AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 1

ON HEALTH AND HUMAN SERVICES

ASSEMBLYMEMBER DR. JOAQUIN ARAMBULA, CHAIR

MONDAY, MARCH 4, 2019

UPON ADJOURNMENT OF FLOOR SESSION - STATE CAPITOL, ROOM 447

ITEMS TO BE HEARD

NON-DISCUSSION ITEMS

LIST OF PANELISTS IN ORDER OF PRESENTATION

4440 DEPARTMENT OF STATE HOSPITALS

ISSUE 1: DEPARTMENT OF STATE HOSPITALS OVERVIEW AND BUDGET

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Ellen Bachman**, Deputy Director, Statewide Quality Improvement Program, Department of State Hospitals
- **George Maynard**, Deputy Director, Administrative Services Division, Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ISSUE 2: INCOMPETENT TO STAND TRIAL ISSUES AND PROPOSALS

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Christina Edens**, Deputy Director, Forensic Services Division, Department of State Hospitals
- **Christine Ciccotti**, Deputy Director, Legal Division, Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ISSUE 3: COURT EVALUATIONS AND REPORTS BUDGET CHANGE PROPOSAL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Christine Ciccotti**, Deputy Director, Legal Division, Department of State Hospitals
- **Jaci Thomson**, Principal Program Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ISSUE 4: DIRECT CARE NURSING BUDGET CHANGE PROPOSAL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Janna Lowder**, Chief, Fiscal and Program Research, Department of State Hospitals
- **Jaci Thomson**, Principal Program Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ISSUE 5: WORKFORCE DEVELOPMENT BUDGET CHANGE PROPOSAL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Dr. Katherine Warburton**, Deputy Director, Clinical Operations Division, Department of State Hospitals
- **Jaci Thomson**, Principal Program Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ISSUE 6: VOCATIONAL SERVICES AND STATE MINIMUM WAGE BUDGET CHANGE PROPOSAL AND TRAILER BILL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Christine Ciccotti**, Deputy Director, Legal Division, Department of State Hospitals
- **Marcelo Acob**, Chief Financial Officer, Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ISSUE 7: OFFICE OF PROTECTIVE SERVICES – HOSPITAL POLICE OFFICER ACADEMY

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

ITEMS TO BE HEARD

4440 DEPARTMENT OF STATE HOSPITALS

ISSUE 1: DEPARTMENT OF STATE HOSPITALS OVERVIEW AND BUDGET

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Ellen Bachman**, Deputy Director, Statewide Quality Improvement Program, Department of State Hospitals
- **George Maynard**, Deputy Director, Administrative Services Division, Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

BACKGROUND

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the State's system of mental hospitals.

State Hospitals. California has five state hospitals that treat people with mental illness. Approximately 90 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital by the criminal justice system. The state hospitals are as follows:

- ***Atascadero (ASH).*** ASH is located on the central coast. It is an all-male, maximum security, forensic facility (i.e., persons referred by the court related to criminal violations). Population estimate: 1,106.

- ***Coalinga (CSH).*** Located in the City of Coalinga, CSH is the newest state hospital, opened in 2005, and treats forensically committed and sexually violent predators. Population estimate: 1,403.

- ***Metropolitan (MSH).*** Located in Norwalk, MSH serves individuals placed for treatment pursuant to the Lanterman-Petris-Short Act (civil commitments), as well as court-ordered penal code commitments. Population estimate: 1,046.

- ***Napa (NSH).*** Located in the City of Napa, NSH is a low-to-moderate security state hospital. Population estimate: 1,278.

- ***Patton (PSH).*** PSH is located in San Bernardino and cares for judicially committed, mentally disordered individuals. Population estimate: 1,494.

Prison-Based Psychiatric Programs. For many years, under court order, DSH provided psychiatric care to inmates in three prison-based psychiatric facilities: 1) Vacaville Psychiatric Program; 2) Salinas Valley Psychiatric Program; and 3) Stockton Psychiatric Program. The 2017 Budget transferred the authority and resources for psychiatric care in these facilities from DSH back to the California Department of Corrections and Rehabilitation.

DEPARTMENT BUDGET

The Governor's proposed 2019-20 DSH budget includes total funds of $1.99 billion dollars, of which $1.8 billion is General Fund. The additional funding is primarily in the form of "reimbursements" from counties that pay the state hospitals for civil commitments. The proposed 2019-20 budget is approximately a 3 percent ($59 million) increase from current year funding, primarily reflecting the Governor's proposals on State Hospitals staffing and workforce, discussed in more detail throughout this agenda.

DEPARTMENT OF STATE HOSPITALS
(Dollars in Thousands)

Fund Source	2017-18 Actual	2018-19 Estimate	2019-20 Proposed	CY to BY $ Change	% Change
General Fund	**$1,527,716**	**$1,766,643**	**$1,825,789**	**$59,146**	**3.3%**
CA State Lottery Education Fund	37	23	23	$0	0%
Reimbursements	$158,816	$167,476	$167,323	-$153	-0.1%
Total Expenditures	**$1,686,569**	**$1,934,142**	**$1,993,135**	**$58,993**	**3.1%**
Positions	9,190.2	10,088.7	11,006.4	917.7	9.1%

STATE HOSPITALS CASELOAD

The State Hospitals provide treatment to approximately 6,372 patients, who fall into one of two categories: 1) civil commitments (referrals from counties); or 2) forensic commitments (committed by the courts). Civil commitments comprise approximately 10 percent of the total population while forensic commitments approximately 90 percent. DSH also operates a Conditional Release Program in which patients reside in community settings as well as jail-based treatment programs.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment by the courts:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.

- *Incompetent to Stand Trial (IST)* – Determination by court that defendant cannot participate in trial because defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to developmental disabilities.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.

- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.

