Department of State Hospitals
Proposed Trailer Bill Legislation
FACT SHEET

Issue Title: Lanterman-Petris-Short (LPS) Population Transition to Alternative Placement
The proposed statutory changes authorize the Department of State Hospitals (DSH) to remove DSH as a treatment placement option over three years, provide treatment for LPS patients at the county level, and utilize the vacated state hospital beds for Incompetent to Stand Trial (IST) patients only. This action is necessary to enable DSH to dedicate its full bed capacity to forensic patients and reflect DSH's statutory and constitutional obligations for the treatment of forensic patients due to ongoing and increasing pressures and referrals for individuals found IST. Three of the major proposed changes are:

- Halting admissions for new LPS patients as of July 1, 2021
- Identifying LPS patient reduction targets over the next three fiscal years until all current LPS patients are placed in the community
- Implementing a daily bed rate of 150 percent of the current rate for counties exceeding LPS bed usage above the DSH specified reduction amounts

Background and History:
The LPS population includes multiple civil commitment patients who have been admitted to DSH under the LPS Act. Welfare and Institutions Code (WIC) 5358 specifies DSH as one treatment option, however, there are multiple treatment options for the LPS population including a medical, psychiatric, nursing, or other state-licensed facility, or a county hospital, hospital operated by the Regents of the University of California, a United States government hospital, or other nonmedical facility approved by the State Department of Health Care Services or an agency accredited by the State Department of Health Care Services. These patients require mental health treatment and are committed through civil court proceedings if legal criteria concerning a danger to themselves or others, or grave disability, are met. The LPS population is referred to DSH by local community mental health programs through involuntary civil commitment procedures pursuant to the LPS Act. As of March 30, 2021, LPS patients reflect 15 percent of DSH's average daily census (ADC). The remaining percentage of patients (85 percent) reflect DSH's forensic commitment types. Over the past several years, DSH has experienced LPS patient census growth coupled with pressures to admit IST patients. While DSH has implemented expanded capacity proposals over the years including, but not limited to DSH-Metropolitan's Increased Secured Bed Capacity project, jail-based competency programs, and community-based restoration programs, DSH continues to face significant pressures to expedite admission of forensically committed patients.

Justification for the Change:
Several contributing factors have led to an increased LPS census coupled with the need to admit IST patients with felony charges more quickly.

The shift from a bed purchase agreement to actual bed usage, combined with IST patients deemed non-restorable not being returned to the county pending their conservatorship investigation as required by statute, then converting to LPS status, and thus bypassing the LPS waitlist is resulting in an increasing LPS census in DSH secure treatment beds. This issue contributes to a reduction in DSH's capacity to provide timely care for those already on the IST waitlist. The ADC for LPS has increased from 554 in 2013-14 to 773 in 2019-20 and the LPS waitlist has grown from 9 to 201 during this same time. The ADC for ISTs has increased from 1,274 in 2013-14 to 1,762 in 2019-20 and the IST waitlist has grown from 389 to 1,212 during this

same time. DSH currently has a waitlist of 282 LPS patients and an IST waitlist of 1,649, as of March 15, 2021. As of February 22, 2021, the current LPS census was 764 with 360 LPS patients residing in the non-secured treatment area and 404 in the secured treatment area. LPS patients are treated in the secured treatment area as there is not sufficient unsecured bed capacity in the DSH system to treat the LPS patients. In FY 2019-20, there were a total of 313 IST patients identified as non-restorable pursuant to Penal Code Section 1370 (b)(1) remaining in DSH beds beyond the statutorily defined ten days. These patients occupied beds for a total of 24,595 days, limiting the number of new patients from the IST waitlist who could be admitted for treatment. This accounts for approximately 149 additional IST patients which could have been served by DSH. Of the 313 non-restorable IST patients in beds beyond the statutorily defined ten days, a total of 75 or 24 percent of that population converted to LPS and remained in a State Hospital bed, bypassing the LPS waitlist. In addition, DSH has identified 143 LPS patients currently receiving treatment who are considered discharge ready. Upon identification of being clinically appropriate for discharge, DSH notifies the county that the patient is discharge ready and works with the conservator, usually the county Public Guardian, for placement. Delays by the County in locating placements to discharge LPS patients who DSH has determined to be ready for discharge prevents DSH from admitting and treating further LPS or IST patients from the waitlist. Furthermore, the LPS census increases if discharge rates are not as fast as the IST to LPS conversion rates.

