April 19, 2022

The Honorable Mark Stone
Chair, Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814

The Honorable Jim Wood, DDS
Chair, Assembly Health Committee
1020 N Street, Room 390
Sacramento, CA 95814

RE: AB 2830 (Bloom) Community Assistance, Recovery, and Empowerment Court Program–CONCERNS
As amended April 7th, 2022

Dear Chair Stone and Wood:

On behalf of the undersigned statewide provider advocacy associations, which combined represent the backbone of the public behavioral health system, we respectfully express significant concerns with AB 2830 (Bloom) as amended on April 7th, 2022. While we support the intention of the proposal to connect individuals with untreated schizophrenia and psychotic disorders to care, we believe that SB 1338 as drafted does not provide adequate services or housing, does not provide for sufficient due process protections, and has the potential to harm individuals who, given the opportunity, would engage in care and housing voluntarily outside of CARE Court.

While we appreciate that the bill language has answered some questions we raised in our preliminary letter regarding the CARE Court proposal, our coalition still has significant questions and concerns that need to be addressed before being able to fully weigh in.

Even with further detail, we request additional discussion via the stakeholder workgroups and other communication mechanisms before registering a position. In this vein, we offer the following questions, considerations, and concerns that we believe should guide the development of this new program. Our organizations and the members we represent stand ready to engage and lend our expertise as you continue to further develop the CARE Court framework.

While we are generally supportive of providing a robust and accountable system of care and we applaud the intention of this legislation, we do have high level concerns. Individuals coerced into treatment experience these services as trauma, not "care." Though we understand that the Administration's goal is not to look to conservatorship, 5150's and other types of mandated treatment as a first option, the fact that these may ultimately be a part of some individuals' treatment plans during CARE Court is concerning. Research shows that coerced treatment is also ineffective treatment and there are numerous studies demonstrating this with respect to services for individuals experiencing mental health and substance use conditions. Accordingly, coerced treatment should be a last resort, and only used in those instances where there is an immediate threat to life or risk of serious harm. This is a value shared in common by all four state associations and our member organizations.

We remain concerned that CARE Court does not include some critical protections and safeguards outlined in Assisted Outpatient Treatment (AOT). AOT authorizes a court to order an individual with a mental illness in counties that have not opted-out onto court-ordered services. AOT eligibility criteria is more specific than CARE Court and critically requires that an individual "has been offered an opportunity to participate in a treatment plan… and the person continues to fail to engage in treatment" and "Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability," pursuant to Welfare and Institutions Code (WIC) 5346 (a)(5-6). Within CARE Court, the petition to place the individual into CARE Court only needs to include an affirmation or affidavit of a qualified behavioral health person that the person has examined, or has made attempts to examine, the respondent in the last three months and that the professional has determined that the person meets or is likely to meet the diagnostic for CARE Court proceedings, pursuant to WIC 5975(g)(1). The qualified behavioral health professional does not need to have offered services to the individual nor even actually evaluated the person in order for a petition to be filed with CARE Court. We find this problematic, as individuals who would otherwise engage in voluntary services will be pulled into an unnecessary legal proceeding which provides them no benefit. We believe that moving forward, CARE Court needs to address these key protections. Without a proper evaluation and service options clients could be faced with further barriers to care.

It is important to note that when it comes to the proposed target population for CARE Court, those individuals experiencing co-occurring mental health and substance use disorders might be the majority group as they are more likely to come to the attention of those who might make referrals into the CARE Court process. Additionally, we remain concerned about clients who never have had contact with the legal system but through this initiative would be experiencing it through this new program. This is why it is of utmost importance to ensure that the CARE Court referral and treatment process is comprehensive and attends to the various impacts of the social determinants of health on this population.

During our conversations with CalHHS staff, we understand the Administration's commitment to focusing on the least restrictive treatment environments and allowing as

much individual choice in the CARE Court process. However, many of our members continue to react to the messaging around CARE Court which seems to feed into stigma-based beliefs around violence and incompetence on the part of those that CARE Court would look to serve. This messaging can and will have an impact on those who might participate in CARE Court, and "care" and "court" are two words that don't make much sense when combined.

With respect to timeline, we believe the January 2023 start date for CARE Court implementation is overly ambitious for an effort with this level of complexity. Additionally, the bill does not require health care service plans and health insurers to cover services for their enrollees that are in CARE Court until July 1, 2023. We are concerned that the ambitious timeline may leave many important details and questions unresolved, and ultimately fail the individuals the proposal aims to help. For example, if critical resources such as workforce for treatment settings and housing do not exist, an individual is bound to fail. As such, we request consideration of a pilot program of several select counties for the next three years beginning January 1 2024, with a sunset, and a robust evaluation conducted by a university. This will allow the state to test the effectiveness of this new court model and correct unforeseen challenges with the program prior to statewide rollout.

Below, we outline additional feedback from our members:

How does the Administration envision substance use disorder conditions to be included in CARE Court? Methamphetamine-induced psychosis, a transient condition, is included under a psychotic disorder although the strategies and involuntary treatment are not effective for this condition. Additionally, individuals with co-occurring conditions will be included under CARE Court and the services described do not match what is needed for an individual with a substance use disorder condition. Access to MAT, recovery residences, harm reduction services, contingency management, and individualized treatment are critical for individuals with substance use disorders. Additionally, what will prevent CARE Court from being used to further criminalize or coerce substance use disorders? How will additional treatment capacity be funded for substance use disorder care? Drug Medi-Cal alone cannot meet the full needs. Since a high percentage of the population in question are co-occurring, there is a significant capacity shortage today to meet the need of this population.