- *Prisoner Regular/Urgent Inmate-Patients* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

2019-20 Governor's Budget Estimated Caseload	
Location	**Estimated Census on June 30, 2020**
Population by Commitment Type – Hospitals	
IST—PC 1370	1,613
NGI—PC 1026	1,399
MDO	1,427
SVP	953
LPS/PC 2974	703
PC 2684 (*Coleman*)	230
WIC 1756 (DJJ)	2
Subtotal	**6,327**
Contracted Programs	
Kern AES Center	60
Riverside JBCT	22
Sacramento JBCT	31
Sacramento JBCT - Female	11
San Bernardino JBCT	143
San Diego JBCT	28
Sonoma JBCT	11
Stanislaus JBCT	11
Monterey JBCT	15
San Joaquin JBCT	10
Solano JBCT	12
Mendocino Small County Model JBCT[1]	TBD
Mariposa Small County Model JBCT[1]	TBD
Butte JBCT	5
Southern CA County A JBCT	5
Central CA County B JBCT	5
Northern CA County C JBCT	6
Northern CA County D JBCT	48
Southern CA County E JBCT	10
Subtotal	**433**
CONREP Programs	
CONREP Non-SVP[2]	692
CONREP SVP	21
Subtotal	**713**
GRAND TOTAL	**7,473**

1. Please note that Mendocino and Mariposa JBCT do not have a set number of beds and instead focus on the number of patients served. As such, the annual population change total does not include these additional beds.
2. The CONREP Non-SVP caseload number includes STRP beds.

Key DSH Budget Adjustments

Patient Driven Operating Expenses and Equipment (-$2.2 million in FY 18-19 and $10.5 million GF in FY 19-20 and ongoing). DSH requests $10.5 million in FY 2019-20 and ongoing to support the operating cost per patient. This request is to fund the 547 state hospital beds activated since FY 2012-13, as well as the beds activated in FY 2018-19 that included a request for staffing in the 2018 Budget Act. This proposal also includes a current year savings of $2.2 million for the 140 DSH-Metropolitan beds that have been delayed and are now scheduled to activate in FY 2019-20.

Office of Protective Services – Hospital Police Officer Academy ($5.8 million and 3.0 positions GF in FY 19-20 and ongoing). DSH requests to convert 3.0 limited-term positions to permanent full-time positions, and $5.8 million ongoing to continue the specialized expanded Hospital Police Officer (HPO) Academy. *Please also see Issue 7 of this agenda*.

Enhanced Treatment Program Staffing (-$1.8 million and -12.7 positions in FY 19-20 one-time GF). The Enhanced Treatment Program (ETP) is a new enhanced level of care designed to treat patients who are at the highest risk of violence and who cannot be safely treated in a standard treatment environment. These units will provide improved treatment with a heightened secure setting to patients with a demonstrated and sustained risk of aggressive, violent behavior toward other patients and staff. Construction and activation of the ETP units was delayed due to the emergency fire situation and a contractor reviewing and revising plans in response to regulatory comments. Due to unavoidable delays, DSH anticipates a savings of $1.8 million in FY 2019-20 for resources for the fourth ETP unit.

DSH-Metropolitan Increased Secured Bed Capacity ($18.6 million and 119.3 positions in FY 19-20 and $20.1 million and 130.0 positions in FY 20-21 and ongoing GF). To provide additional capacity to address the ongoing system-wide forensic waitlist with a particular focus on the continuing IST waitlist, this expansion at DSH-Metropolitan is the final phase of the project. *Please also see Issue 2 of this agenda*.

Lanterman-Petris-Short Population Services Adjustment ($606,000 in FY 19-20 and ongoing). DSH admits Lanterman-Petris-Short (LPS) patients through civil commitment processes. LPS beds are funded through reimbursements from counties that use the DSH system. Due to the increasing LPS population, DSH's reimbursement authority is not sufficient for the services provided to counties. Based on LPS bed usage, DSH projects it will collect approximately $606,000 more in FY 2019-20 than its current reimbursement authority. DSH requests an additional $606,000 reimbursement authority for LPS patients in FY 2019-20.

Deferred Maintenance ($35 million in FY 19-20 one-time GF). DSH requests $35 million to address deferred maintenance projects that represent critical infrastructure deficiencies. *Please also see Issue 10 of this agenda*.

Conditional Release Program (CONREP) Estimate ($3.1 million in FY 19-20 and ongoing GF).

- ***CONREP General/Non-Sexually Violent Predator (SVP) Program - Housing Cost Increase ($1.0 million GF).*** DSH requests $1.0 million in FY 2019-20 and ongoing to support its contracted caseload of 666 CONREP clients. Without an augmentation of the current CONREP budget, DSH will not be able to maintain its current census and over time, will continue to reduce admissions and capacity to accommodate increasing housing costs for clients currently in the program.

- ***CONREP SVP Program Update ($2.1 million GF).*** DSH requests $2.1 million in FY 2019-20 and ongoing to support an additional two SVPs assumed to be released, for a total CONREP-SVP caseload of 23 by June 30, 2020.

Contracted Patient Services Estimate ($12.3 million in FY 19-20 and $13.4 million ongoing GF). *Please also see Issue 2 of this agenda*.

- ***Jail-Based Competency Treatment (JBCT) Existing Program Cost Increase ($1.1 million in FY 19-20 and $1.7 million on-going GF).*** Several existing JBCT programs have identified increased costs in providing restoration of competency services for DSH.

- ***JBCT New Programs ($11 million in FY 19-20 and $11.4 million ongoing GF).*** DSH continues to build out its continuum of care to support IST patients by working with a number of counties to develop new JBCT programs in their local jails and secure contracts to activate these programs in the budget year.

- ***Patients' Rights Advocate ($259,000 in FY 19-20 and ongoing GF).*** To comply with statute and regulations governing JBCT and the Admission, Evaluation, and Stabilization Center, DSH is requesting $259,000 in the budget year and ongoing to fund 6.5 contracted Patients' Rights Advocates to support the JBCT programs.

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH to provide an overview of the department, the state hospitals system, and the Governor's proposed 2019-20 DSH budget.

Please also present any and all program updates and proposals not otherwise contained in another Issue in this agenda.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 2: INCOMPETENT TO STAND TRIAL ISSUES AND PROPOSALS

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Christina Edens**, Deputy Director, Forensic Services Division, Department of State Hospitals
- **Christine Ciccotti**, Deputy Director, Legal Division, Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

BACKGROUND

When a judge deems a defendant to be incompetent to stand trial (IST), the defendant is referred to the state hospitals system to undergo treatment for the purpose of restoring competency. Competency is legally defined as being able to understand the court proceedings and being able to aid in one's own defense. Once an individual's competency has been restored, the county is required to take the individual back into the criminal justice system to stand trial, and counties are required to do this within ten days of competency being restored.