For over seven years, DSH has experienced an increase in referrals, growing waitlists, and lengthy wait times for IST patients with felony charges committed to its system for care. With continued investments during this same time in state hospital beds and jail-based competency treatment programs (955 beds total, the equivalent of building a state hospital), as well as providing for community-based restoration and diversion, prior to the pandemic, DSH had reduced its waitlist and wait times significantly from its former high in April 2018. However, due to the need to develop admission observation units, isolation units, and space for persons under investigation in response to the COVID-19 Pandemic, DSH's IST patient census in its hospital programs has significantly decreased. Furthermore, throughout the pandemic, DSH has had to halt admissions twice altogether and various outbreaks have also impacted admissions to protect patients and employees from exposure to COVID-19. As a result, the COVID-19 pandemic has significantly exacerbated the IST patient waitlist challenges and requires DSH to fully focus care and treatment on DSH's forensic patient population.

Summary of Arguments in Support:
The proposed changes to WIC sections 4330 – 4335, 5304, 5358, and 17601 would do the following for DSH and counties related to the removal of DSH as a treatment placement option for the LPS population:

- Reduce the number of LPS patients residing in DSH beds that could otherwise be served in the community in a lower level of care setting
- To utilize existing DSH bed capacity, currently utilized to treat LPS patients, to treat an increased number of felony IST patients and thereby reduce the waitlist for IST patient admissions

Estimate and Title:
4440-093-ECP-2021-MR and 4440-094-ECP-2021-MR: Lanterman-Petris-Short (LPS) Population Transition to Alternative Placement Proposal

STATE HOSPITALS
LANTERMAN-PETRIS-SHORT (LPS)
POPULATION AND PERSONAL SERVICES ADJUSTMENT
Program Update

General Fund	Positions			Dollars in Thousands		
	CY	BY	BY+1	CY	BY	BY+1
Governor's Budget	**0.0**	**0.0**	**0.0**	**$0**	**$0**	**$0**
One-time	*0.0*	*0.0*	*0.0*	*$0*	*$0*	*$0*
Ongoing	*0.0*	*0.0*	*0.0*	*$0*	*$0*	*$0*
May Revision	**0.0**	**3.0**	**3.0**	**$0**	**$17,082**	**$88,540**
One-time	*0.0*	*0.0*	*0.0*	*$0*	*$0*	*$0*
Ongoing	*0.0*	*3.0*	*3.0*	*$0*	*$17,082*	*$88,540*
Total	**0.0**	**3.0**	**3.0**	**$0**	**$17,082**	**$88,540**
One-time	*0.0*	*0.0*	*0.0*	*$0*	*$0*	*$0*
Ongoing	*0.0*	*3.0*	*3.0*	*$0*	*$17,082*	*$88,540*

Reimbursement Authority	Positions			Dollars in Thousands		
	CY	BY	BY+1	CY	BY	BY+1
Governor's Budget	0.0	0.0	0.0	$0	$8,102	$8,102
May Revision	0.0	0.0	0.0	$0	-$*24,704*	-$*96,162*
Total	**0.0**	**0.0**	**0.0**	**$0**	**-$24,704**	**-$96,162**

BACKGROUND

The Lanterman-Petris-Short (LPS) population includes multiple civil commitment patients who have been admitted to the Department of State Hospitals (DSH) under the LPS Act (WIC section 5000 et seq.). Welfare and Institutions Code (WIC) 5358 specifies DSH as one treatment option, however, there are multiple treatment options for the LPS population including a medical, psychiatric, nursing, or other state-licensed facility, or a county hospital, hospital operated by the Regents of the University of California, a United States government hospital, or other nonmedical facility approved by the State Department of Health Care Services or an agency accredited by the State Department of Health Care Services. These patients require mental health treatment and are committed through civil court proceedings if legal criteria concerning a danger to themselves or others, or grave disability, are met. The LPS population is referred to DSH by local community mental health programs through involuntary civil commitment procedures pursuant to the LPS Act. WIC section 4330 requires counties to reimburse DSH for their use of hospital beds and services provided pursuant to the LPS Act.