There will need to be a new workforce of evaluators for CARE Court that is trained specifically on the eligible diagnoses and impairment criteria. From conversations regarding alienist evaluations for felony incompetent to stand trial (IST) evaluations, there is not sufficient training or an adequate number of evaluators leading to delays before evaluation and inappropriate evaluations leading to individuals who are competent being placed on the IST waitlist. It is unclear in the bill's language who is qualified to do these evaluations and there is no definition in the bill of a "qualified behavioral health professional." How will the state prevent something similar from happening with CARE Court? One potential solution could include adapting the Massachusetts model for IST evaluations which includes workshops for evaluators, individual mentoring, review of reports, written examination and an ongoing quality improvement process overseen by the

state mental health agency. Additionally, it is imperative that the CARE Court process include protections for underserved, underrepresented and under-resourced communities that have been historically targeted by law enforcement for crimes at a higher rate than other communities.

Given that there is an existing behavioral health staffing shortage, what will prevent CARE Court from draining staff from community-based programs into a costly and time-consuming court process where individuals are already receiving services? We hear from provider agencies that the critical barrier that prevents them from offering additional services is the lack of ability to hire and retain qualified workforce. One specific example is when San Francisco City and County declared a local state of emergency in December regarding the situation in the Tenderloin, allowing them to waive the government hiring process and fill nearly all of the hundreds of vacant and funded positions within the behavioral health branch of the Department of Public Health. However, doing this gutted the vital workforce from local CBOs. While we appreciate that the Administration has proposed a Care Economy Workforce request in the Fiscal Year 2022-23 State Budget, workforce development will take time and the immediate need is far greater than what is proposed to meet the needs of Californians with mental health and substance use conditions.

While considering workforce shortages, we are also uneasy about deadlines listed in the bill. Between 56 distinct county systems this program will be implemented in many different ways. This could prove to be problematic when mandating each client receive a hearing no later than 30 days. If hearings are delayed for more than 30 days the "defendant is released on their own recognizance" and, without a transition plan, returns to the community. Not only do we think it would be feckless to let someone simply lapse out of care due to a missed deadline but without an appropriate transition plan further homelessness and churn is inevitable.

While we understand that CARE Court is not intended to be a silver bullet solution to homelessness, likely a significant portion of the individuals in CARE Court will be experiencing homelessness or housing insecurity. How does CARE Court intend to operate when we are experiencing a general lack of housing services for individuals with behavioral health conditions? We have members that are currently doing a superb job of engaging predominantly individuals experiencing homelessness with both mental health and substance use conditions, but are having a difficult time linking individuals to housing and services particularly for individuals with co-occurring conditions because these options simply do not exist. Clients are able to take a shower, access harm reduction services, and get short-term services, but there remains a need for more housing options for individuals with behavioral health conditions.

It is also important to note that research from Dr. Margot Kushel of UC San Francisco indicates that half of all individuals experiencing homeless today are over the age of 50 with half of this population having their first experience of homelessness after they turned 50 years old. There is a significant percentage of this population who have geriatric conditions beyond their biological age including urinary incontinence, hearing impairment

and mobility impairment. As such, access to services, including housing needs to be designed to address these needs. Does the CARE Plan designed within the CARE Court model include adequate access to primary care and physical health care services?

Our members raised several questions about the mechanics of CARE Court and how it will actually be operationalized. The pathway of Referral, Clinical Evaluation, Care Plan, Support, and Success is highly aspirational and does not reflect all of the possible situations that could occur including refusal of treatment. As well as the successful examples outlined in the materials we have seen, is it possible to see a diagram or decision tree that reflects a person refusing or failing out of CARE Court, at each point in the pathway, in order to better understand their treatment options and what happens to them if they refuse or drop out of the process prior to the "end?"

Lastly, our members are also concerned about the role that different system representatives play in the CARE Court model. What will happen if a homeless outreach worker or a police officer refers an individual to be evaluated and placed into CARE Court, but the individual refuses? To what location are the notices served when the individual is unhoused? Will the person be arrested or detained by law enforcement? Further, how does the person actually get to the court? Are they transported? Where will the person be detained until they are evaluated? We believe that jails are not the appropriate place for individuals with behavioral health conditions and psychiatric hospitals are already at capacity. What protections will exist for situations where an inappropriate referral is made? How will individuals who lack medical decision-making capacity also be required to complete an advanced health care directive?

Our organizations combined represent the community-based providers on the ground serving individuals that could potentially be ordered into CARE Court. We have provided commentary and questions reflecting fundamental details that need to be resolved prior to CARE Court passing the Legislature, being signed by the Governor, and implemented.

We are committed to continuing discussions with our respective members, with the Legislature, and with the CalHHS team. If you have any questions, please do not hesitate to outreach to any of our organizations.

Sincerely,

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Honorable Members, Assembly Health Committee
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