For a portion of this population, the state hospital system finds that restoring competency is not possible. For these individuals, the responsibility for their care returns to counties which are required to retrieve the patients from the state hospitals within ten days of the medical team deeming the individual's competency to be unlikely to be restored. AB 2625 (Achadjian, Chapter 742, Statutes of 2014) changed this deadline for counties from three years to ten days. Prior to this bill, many individuals in this category would linger in state hospitals for years.

Over the past several years, the state hospitals have seen a growing waiting list of forensic patients, with a ten percent annual increase in IST referrals from courts to DSH. DSH has undertaken several efforts to address the growing IST waitlist including: 1) increasing budgeted bed capacity by activating new units and converting other units; 2) establishing a statewide patient management unit; 3) promoting expansion of jail-based IST programs; 4) standardizing competency treatment programs; 5) seeking community placements; 6) improving referral tracking systems; 7) participating in an IST workgroup that includes county sheriffs, the Judicial Council, public defenders, district attorneys, patients' rights advocates, and the administration; and 8) most recently, establishing and funding a mental health diversion program through the 2018 budget. DSH acknowledges that, despite these efforts, IST referrals have continued to increase, outpacing the

increases in DSH capacity. When queried about the potential causes of the growing number of referrals from the courts, the administration describes a very complex puzzle of criminal, social, cultural, and health variables that together are leading to increasing criminal and violent behavior by individuals with mental illness, consistent with national trends.

Since the 2007-08 fiscal year, the backlog of IST referrals awaiting treatment in state hospitals has grown from between 200 and 300 to 840 in December 2017; currently there are 753 on the IST waiting list. In 1972, the United States Supreme Court found in Jackson v. Indiana that a person committed on account of his or her incapacity to proceed to trial cannot be held for longer than the reasonable period of time necessary to determine whether the individual is likely to attain capacity. California law requires state hospital or outpatient facility staff to report to the court within 90 days on the status of the defendant's restoration to competency. Based on this 90 day requirement, several court rulings have recommended that a "reasonable" time to transfer IST patients for treatment is no more than 30 to 35 days. Many IST patients remain in county custody for longer, which may violate these patients' due process rights. In addition, the housing of IST patients in county jails while they await availability of treatment beds in state hospitals places stress on county jail systems.

2018 Mental Health Diversion Proposal

The 2018 budget (AB 1810, health budget trailer bill) provides legal authority for courts to divert qualified individuals to mental health treatment, in place of legal proceedings. The 2018 budget also includes over $100 million to help interested counties to establish the mental health treatment services needed to be able to divert certain, qualified mentally ill defendants. Subcommittee staff has asked DSH to provide an update on the implementation of these funds for counties. Additionally, the Judicial Council provided the following data on a couple of counties where mental health diversion is being implemented (outside of last year's DSH funding):

Mental Health Diversion Activity Since July 1, 2018					
Contra Costa County					
	Requested	Granted	Pending	Denied	Withdrawn
Petitions	62	5	57	0	0
Defendants	41	2	39	0	0
San Bernardino County					
Cases	43	8	18	16	1
Defendants	22	6	9	6	1

PROPOSALS

Consistent with the past several years, the 2019-20 DSH budget includes several requests and proposals intended to help address the IST waiting list, or to manage the increased workload that has resulted from the growing IST waiting list. These proposals include the following:

***Increase of Court Hearings and Public Records Act Budget Change Proposal*.** DSH requests 5.5 two-year limited term positions and $767,000 to address the 153 percent increase in court hearings at which DSH attorneys are required to appear throughout the State and the 220 percent increase in Public Records Act requests to which DSH must respond.

***Contract Services and Patient Management Support Budget Change Proposal*.** DSH requests 8.0 permanent full-time positions and $1.1 million in FY 2019-20 and ongoing to manage the developing and ongoing support of the expansion of competency restoration programs and increasing IST caseload, and to provide essential data and analysis for effective and efficient management of DSH patient management programs.

***Jail-Based Competency Treatment (JBCT) Existing Program Cost Increase*.** Several existing JBCT programs have identified increased costs in providing restoration of competency services for DSH. To continue operating these programs, DSH proposes to support the counties' requests for increased funding for JBCT programs in Sacramento, San Diego, and Sonoma counties. DSH requests $1.1 million in FY 2019-20 and $1.7 million ongoing to support these JBCT program costs.

***JBCT New Programs*.** DSH continues to build out its continuum of care to support IST patients by working with a number of counties to develop new JBCT programs in their local jails and secure contracts to activate these programs in the budget year. Negotiations and contract development are at various stages. DSH requests funding for contracting with five counties, serving up to 74 JBCT beds, for which DSH is requesting $11 million in FY 2019-20 and $11.4 million ongoing.

***DSH-Metropolitan Increased Secured Bed Capacity*.** To provide additional capacity to address the ongoing system-wide forensic waitlist with a particular focus on the continuing IST waitlist, this expansion at DSH-Metropolitan is the final phase of the project. DSH has received approval via past Budget Acts for positions and funding for Units 404, 406, and 408, which are scheduled to activate in Spring 2019, after construction completion. Consistent with the previous units, DSH is requesting 130.0 positions and $20.1 million ongoing for Units 412 and 414 (119.3 partial year positions and $18.6 million in 2019-20). The net impact of the Continuing Treatment West (CTW) Building and 100s Building renovations will be the activation of 236 additional beds at DSH-Metropolitan.

***Patients' Rights Advocate*.** To comply with statute and regulations governing JBCT and the Admission, Evaluation, and Stabilization Center, DSH is requesting $259,000 in the budget year and ongoing to fund 6.5 contracted Patients' Rights Advocates to support the JBCT programs.

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH to provide an overview of the IST waiting list, present the proposals related to the IST waiting list (contained in this agenda item), and provide an update on the implementation of the diversion program adopted through the 2018 budget.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 3: COURT EVALUATIONS AND REPORTS BUDGET CHANGE PROPOSAL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Christine Ciccotti**, Deputy Director, Legal Division, Department of State Hospitals
- **Jaci Thomson**, Principal Program Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

PROPOSAL

DSH requests 43.0 permanent full-time positions and $8.1 million in FY 2019-20, an additional 34.5 permanent full-time positions and $5.9 million in FY 2020-21, an additional 17.1 permanent full-time positions and $4.2 million in FY 2021-22 and an ongoing augmentation of $18.1 million in FY 2022-23 to implement a staffing standard to support the forensic services workload associated with court directed patient treatment.