As of March 30, 2021, LPS patients reflect 15 percent of DSH's average daily census (ADC). The remaining percentage of patients (85 percent) reflect DSH's forensic commitment types including: Incompetent to Stand Trial (IST), Coleman patients pursuant to Penal Code (PC) 2684, Not Guilty by Reason of Insanity, Offenders with a Mental Health Disorder, and Sexually Violent Predator. Over the past several years, DSH has experienced LPS patient census growth coupled with pressures to admit IST patients. DSH has implemented expanded capacity proposals over the years including, but not limited to DSH-Metropolitan's Increased Secured Bed Capacity project, jail-based competency programs, and community-based restoration programs. However, DSH continues to face significant pressures to admit its forensically committed patients quicker.

LPS Waitlist and Census Growth Impacting Capacity to Serve Forensic Patients

Beginning September 1, 2014, the billing process for LPS patients changed to monthly billing, based on a county's actual bed usage. This replaced the past process of billing based on a county's bed purchase agreement and excess usage above the contracted bed purchase. The current billing framework has led to a steady increase in the number of LPS patients served over time in institutional state hospital beds despite a subset of the population being ready to be served in a lower level of care setting. Community alternatives to inpatient care are always the preferred treatment setting for discharge-ready patients due to the less restrictive setting, as required by law. It also increases opportunities for patients to reengage in the community.

The shift from a bed purchase agreement to actual bed usage, combined with IST patients deemed non-restorable not being returned to the county pending their conservatorship investigation as required by statute, then converting to LPS status, and thus bypassing the LPS waitlist is resulting in an increasing LPS census in DSH secure treatment beds. This issue contributes to a reduction in DSH's capacity to provide timely care for those already on the IST waitlist and are awaiting admission to DSH. The ADC for LPS has increased from 554 in fiscal year (FY) 2013-14 to 773 in FY 2019-20, and the LPS waitlist has grown from nine to 201 during this same time period. The ADC for ISTs has increased from 1,274 in FY 2013-14 to 1,762 in FY 2019-20, and the IST waitlist has grown from 389 to 1,212 during this same time period. DSH currently has a waitlist of 282 LPS patients, as compared to the IST waitlist of 1,649 as of March 15, 2021.

As of February 22, 2021, the current LPS census was 764, with 360 LPS patients residing in the non-secured treatment area, and 404 in the secured treatment area which is otherwise allocated to treat IST patients. LPS patients are treated in the secured treatment area as there is insufficient unsecured bed capacity in the DSH system to treat the growing LPS patient population. In FY 2019-20, there were a total of 313 IST patients identified as non-restorable pursuant to Penal Code Section 1370 (b)(1) remaining in DSH beds beyond the statutorily defined ten days. Of the 313 non-restorable IST patients in beds beyond the statutorily defined ten days, a total of 75 or 24 percent of that population converted to LPS and remained in a State Hospital bed, bypassing the LPS waitlist. These 313 non-restorable IST patients occupied beds for a total of 24,595 days, an average of 78.6 days per patient, limiting the number of new patients from the IST waitlist who could be admitted for treatment. This accounts for approximately 149 additional IST patients which could have been served by DSH. In addition, DSH has identified 143 LPS patients currently receiving treatment who are considered discharge ready and have not been placed in lower treatment settings by the county. Upon identification of being clinically appropriate for discharge, DSH notifies the county the patient is discharge ready and works with the conservator, usually the county Public Guardian for placement. Delays by the County in locating placements to discharge LPS patients who DSH has determined to be ready for discharge prevents DSH from admitting and treating further LPS or IST patients from the waitlist. Furthermore, the LPS census increases if discharge rates are not as fast as the IST to LPS conversion rates.

