).

Winsor C. Schmidt, author of the original national study in the 1970s, discouraged this model as he believed it would introduce a conflict of interest. Schmidt advised that states should separate oversight functions for the public guardianship program from the direct services function to address this issue. Schmidt observed that some states with this structure instituted language stating the Public Guardian is “to serve unless there is no other alternative available.”<sup>37</sup> For this reason, many states request that the Public Guardian first try to identify other guardians before assuming this role; and

- 4) **County Model:** either the public guardian function is located at the county level or it is coordinated at the state level with the administrative functions at the county or regional level. The services were provided through a department or through a contracted provider. Arizona, California, and Georgia were examples of this model at the time of this study.

San Francisco still maintains a hybrid structure of the County model and social services agency as the Public Conservator is housed within the County’s Human Services Agency and collaborates with the San Francisco Department of Public Health to identify long-term care placements for LPS conservatees.

#### **Administration of LPS Conservatorships Uniform in California, but Housed in Different County Departments**

In California, there is no substantial variation in the processes and practices of LPS conservatorship across counties due to the State-wide mandates specified in the Welfare and Institutions Code. Exhibit V.1 below shows the home agency of public guardians across the 58 counties in California.

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<sup>37</sup> Pamela Teaster, Erica Wood, Naomi Karp, Susan Lawrence, Winsor Schmidt & Marta Mendiondo, *Wards of the State: A National Study of Public Guardianship* (Apr. 2005, page 11).

**Exhibit 18. Configuration of Public Guardian Offices in California<sup>38</sup>**

Home Agency of Public Guardian	Number of Counties
Health Care or Health Services Agency	23
Human Services or Social Services Agency	10
The Public Administrator	8
Department of Mental Health or Behavioral Health	8
District Attorney-Public Administrator-Public Guardian	2
Adult Services	4
General Services	2
Treasurer-Tax Collector	1

Source: Individual County information; and *Evaluation and Realignment of a Public Guardian Agency to Achieve National Standards*; Lucille Lyon Orange County Public Guardian/Assistant Public Administrator and Frank Tuanai MBA Administrative Manager/Budget and Finance; at the National Guardianship Association 2012 Annual Conference; October 22, 2012.

**National Standards on Conservatorships/Guardianships Primarily Focus on Probate Conservatorships, and not Mental Health Conservatorships**

State and national professional associations have developed best practices and recommendations for guardianship. However, most of these recommendations pertain to what in California is traditional probate conservatorship, with a strong focus on the efficient and ethical guardianship of estates. Although these standards do include service planning and quality, they do not address mental health conservatorships specifically or patient outcomes.

The Budget and Legislative Analyst identified two helpful documents that discuss standards and best practices for the administration of conservatorship/ guardianship programs. First, the 2005 national study on public guardianships profiles guardianships at the time of the study and provides recommendations to improve patient care. The second document is the *Standards for Agencies and Programs Providing Guardianship Services*, published by the National Guardianship Association.<sup>39</sup> The “Standards for Agencies” provides a framework to improve service delivery and establish performance-based standards. Exhibit V.2 below summarizes the key standards detailed in these two documents.

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<sup>38</sup> Evaluation and Realignment of a Public Guardian Agency to Achieve National Standards; Lucille Lyon Orange County Public Guardian/Assistant Public Administrator and Frank Tuanai MBA Administrative Manager/Budget and Finance; at the National Guardianship Association 2012 Annual Conference; October 22, 2012.

<sup>39</sup> National Guardianship Association, 2007, Standards for Agencies and Programs Providing Guardianship Services.