The specific components of the Governor's proposal include:

- ***Additional Staff for Court Evaluations, Reports, and Testimony Workload ($4.1 Million).*** The Administration proposes additional clinical staff that would be dedicated to the workload associated with court evaluations, reports, and testimony, primarily to eliminate the conflict of interest that exists when treating clinicians perform these tasks related to their patients. Based on a review of the amount of workload generated by each patient type, the Department proposes staffing standards that would establish the number of clinicians it needs. Based on these standards, the Administration is proposing a total of 53.1 new positions (largely senior psychologist specialist positions) that would be phased in over three years, with 18.5 positions proposed for 2019-20. Under the Administration's proposal, staffing levels would be regularly adjusted based on the proposed staffing standards to account for changes in the makeup of the population. DSH plans to refine the staffing standards in future years as it collects more data about the amount of resources this workload requires.

- ***Additional Forensic Case Management and Data Tracking (FCMDT) Staff ($986,000).*** In order to standardize staffing for FCMDT workload, the Administration proposes a department-wide standard of 250 patients per staff member and to use associate government program analysts and staff service analysts (rather than the varying classifications currently being used) for the workload. In addition, the Administration is proposing to hire five additional associate government program analysts to expand its data collection efforts to

further refine the staffing standards for the evaluations, reports, and testimony workload on an ongoing basis. The Governor's budget proposes 7.3 positions in 2019-20. Under the proposal, each hospital would have an average of roughly ten positions dedicated to the work. These staffing levels would be adjusted regularly to account for changes in the size of the patient population.

- ***Increased Use of Neuropsychological Evaluations ($2 Million).*** The Governor's budget proposes additional resources to use neuropsychological evaluations on a larger scale to identify more patients with cognitive deficits. According to the department, this would enable clinicians to identify patients who are at risk of violence and to better tailor existing treatments to meet the needs of patients with cognitive deficits. Based on research conducted at DSH-Patton, the Department estimates that roughly 25 percent of patients admitted would need an in-depth neuropsychological evaluation after receiving an initial screening from their unit psychologist. Accordingly, the Governor's budget proposes 10.2 positions (largely senior psychologist specialists). Under the proposal, these staffing levels would be adjusted regularly to account for changes in the number of patients admitted.

- ***Cognitive Remediation Therapy Pilot ($954,000).*** The Administration proposes to begin treating patients with cognitive remediation therapy on a pilot basis at DSH-Metropolitan and DSH-Napa. According to the Department, patients that receive this therapy would be less likely to engage in violence and may have better outcomes. To implement the pilot, the Governor's budget proposes seven positions (including senior psychologist specialists and psychiatric technicians) in 2019-20.

BACKGROUND

The staffing standard was developed through research conducted within DSH's Staffing Study and in collaboration with the Department of Finance Research and Analysis Unit through a Mission-Based Review. The proposed standard establishes population driven methods for calculating staffing needs in the following forensic functions: Evaluations, Court Reports and Testimony, Forensic Case Management and Data Tracking, and Neuropsychological Assessments and Treatment. DSH is continuing to enhance data collection efforts and will provide annual updates on data findings impacting the presented standards within the annual DSH Caseload Estimate.

DSH Clinicians Required to Provide Evaluations, Reports, and Testimony. Given that around 90 percent of the patient population is committed to DSH from the criminal justice system, the department's clinicians are frequently required to provide courts with evaluations, reports, and testimony regarding patients, including IST, MDO, Not Guilty by

Reason of Insanity, and Sexually Violent Predator patients. The department estimates that it is required to complete roughly 11,000 mandated court reports each year.

After completing evaluations and/or reports, clinicians are often required to attend court hearings and provide testimony regarding their patient reports and evaluations. When this happens, clinicians are frequently required to travel to the court that committed the patient to participate in hearings.

Currently, each state hospital has its own approach to handling the above workload. For example, DSH-Atascadero and DSH-Coalinga have specific clinical staff dedicated to completing this workload. In contrast, DSH-Metropolitan and DSH-Patton do not have such dedicated staff. At these particular hospitals, the clinician who treats the patient also completes the required evaluations and reports, and provides court testimony. DSH-Napa uses a hybrid approach. Specifically, the hospital generally requires the treating clinician complete this workload but maintains a team dedicated to this workload for IST patients.

The Department reports that there are several problems associated with having the clinician who treats the patient also complete evaluations and reports and provide testimony regarding that patient. Specifically, DSH is concerned that this practice:

- ***Creates a Conflict of Interest.*** The Department indicates that having the treating clinicians carry out this workload for their patients can represent a conflict of interest. For example, it might require the clinician to indicate to a court that he or she has been unable to effectively treat a patient. In addition, the Department reports that there have been incidents in which patients have attacked their clinicians due to the testimony provided about them. According to DSH, such factors undermine the ability of clinicians to complete this workload objectively.

- ***Relies on Clinicians Who Lack Necessary Expertise.*** DSH indicates that, to be effective in completing the required court evaluations and reports, clinicians must be familiar with the judicial system as well as the legal requirements related to the required documents. However, DSH reports that many clinicians currently lack the legal training to carry out these tasks effectively. The Department also indicates that courts have complained about the quality of the work carried out by some clinicians.

- ***Reduces Quality of Care.*** This workload takes away time clinicians could otherwise spend treating their patients. As such, the department is concerned that the required workload could reduce the quality of care that patients receive.

Forensic Case Management and Data Tracking (FCMDT) Staff. While clinicians complete the reports, evaluations, and provide testimony, the Department employs FCMDT administrative staff to assist them with this workload. These FCMDT staff are responsible for the overall coordination and tracking of the required reports and the coordination and completion of all paperwork and responses to court questions. FCMDT staff are also responsible for data tracking and analytical efforts related to various aspects of state hospital operations, such as admissions and discharge data, as well as bed capacity. The Department does not currently have a standardized approach to staffing these positions at each state hospital, but it reports that each FCMDT staff member typically has a caseload of 200 to 300 patients, though at some hospitals the caseload can be higher. On average, each hospital currently has roughly seven positions dedicated to this work.