Additional Challenges Impacting DSH Capacity

For over seven years, DSH has experienced an increase in referrals, growing waitlists, and lengthy wait times of ISTs on felony charges committed to its system for care. With continued investments during this same time in state hospital beds and jail-based competency treatment programs (955 beds total, the equivalent of building a state hospital), as well as providing for community-based restoration and diversion, prior to the pandemic, DSH had reduced its waitlist

and wait times significantly from its former high in April 2018. However, the COVID-19 pandemic has reversed DSH's trajectory, and catapulted DSH into a significant IST challenge that it will be unable to recover from without fully focusing its care and treatment on DSH's forensic patient population.

Due to the need to develop admission observation units, isolation units, and space for persons under investigation in response to COVID-19, DSH's IST census in its hospital programs has significantly decreased. Furthermore, during the pandemic, DSH has had to halt admissions twice to protect patients and employees from exposure to COVID-19. The following table reflects the changes to the waitlist.

Month	IST Waitlist
April 2018	1,016
March 2020	850
March 2021	1,672

DESCRIPTION OF CHANGE

DSH proposes to update the statutes governing LPS patients to remove DSH as a treatment placement option and maintain treatment for LPS only at the county level. This action is necessary to enable DSH to dedicate its full bed capacity to forensic patients and reflect DSH's statutory and constitutional obligations for the treatment of forensic patients due to ongoing and increasing pressures and referrals for individuals found IST. Three of the major proposed changes are:

- Halting admissions for new LPS patients as of July 1, 2021
- Identifying LPS patient reduction targets over the next three fiscal years until all current LPS patients are placed in the community
- Implementing a 150 percent charge of the daily bed rate for counties exceeding LPS bed usage above the DSH specified reduction amounts

DSH anticipates the full transition of LPS patients residing in a DSH bed will require three years to implement. The multi-year approach will allow time for DSH to work with California Mental Health Services Authority (CalMHSA), California Behavioral Health Director's Association (CBHDA) and counties on discharge and transition planning and provide DSH time to assess its non-secured treatment area space to determine the appropriate modifications needed to serve forensically committed patients.

From July 1, 2021 through December 31, 2021, DSH will engage CalMHSA and counties on the development of a transition plan. DSH proposes starting January 1, 2022 to begin reducing the LPS population from the current census. CalMHSA and counties will need to identify the allocation of beds per county with technical assistance provided by DSH. Counties will continue to be billed the current daily bed rate based on the number of patients currently residing in a DSH bed. However, if counties exceed their bed usage amount in accordance with the reduction targets noted below, DSH will charge up to 150 percent of the daily bed rate to the counties for patient beds in excess of the cap. DSH proposes the following LPS bed reduction percentages over a three-year period:

- FY 2021-22: Achieve 33 percent LPS patient reduction by June 30, 2022
- FY 2022-23: Achieve 66 percent LPS patient reduction by June 30, 2023
- FY 2023-24: Achieve 100 percent LPS patient reduction in DSH bed by June 30, 2024

The reduction in LPS patients would result in an equivalent number of State Hospital beds becoming available to serve IST patients on the waitlist. Where LPS patients have average length of stay (ALOS) of 3.2 years, ISTs have an ALOS of approximately 155 days. By reducing all of the LPS patients by the end of FY 2023-24, using 764 LPS beds as the baseline and phased over three years, DSH estimates it could serve an additional 260 ISTs during FY 2021-22, an additional 878 ISTs during FY 2022-23, an additional 1,521 ISTs during FY 2023-24 and an additional 1,799 ISTs ongoing annually.

Funding and Workload Considerations

By reducing LPS bed usage gradually and to zero LPS bed usage by the end of FY 2023-24, this would result in a decreased amount of reimbursement received from counties proportionate to the reduction in bed days multiplied by the per diem bed rate. The decrease in the number of LPS patients served projects to result in a loss of reimbursement DSH receives from the counties by $16.6 million in FY 2021-22, $88.1 million in FY 2022-23, and $145.5 million in FY 2023-24. The loss in county reimbursement will require the General Fund to close the funding gap needed to serve IST patients. The table below reflects the projected loss in reimbursement based on the phasing out of LPS bed usage from FY 2021-22 to FY 2023-42.

