

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 860 (Cooley) – As Amended April 6, 2017

SUBJECT: Mental Health Services Oversight and Accountability Commission: factfinding tour

SUMMARY: Exempts the Mental Health Services Oversight and Accountability Commission (Commission) from certain provisions in the Bagley-Keene Open Meeting Act (Bagley-Keene Act). Specifically, **this bill:**

- 1) Exempts the Commission from the Bagley-Keene Act when conducting a fact-finding tour of a facility or a location that is either not open to the public, or for which opening the facility or location to the public would compromise the safety or security of the facility or location, including, but not limited to, locked mental health facilities, prisons, jails, schools, or other facilities related to the discharge of the commission's duties, for the purpose of supporting the Commission's duties under the Mental Health Services Act (MHSA).
- 2) Requires the Commission to comply Bagley-Keene notice procedures specified in Government Code § 11125 and 11125.1.
- 3) Requires the notice to include a statement identifying the location, date, and purpose of the fact-finding tour, and the reason that the location of the site visit is not open to the public.
- 4) Requires the notice to include information for members of the media of the commission's intent to tour a facility or location, and shall allow at least one member of the media to attend the fact-finding tour.
- 5) Permits the Commission to make arrangements for a pool reporter to attend the tour if the number of reporters requesting to accompany the Commission is excessive and would compromise or impede the safety and security of the facility or location.
- 6) Prohibits the Commission from taking any action during a fact-finding tour and prohibits the members from discussing among themselves any business that does not fall within the scope or purpose of the tour.
- 7) Requires the Commission to post on its Internet Website a summary of the fact-finding tour within 10 days after the completion of the tour.
- 8) Makes legislative findings and declarations to justify the limitations on the public's right of access to the meetings of public bodies or the writings of public officials and agencies this bill imposes.

EXISTING LAW:

- 1) Establishes the Bagley-Keene Act which requires state entities to conduct their meetings open to the public. These requirements include, but are not limited to:

- a) Providing notice of a meeting to any person who requests notice in writing. Requires the notice to be given and be made available on the Internet at least 10 days in advance of the meeting. Requires the notice to include the name, address, and telephone number of any person who can provide further information prior to the meeting;
 - b) The notice to include an agenda including a brief description of the items of business to be transacted or discussed in either open or closed session, as specified;
 - c) Upon request, a person be provided notice for all meetings of a state body or for a specific meeting or meetings; and,
 - d) The notice to be made available in appropriate alternative formats that comply with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the relevant related federal rules and regulations, as specified.
- 2) The Bagley-Keene Act defines “state body” to mean each of the following:
- (a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
 - (b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
 - (c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body. Advisory bodies created to consist of fewer than three individuals are not a state body, except that standing-committees of a state body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body are state-bodies for the purposes of this chapter.
 - (d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- 3) Prohibits a majority of the members of a state body, outside of a meeting authorized by the Bagley-Keene Act, from discussing, deliberating, or taking action on any item of business that is within the subject matter of the state body.
- 4) Specifies that the prohibition in 7) above does not apply to the attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled

program, business of a specific nature that is within the subject matter jurisdiction of the state body.

- 5) Establishes the MHSA, enacted by voters in 2004 as Proposition 63, to provide funds to counties to expand services, develop innovative programs, and integrated service plans for mentally ill children, adults, and seniors through a 1% income tax on personal income above \$1 million.
- 6) Establishes the Commission to oversee the implementation of MHSA, made up of 16 individuals appointed by the Governor and the Legislature, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the Bill: According to the author, “citing the Centers for Disease Control and Prevention and the National Institute of Mental Health data, over 20% of children and 25% of adults in America suffer from a diagnosable mental disorder. In 2004 the California voters passed the MHSA to transform the mental health system. The MHSA established the Commission as an independent entity charged with providing oversight and accountability to the public mental health system. The intended outcomes of the MHSA include reducing incarcerations, school failure, unemployment, suicide, suffering, and prolonged homelessness for those in need of mental health services.

Current law requires that any location where the Commission conducts a fact-finding tour be open to the general public. However, many Californians with mental health needs receive services in locations that are not open to the public, including locked mental health facilities, schools, jails, and prisons, making it difficult for the Commission to gather information about services provided behind closed doors and discharge its oversight duties effectively.