Neuropsychological Evaluations and Treatment. Neuropsychological evaluations are used to determine patients' current abilities to pay attention, remember information, plan and organize, and use language. This allows clinicians to determine whether patients have cognitive deficits and could benefit from cognitive rehabilitation therapy, which is designed to improve patients' cognitive function.

The Department reports that it is important to identify and treat cognitive deficits for two primary reasons. First, identifying and treating patients with cognitive deficits can reduce violence. For example, research conducted at DSH in recent years has found that cognitive deficits were predictive of violence. Moreover, a 2011 study at DSH-Patton showed that providing cognitive rehabilitation therapy to patients with cognitive deficits reduced their violence by 38 percent. Second, identifying and treating patients with cognitive deficits could improve treatment outcomes. For example, in a study also carried out at DSH-Patton, the presence of cognitive deficits was associated with longer lengths of stay. According to the Department, this suggests that treating such deficits could result in shorter lengths of stay. Moreover, the Department reports that providing information about patients' clinical deficits to clinicians can help them better structure the treatment they provide, even if the patient does not receive cognitive rehabilitation therapy. Despite these benefits, the Department reports that three of the five state hospitals do not offer cognitive rehabilitation therapy. While DSH-Patton and DSH-Atascadero offer such therapy, the Department reports that these hospitals are currently only able to provide such treatment to less than 1 percent of the patients needing it.

LAO Concerns and Recommendations

Reject Staffing for Evaluations, Reports, and Testimony and Direct DSH to Develop Plan for a Peer-Review Pilot. The LAO recommends that the Legislature reject the proposed funding for dedicated staff for court evaluations, reports, and testimony workload, including the related staffing standards proposed by the Administration.

Instead, the LAO believes that it would be more effective for the Department to implement a peer-review approach on a pilot basis beginning in the budget year in which treating clinicians complete this workload for each other's patients. As such, the LAO recommends that the Legislature direct the Department to provide a plan for implementing such a pilot by April 1, 2019, including information on what resources, if any, it would need and how it would go about selecting participating clinicians.

Reject Additional FCMDT Staff. The LAO states that, given that the Department did not demonstrate that its existing FCMDT staff are unable to effectively complete their workload, they recommend the Legislature reject the proposed augmentation for these staff. The LAO does not have concerns with the Department standardizing the classifications used to complete this workload or establishing staffing standards for it, so long as it can be done within existing resources. Finally, because the primary justification for the five associate governmental program analysts is collecting data to refine the standards for staffing evaluation, reports, and testimony workload, which the LAO does not recommend approving, they also recommend rejecting those proposed positions.

Approve Funding for Neuropsychological Evaluations. In light of the potential benefits, the LAO recommends approving the funding that would allow the Department to expand testing of patients with neuropsychological evaluations. The LAO agrees with DSH that this could help the department better prevent patient violence and improve treatment for patients with cognitive deficits.

Approve Funding for Cognitive Remediation Pilot on Limited-Term Basis, Require Evaluation. The LAO recommends that the Legislature approve three-year limited-term funding for the proposed cognitive remediation pilot at two state hospitals, rather than ongoing funding as proposed by the Governor. The LAO also recommends that the Legislature direct the Department to report on the outcome of the pilot by January 10, 2022, as this would allow the Legislature to determine whether to approve ongoing and/or expanded funding for cognitive remediation therapy as part of the 2022-23 budget.

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH present this request, requests the LAO explain their concerns and recommendations, and requests DSH to then provide reactions to the LAOs concerns and recommendations.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 4: DIRECT CARE NURSING BUDGET CHANGE PROPOSAL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Janna Lowder**, Chief, Fiscal and Program Research, Department of State Hospitals
- **Jaci Thomson**, Principal Program Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

PROPOSAL

DSH requests 379.5 positions and $45 million, phased in across a three-year period, to support the workload of providing 24-hour care nursing services. DSH also requests position authority only for 254.0 temporary help positions and 50.0 administrative positions to implement a staffing standard consistent with the findings of the Clinical Staffing Study of 24-hour care nursing services.

The Administration proposes several changes related to the way nurses are staffed at the state hospitals. Specifically, the Administration proposes to:

1. Standardize nursing staffing ratios across the unit categories established by the Clinical Staffing Study;

2. Permanently create temporary help positions and a budget for overtime;

3. Shift certain duties currently carried out by nursing staff to administrative staff;

4. Create psychiatric technician positions dedicated to staffing medication rooms; and

5. Create registered nurse supervisor positions that would provide oversight during the evening and overnight shift.

In total, the Governor's budget includes $15 million from the General Fund and 421.3 positions in 2019-20 to implement the above changes. (Under the proposal, the level would grow each year until reaching $46 million and 683.5 positions by 2021-22 and annually thereafter.)

The staffing standard was developed through research conducted within DSH's Clinical Staffing Study and in collaboration with the Department of Finance Research and Analysis Unit. This proposal examined nurse-to-patient ratios for providing nursing care and the components available to achieve these ratios including internal registries, overtime, and position movements among facilities. The proposal additionally presents

staffing methodologies for the administration of medication and the afterhours nursing supervisory structure. All methodologies can be re-assessed annually with updates provided within the annual DSH Caseload Estimate.

BACKGROUND

DSH Clinical Staffing Study. In 2013, DSH began evaluating staffing practices at its five hospitals in a review known as the Clinical Staffing Study. The Department initiated the study in an effort to assess whether past practices and staffing methodologies—which often differed between each hospital—are in need of revision, particularly in light of a patient population that has grown in terms of size, age, and the number who have been referred by the criminal justice system. The study is in the process of reviewing the hospitals' nursing services, forensic departments, protective services, and the way each hospital plans and delivers treatment.

As part of its review of nursing staffing, the study collected data on the actual amount of staff that was being used on each unit throughout the state hospitals. The study also classified all of the different units into ten categories and two-dozen subcategories based on the type of services delivered and/or type of patients treated on the unit. This allowed the study to compare the staffing levels in place across the state hospitals at units that were delivering similar types of treatment to similar types of patients.