**Exhibit 19. Summary of Guardianship/ Conservatorship Standards**

<b>Standard</b>	<b>2007 Standards for Agencies &amp; Programs Providing Guardianship Services</b>	<b>2005 Ward of the State Report</b>
Programmatic and Quality	<ul style="list-style-type: none"> <li>▪ Adhere to “Ethical Principles” and Standards of Practice related to: intake, case assignment, service planning, staff supervision, confidentiality and record keeping</li> <li>▪ Annual Internal Program Quality Review</li> <li>▪ Grievance procedure that allows conservatees to “voice grievances and recommend changes in policies and services.”</li> <li>▪ A policy that defines and determines staff response to critical incidents.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide adequate funding for home and community-based care for conservatees</li> <li>▪ Adopt written policies and procedures and training on policies and procedures.</li> <li>▪ Study the effect of public guardianship services on wards over time.</li> <li>▪ Conduct periodic external evaluation with input from guardianship actors and evaluators.</li> <li>▪ Establish standardized forms and reporting instruments.</li> <li>▪ Cap conservatee to conservator ratio and fund public conservatorship to enable ratio.</li> </ul>
Operations	<ul style="list-style-type: none"> <li>▪ Independence of the guardianship function especially when located within a larger agency</li> <li>▪ Personnel standards for competence, training, continuing education and performance evaluation</li> <li>▪ Fiscal standards that demonstrate the guardianship agency operates in accordance with Generally Accepted Accounting Principles and maintains fiscal and internal controls</li> </ul>	<ul style="list-style-type: none"> <li>▪ Collect information and track cost savings such as savings from the discharge of patients from psychiatric hospitals to less restrictive environments.</li> <li>▪ Limit functions of public guardianship to guardianship services only not direct services to “wards” (i.e. conservatees).</li> <li>▪ The public guardian should not petition for its own appointment and identify others to petition.</li> </ul>

**Guardianship Standards Being Drafted for the State of California**

The California Association of Public Administrators, Public Guardians, and Public Conservators (PAPPGPC) published *Suggested Industry Best Practices* in May 2017. These guidelines represent the organization’s effort to standardize key service delivery policies and are similar to the standards recommended by the National Guardianship Association, with a stronger

emphasis on positive patient health outcomes. However, these standards pertain to the guardianship function broadly and not exclusively to LPS conservatorship.

A few key takeaways from the Best Practices include:

- Limiting caseload sizes to allow a minimum of one visit by the conservator each 90 days with each conservatee and “that allows regular contact with all service providers;”
- Staffing, Certification and Education of public conservators that mirrors the county’s social work classifications in pay and escalating responsibility;
- Informed Consent. “Decisions made on behalf of the conservatee shall be based on the principle of informed consent and be in the best interests of the conservatee: the conservator must choose the least restrictive, most normalizing course of action possible to provide for the needs of the conservatee;”
- Promotion, monitoring and maintaining the conservatee’s health and well-being ensuring that all medical care necessary for the conservatees health and well-being is appropriately provided (within the estate’s ability to pay);
- Periodic conservatee visits and review to ensure conservatee is in the least restrictive environment appropriate, is visited at least every 90 days, that provision is made for the support, care, comfort, health and maintenance of the conservatee and the conservatee is assessed regularly; and
- Investigations. The best practices provide detailed recommendations on the elements of conservatorship investigation.

### **Community Conservatorship (CC) in Alameda County**

In 2016, Alameda County launched a program called Community Conservatorship based on San Francisco’s Community Independent Participation Program. The program began as a pilot and was made permanent as of July 2018. Similar to San Francisco, Alameda County’s program is intended to “provide individualized treatment, supervision, and placement” and to minimize the time spent in sub-acute and other locked psychiatric facilities for people who can safely receive treatment in the community with the support and oversight of the Public Guardian-Conservator.

The program allows Lanterman-Petris-Short (LPS) Act conservatees to live in the community, either in a Board and Care facility or in a supervised family home. Participants must already be conserved or in the

conservatorship process and must agree to comply with their medication requirements.

If an individual is deemed appropriate for the Community Conservatorship program, the individual is referred to the Superior Court for a hearing. The potential conservatee is represented by the Public Defender while the Public Guardian is represented by the Alameda County Counsel. During this process, Alameda County Behavioral Health Care Services staff, the treating facility, and the Public Guardian-Conservator collaborate to identify appropriate services including housing and individualized behavioral health and social services. Individuals enrolled in Alameda County's Community Conservatorship are expected to be transitioned more quickly from inpatient and sub-acute settings with intensive services and increased oversight.

The program includes a Memorandum of Understanding among the Public Guardian / Public Conservator, Behavioral Health Care Services, Public Defender, and the County Counsel. The program has subsequently expanded the target population by allowing referral of participants from subacute treatment settings as well as from inpatient psychiatric facilities.