California's mental health system needs effective oversight to ensure positive outcomes for the growing number of individuals in need of services, whether services are provided in public or non-public facilities. This bill strengthens accountability of mental health services by allowing the Commission to visit non-public facilities when gathering information in support of their oversight duties.”

Background: When the Legislature enacted the Bagley-Keene Act of 1967, it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. The Act explicitly mandates open meetings for California State agencies, boards, and commissions. It facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public is allowed to monitor and participate in the decision-making process. Similarly, the Ralph M. Brown Act of 1953 protects citizen's rights to open meetings at the local and county government levels.

Existing law defines an advisory board, commission, committee, and subcommittee of a state body that is comprised of three or more persons and created by a formal action of the body as a

“state body” for purposes of the Act. This generally requires state agencies, boards, and commissions to publicly notice meetings, prepare formal agendas, accept public testimony, and conduct meetings in public, unless specifically authorized to meet in closed session.

While the Bagley-Keene Act contains specific exceptions from the open meeting requirements where government has demonstrated a need for confidentiality, such exceptions have been narrowly construed by the courts. AB 860 would provide a narrow exception to the Bagley-Keene Act for the Commission, while maintaining important public notice requirements.

MHSA & Commission: Proposition 63 was passed by voters in November 2004. The MHSA imposes a 1% income tax on personal income in excess of \$1 million and creates the 16 member Commission charged with overseeing the implementation of MHSA. The 2016-17 Governor’s Budget projected that \$1.9 billion in revenue would be deposited into the MHSF in fiscal year 2017-18. The MHSA addresses a broad continuum of prevention, early intervention, and service needs, as well as provided funding for infrastructure, technology, and training needs for the community mental health system. In addition to local programs, the MHSA authorizes up to 5% of revenues for state administrative functions performed by a variety of state entities such as the DHCS and Office of Statewide Health Planning and Development (OSHPD). It also funds evaluation of the MHSA by the Commission, which was established by the MHSA.

The role of the Commission is to oversee the implementation of the MHSA. The Commission oversees the Adults and Older Adults Systems of Care Act; Human Resources; Innovative Programs; Prevention & Early Intervention Programs; and, the Children’s Mental Health Services Act. The MHSA requires each county mental health department to prepare and submit a three-year plan to DHCS that must be updated each year and approved by DHCS after review and comment by the Commission. In their three-year plans, counties are required to include a list of all programs for which MHSA funding is being requested and that identifies how the funds will be spent and which populations will be served. Counties must submit their plans for approval to the Commission before the counties may spend certain categories of funding.

Support: According to the Commission, “In order to discharge its duties, the Commission, from time to time, conducts fact-finding tours of facilities not open to the public, such as locked mental health facilities, jails, prisons and schools. To properly discharge its oversight duties the Commission needs to have access to these types of non-public facilities... This bill will authorize the Commission to conduct a fact-finding tour of non-public facilities, while continuing to comply with notice provisions of the Bagley-Keene Open Meeting Act.”

Double Referral: AB 860 was first heard in Assembly Committee on Health on April 4, 2017, and passed on a 14-0 vote.

Prior/Related Legislation: AB 462 (Thurmond) of 2017/2018 Legislative Session. Would authorize the Director of Employment Development Department to share information with the Commission related to quarterly wage data to assist the Commission in fulfilling its duties under the MHSA, to the extent permitted under applicable federal statute and regulation. Declares it the intent of the Legislature to authorize the Commission to receive information held by other state agencies, as it relates to outcomes established under the MHSA, for purposes of monitoring outcomes and improving the mental health system. (Pending on Assembly Third Reading).

AB 727 (Nazarian) of 2017/2018 Legislative Session. Would clarify that counties may spend MHSA monies on housing assistance, as defined, for people in the target population identified in the MHSA. (Pending on Assembly Third Reading).

AB 1134 (Gloria) of 2017/2018 Legislative Session. Would authorize the Commission to establish a fellowship program for the purpose of providing an experiential learning opportunity for a mental health consumer and a mental health professional. (Pending in Assembly Appropriations Committee).

REGISTERED SUPPORT / OPPOSITION:

Support

Mental Health Services Oversight and Accountability Commission (sponsor)
California Access Coalition
CaliforniaHealth+ Advocates

Opposition

None on file

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