DSH Subject to Minimum Staffing Standards for Nurses. Patients admitted to DSH are housed in different units throughout the hospitals based on various factors including their patient type (such as whether they are an MDO or a Sexually Violent Predator) and the level of care they require—also known as their acuity. The Department staffs these units with employees known as "level of care staff" who provide treatment services to the patients. Level of care staff include various types of nurses (such as registered nurses and psychiatric technicians) and other clinical staff including psychiatrists, psychologists, and social workers.

DSH is required to meet certain minimum staffing standards on its units. For example, DSH must comply with Title 22 of the California Code of Regulations, which sets the standards for operating many of the department's beds. In particular, it requires a certain minimum number of nursing staff based on patient acuity and associated treatment needs for each different eight-hour nursing shift (meaning morning, afternoon, or overnight). Title 22 nursing staff have many responsibilities, including patient observation, medication distribution, and patient escorting.

Actual Nurse Staffing Generally Exceeds Minimums and Varies by Hospital. According to DSH, the minimum staffing standards do not result in enough nurses to effectively deliver adequate care. For example, the Department indicates that these ratios do not account for changes in the needs of the patient population since they were first established in the early 1980s. According to the Department, the patient population has become more difficult and violent since that time, which has increased the need for more intensive care. For example, patients experiencing a mental health crisis or feelings of suicidality require additional staff. To accommodate this workload, the Department typically staffs more nurses on its units than required by the minimum standards. DSH reports that these additional staff have resulted in it requiring more positions than it is currently approved for. Accordingly, the Department has relied on significant amounts of temporary help positions that have not been officially established in the budget. In addition, the Department has made significant use of overtime—including mandatory overtime—to maintain its current level of staffing. For example, a 2016 Little Hoover Commission study found that DSH nurses had worked about 194,000 hours of mandatory overtime in 2014-15.

Currently, DSH has no statewide standards established for the number of additional nurses that are necessary on its units to provide adequate care. This has resulted in each hospital using its own methods for establishing the number of nurses it views as adequate. For example, DSH-Atascadero uses the Patient Classification Rating System, which evaluates patients' stability in various behavioral areas to establish patients' clinical needs and corresponding staffing levels. In contrast, DSH-Napa utilizes fixed staffing levels for each unit that have been determined by management, such as the clinical administrator and nursing administrator.

Staffing Not Regularly Readjusted in Budget Process. While DSH requests additional nursing staff when activating new units, it does not typically adjust its staffing when the makeup of its units changes over time. Accordingly, if the population changes in a way that requires more nurses—such as more acute patients being admitted—the Department must redirect the resources for the additional staff it needs from elsewhere in its budget and rely more on temporary help and overtime. Conversely, if its patient population shifts in a way that requires less staffing, the resulting savings are not normally recognized in the budget.

Medication Room Staffing. Nurses who are assigned to medication pass duties are required to prepare, administer, document, and manage the medication administration process within each unit. Medication pass occurs four times a day, typically in the morning, noon, afternoon, and evening and can take up to two hours per pass. Medications are stored, managed, and administered from a medication room on each unit or brought patient to patient using a medication cart. According to the Department, each hospital staffs its medication rooms with a dedicated psychiatric technician on both the

morning and afternoon shifts. The Department reports that while these psychiatric technicians are counted toward the nurse to patient staffing ratios, they are generally preoccupied with their medication-related duties and are unavailable to deliver other types of care or to respond to incidence of violence on the units.

On-Call Supervisor Used During the Evening and Overnight Shift. The first-line management and oversight of nurses on units in DSH is performed by either a unit supervisor or a supervising registered nurse, depending on various factors, such as the medical acuity of the unit. These supervisors work five days per week during the day shift. To ensure that a supervisory position is available during times when these individuals are not present, DSH uses a "program officer of the day" to fill the role. This role is assigned to unit supervisors and other managerial staff on a rotating basis. Individuals who are assigned to the program officer of the day role are not present at the hospital. Instead, they are on call and can be contacted by staff to address issues that arise on the unit. According to the Department, this can occur several times throughout the night.

LAO Recommendations:

Approve Nursing Adjustments, but Require Evaluation. The LAO recommends that the Legislature approve the proposed (1) standardization of nursing staffing ratios, (2) 254 temporary help positions and dedicated budget for overtime, and (3) 50 administrative staff to reduce the administrative workload currently carried out by nurses. The LAO states that these proposals would collectively help ensure that the Department's budget better reflects changes in the makeup of its patient population, increase transparency, and make better use of nursing staff.

However, the LAO also states that the proposed staffing standards are reflective of current practice that has not been subject to independent evaluation. Accordingly, the LAO recommends that the Legislature require DSH to contract with an independent consultant for a comprehensive clinical staffing analysis. Such an analysis should include: (1) an evaluation of the Department's clinical staffing—including both nursing and other clinical staffing; (2) an assessment of the appropriate number and type of clinical staff necessary to provide treatment for patients assigned to each category of unit established in the Clinical Staffing Study; (3) an assessment of whether staff are assigned appropriate responsibilities, or whether more tasks could be assigned to nonclinical staff or less costly clinical staff; and (4) recommendations to ensure the Department is utilizing its staff as efficiently and effectively as possible. The LAO estimates that such an analysis would likely cost in the low hundreds of thousands of dollars.

Pilot Medication Room Staffing. The LAO believes that it is possible that the proposed additional nursing staff for medication rooms would free up other nurses on units to help better deliver care and reduce violence. However, the LAO states that, given the lack of data demonstrating that this is likely to occur and the magnitude of the proposed

resources, they recommend that the Legislature approve only a portion of the positions on a pilot basis. Specifically, they recommend that the Legislature approve $7.1 million (General Fund) and 63 psychiatric technician positions in 2019-20 on a three-year limited-term basis. The LAO states that this would provide the Department with sufficient staff to place dedicated nurses in 24 medication rooms, and argues that this should provide the Department with enough staff to test the new staffing package on a wide range of unit types. The LAO also recommends that the Legislature require the Department to report by January 10, 2022 on the effect that the additional staffing has on patient length of stay and violence rates, and notes that this analysis could be carried out by the independent consultant conducting the comprehensive clinical staffing analysis that they also recommend.

Approve Evening/Overnight Supervisors. The LAO recommends that the Legislature approve the proposed registered nurse supervisor positions as these positions would ensure that supervisory staff are physically present to address issues that arise on the units. It would also bring DSH staffing more in line with the staffing used by CDCR on similar mental health units.