Projected Loss of Reimbursements Based on Phased Reduction in LPS Beds				
Fiscal Year	**Level of Care**	**Rate**	**Reduction of Patient Days[1]**	**Forgone Reimbursement**
2021-22	ICF/Acute	$626	26,520	$16,601,520
2022-23	ICF/Acute	$626	140,670	$88,059,420
2023-24	ICF/Acute	$626	232,470	$145,526,220

[1]Calculated based on LPS patients discharging from an ICF/Acute level-of-care starting in January 1, 2022 at a rate of 42 patients per month in FY 2021-22 and a rate of 21 patients per month for FY 2022-23 through FY 2023-24. The reduction/discharging of LPS patients assumes a baseline of 764 LPS patients. The actual rate of discharge will be dependent on collaboration between CalMHSA, counties, and DSH.

The fiscal estimate is based on the current LPS daily bed rate structure and is subject to change based on a number of variables including but not limited to the following: rate of LPS discharge from a DSH bed, total number of LPS patients discharged, and the level of care a patient was discharged from. Additionally, there are other complicating factors to consider for projection purposes, such as penalties assessed to a county should they exceed the reduction targets identified. Given the uncertainty of the rate of discharges and any assessment of penalties, DSH requests budget bill language to provide DSH with the flexibility in FY 2021-22 and annually to adjust its authority to reflect an accurate amount. Without the authority to adjust within the current year and annually, DSH could be over or under projecting its needs.

Proposed Provisional Language

Item 4440-011-0001
xx. The Department of Finance is authorized to approve expenditures in those amounts made necessary by decreased reimbursements resulting from Lanterman-Petris-Short caseload reductions during the 2021–22 fiscal year that are within or in excess of amounts appropriated in this act for that year. The Department of Finance shall provide written notification of the augmentation to the Joint Legislative Budget Committee within 10 days from the date of approval.

Limited-Term Resources for Implementation

Additional resources are necessary to implement the transition away from serving LPS patients and oversee, manage, and evaluate efforts towards implementation. DSH requests the following positions:

- 1.0 Staff Services Analyst in the Hospital Strategic Planning and Implementation Division to monitor and troubleshoot discharge and bed management of LPS patients and conversion of beds to IST.
- 1.0 Attorney III to address legal concerns raised by the counties, including county counsel, behavioral health, and public guardians, and assist with advising DSH on resolution. Additionally, assist with statute interpretation in any discussions or negotiations with CalMHSA
- 1.0 Staff Services Manager I (Specialist) to serve as DSH's liaison with CalMHSA through the duration of implementation to conduct stakeholder engagement, monitor compliance, escalate issues, and notify counties of updates.

DSH requests $480,000 General Fund in FY 2021-22 through FY 2023-24 to support 3.0 three-year limited term (LT) positions necessary to address the workload associated in implementing the statutory changes removing DSH as a placement option for LPS patients.

STATUTORY CHANGES

Trailer Bill Language (TBL) is necessary to implement this proposal. WIC 5358 will require amendments to reflect DSH no longer serving as one of the placement options for an LPS patient. Additionally, WIC sections 4330 – 4335 provide the existing statutory framework for the county bed billing process, which will require adjustments providing DSH the authority to implement the gradual reduction of LPS bed usage. These sections will also reflect DSH's authority to apply 150 percent of the current daily bed rate to a county for exceeding its bed cap.

TIMELINE

DSH's current MOU with the counties is set to expire June 30, 2021. DSH proposes extending the current MOU via an amendment for another six months while DSH concurrently works with CalMHSA on the strategy for discharging LPS patients and transitioning away from DSH as a placement option. Starting January 1, 2022, counties will be expected to discharge patients to meet the 33-percent reduction goal by June 30, 2022 and meet the annual reduction targets or DSH will charge 150 percent of the current daily bed rate for any bed usage above the bed reduction. DSH's proposal to halt LPS patient admissions, implement LPS bed usage reductions, and implementing an excess bed rate would be subject to trailer bill language being included as part of the 2021 Budget Act.