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH present this request, requests the LAO explain their concerns and recommendations, and requests DSH to then provide reactions to the LAOs concerns and recommendations.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 5: WORKFORCE DEVELOPMENT BUDGET CHANGE PROPOSAL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Dr. Katherine Warburton**, Deputy Director, Clinical Operations Division, Department of State Hospitals
- **Jaci Thomson**, Principal Program Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

PROPOSAL

DSH requests 8.0 permanent full-time positions and $1,755,000 General Fund in fiscal year (FY) 2019-20, $2,154,000 in FY 2020-21, $2,404,000 in FY 2021-22 and 2022-23 and $2,604,000 in FY 2023-24 on-going to support the development and implementation of a Psychiatric Residency Program and expand resources for Nursing Recruitment to meet the mission of providing mental health services to patients and reduce vacancy rates for mental health providers.

BACKGROUND

The provision of mental health care requires attracting and retaining a sufficient workforce of trained medical professionals, psychologists, social workers, rehabilitative therapists and nursing staff. This BCP focuses on psychiatrists and nursing level of care staff due to the high vacancy rates in these classifications. In California, a medical doctor specializing in the diagnosis, treatment, and prevention of mental health illness must complete a four-year residency program in psychiatry in addition to specialized fellowship training to become a licensed psychiatrist. While DSH employs a large number of psychiatrists, many positions remain vacant. DSH and other state employers of psychiatrists, such as CDCR are experiencing difficulties in filling these positions largely due to the nationwide shortage of psychiatrists. In addition, successful recruitment is also challenged by the high-risk work environment. While nursing level of care classifications vary at DSH, this request will focus primarily on recruitment for registered nurses (RNs) and psychiatric technicians (PTs). These two nursing classifications reflect most of the authorized nursing positions at DSH. Below are various factors that affect DSH's ability to recruit and retain psychiatrists and level of care nursing staff.

Psychiatry Recruitment and Retention Challenges

Staffing Requirements
DSH operates a 24 hour a day, 7 days per week hospital system that requires minimum staffing levels to meet legally prescribed licensing and certification requirements and safety standards. This requires shifts to be covered, even if positions are vacant. Nine out of ten DSH patients are forensic commitments - sent to DSH through the criminal court system because they have committed or have been accused of committing a crime linked to their mental illness. DSH cannot admit or discharge forensic patients without a court's consent order nor refuse to treat patients. As such, DSH must be staffed appropriately, at all levels and at all times.

An association of 15 state mental health hospital systems in the western region of the US, known as the Western Psychiatric State Hospital Association (WPSHA), found that the average ratio of psychiatrists to patients was 1:25 amongst its member hospitals. DSH's official budgeted psychiatry ratio is 1:35, well above the average of other state hospitals.

Vacancies
DSH has 259.3 authorized psychiatrist positions and a current statewide psychiatrist vacancy rate of 40.6 percent. As the primary care physician, unit activations are delayed without an adequate number of psychiatrists. DSH patients are extremely psychiatrically ill, requiring complex psychopharmacological interventions, which psychiatrists are uniquely qualified to prescribe. Absent an adequate number of psychiatrists, DSH may be unable to provide care to the growing forensic state hospital population, resulting in increased patient length of stay, further exacerbating the admission waitlists and litigation liabilities.

High Risk Environment
DSH's work environment is high-risk due to the high acuity of patients, rate of assaults, and mentally and physically demanding requirements. There were 3,639 patient-on-patient aggressive incidents and 2,855 patient-on-staff aggressive incidents recorded in 2016. Unlike the prison custodial environment, state hospitals cannot lock patients in their rooms and have very few options for the physical control of assaultive patients. The California Department of Public Health licensing requirements mandate that DSH patients are free to move about their unit and to off-unit treatment locations. As such, the potential to be assaulted is a daily threat for clinicians.

To further exacerbate DSH's challenges with psychiatrist recruitment and retention, DSH has higher caseloads than other state hospital systems. DSH as a system, is operating at nearly maximum functional capacity, which is not consistent with industry best practices. According to existing research, occupancy levels above 80 percent leads to

stressful work environments and further studies have shown that operating above 85 percent occupancy will have detrimental impacts to hospital performance such as staff dissatisfaction, burn-out, medication errors, aggressive behavior by patients among others. For large hospitals (above 1,000 beds), optimum occupancy is considered 83 percent.

National Shortage and Problem with Residency Slots

The National Institute of Mental Health attributes the national psychiatry shortage to several factors including an aging workforce and limited residency slots. Psychiatrists are aging out of the workforce - 70 percent of all active psychiatrists are age 50 or older and 39 percent of psychiatrists are 61 or older. This compares to only 55 percent of all physicians being age 50 or older. Thousands of psychiatrists could retire at any time.

Merritt Hawkins, a national medical recruitment firm, notes that psychiatrist searches are the third most requested specialty. In their 2015 Review of Physician and Advanced Practitioner Recruiting Incentives, Merritt Hawkins states, "the shortage of psychiatrists is an escalating crisis of more severity than shortages faced in virtually any other specialty. With many psychiatrists aging out of the profession, and with a preference among psychiatrists for outpatient practice settings, it is becoming increasingly difficult to recruit to inpatient settings." Graduates' preference for community outpatient services is in stark contrast to DSH's work environment, which is inpatient and serves a predominantly forensic population.

Existing Psychiatry Residency Programs

Per the National Resident Matching Programs Results and Data Report from April 2018, there are a total of 4,523 accredited Year 1 (PGY-1) residency programs in the United States (US). In all fields of Psychiatry, there are a total of 256 accredited PGY-1 residency programs with 1,556 resident slots. Of those, 22 programs are in California with 152 slots in California, in the field of Psychiatry."

Meanwhile, the current residency pipeline is insufficient to replace potential retirees from the field. The table on the next page highlights the total number of psychiatry residents in 2013-14. Program length is typically four years with approximately 1,000 residents graduating each year. It is notable that there are only 66 forensic psychiatry resident slots in the US with only about 16 finishing a residency program each year. DSH could absorb every forensic psychiatry resident in the US and still face significant staffing shortages.

Nursing Level of Care Recruitment and Retention Challenges

Many of the factors impacting psychiatry recruitment and retention similarly apply to nursing care positions, specifically as it relates to the high-risk environment and the remote geographic locations. The following information further outlines specific detail of nursing recruitment and retention barriers.

Staffing Requirements

DSH hospitals are licensed and regulated under CCR Title 22: Social Security, Division 5: Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies. DSH hospitals contain beds licensed under Chapter 2 - Acute Psychiatric Hospital, Chapter 3 - Skilled Nursing Facilities and Chapter 4 - Intermediate Care Facilities. DSH must adhere to staffing minimums required by Title 22. Nursing staff shall be employed in the number and with the qualifications determined to provide the necessary services for those patients admitted for care. At a minimum, each nursing unit should have a registered nurse, licensed vocational nurse or psychiatric technician on duty at all times; however, licensed vocational nurses and psychiatric technicians may be utilized as needed to assist registered nurses in ratios appropriate to patient needs. In accordance with licensing requirements, DSH's budgeted staffing ratio for nurses are as follows in the majority of treatment units:

Table 2: DSH Nursing to Patient Ratios by Shift and Level-of-Care Setting

Level-of-Care Setting	AM	PM	NOC
Acute	1:6	1:6	1:12
Intermediate Care Facility (ICF)	1:8	1:8	1:16

While these are the budgeted nursing ratios in most of the DSH units, for safety (patient and staff) reasons, the actual nurse to patient ratio is much richer (see the 2019-20 Nursing Staffing Study BCP). DSH achieves these higher staffing ratios on the units largely through the use of overtime. Vacancies in the nursing classifications increases the amount of overtime necessary in order to cover all the posts in a unit for all shifts. In addition, the 2019-20 budget includes proposals for an additional 335 PTs and 44.5 Supervising Registered Nurses (SRN), the latter of which is expected to be largely filled through the promotion of current RNs.

Vacancies

DSH has 1,609.5 authorized positions for RN's and 3,120 authorized positions for PT's. Over the past year, the statewide vacancy rate for RNs has ranged from 13 to 18 percent, while the statewide vacancy rate for PTs has ranged from 10 percent to 21 percent. The rates at DSH-Atascadero and DSH-Coalinga are generally higher due to their geographic location.

To ensure that DSH facilities maintain a sufficient nurse to patient ratio, DSH's short term solution is to proactively use a combination of overtime, internal registries, temp help and external registries to fill these posts when vacant. Unfortunately, despite these efforts to meet mandated ratios, mandatory overtime is commonly required at DSH hospitals. In the first quarter of the current Fiscal Year (July- September 2018), RNs and PTs at the five hospitals had to work a total of 459,577.47 hours of overtime. The Little Hoover Commission issued a report dated April 1, 2016 regarding the excessive amount of overtime utilized at DSH.

Staffing shortages and mandatory overtime negatively affect staff as current RNs and PTs are subject to burn out and will leave for less stressful opportunities, resulting in DSH having an even higher vacancy rate. An important part of reducing high vacancy rates includes the development of a recruitment plan that is able to keep pace with attrition and growth.

LAO Concerns and Recommendations:

Permanent Funding Proposed for Promising, but Unproven Residency Program. The LAO believes that, given the high vacancies among psychiatrists and the need for additional forensic psychiatric residency programs, the Administration's proposal to create a forensic psychiatric residency program involving DSH-Napa merits legislative consideration. However, this approach is relatively expensive given that it would cost $1.6 million to produce four potential psychiatrists per year once it is fully operational. In addition, it is unclear how effective the program would actually be at filling psychiatrist positions at DSH as residents in the program could accept positions outside of DSH. Despite these uncertainties about the cost-effectiveness of the proposal, the Administration is proposing to fund the program on an ongoing basis. The LAO notes that this is inconsistent with a separate proposal the administration has to establish a nurse practitioner residency program within CDCR. In that case, the Administration is proposing limited-term funding to allow the residency program to be evaluated before funding it on an ongoing basis.

Expansion of Nursing Training Partnerships Appears Reasonable . . . The LAO believes that the Administration's proposal to expand existing nursing training partnerships appears reasonable. This is because the current programs have a proven ability to help recruit additional nurses. Moreover, according to the Department, demand for the programs currently exceeds capacity at each of the participating colleges. For example, the Department reports that there are typically 150 applicants for the 30 slots in Cuesta Community College's program for psychiatric technicians.

. . . But It Is Unclear Why Community College Instructional Funding Cannot Offset Costs. Given that the nursing instructors DSH would provide to the community colleges would allow them to enroll additional students, the community colleges should be receiving instructional funding associated with these students, according to the LAO. However, the Administration's current proposal would not offset the cost of the nursing instructors to account for this. While the Department informs us that it will submit a spring Finance Letter to offset $370,000 of the $507,000 cost for the three nurse instructors proposed for DSH-Atascadero, it is not currently planning to do so for the nurse instructors proposed for DSH-Coalinga or DSH-Napa.

Approve Forensic Psychiatric Residency Program on Limited-Term Basis, Require Evaluation. The LAO recommends that the Legislature approve the resources requested to establish a forensic psychiatric residency program. However, given that the program is relatively costly and it is unclear whether it will effectively reduce psychiatric vacancies, the LAO recommends that the funding only be approved on a six-year limited-term basis. This would allow one cohort of students to complete the program and determine whether they ultimately accept positions at DSH. The LAO also recommends that the Legislature pass budget trailer legislation requiring the Department to report by January 10, 2025 on the extent to which the program has reduced psychiatric vacancies. This would allow the Legislature to review the outcomes of the program when considering whether to approve funding on an ongoing basis for the program as part of its deliberations on the 2025-26 budget.

Direct Department to Report on Funding for Expansion of Nursing Training Partnerships. While the LAO has no concerns with the proposal to expand the existing nursing training partnerships at three state hospitals, they recommend that the Legislature withhold action on the proposal and direct the Department to report at spring budget hearings on why it cannot offset the costs of all five proposed nurse instructors with community college instructional funding.

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH present this request, requests the LAO explain their concerns and recommendations, and requests DSH to then provide reactions to the LAOs concerns and recommendations.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 6: VOCATIONAL SERVICES AND STATE MINIMUM WAGE BUDGET CHANGE PROPOSAL AND TRAILER BILL

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Christine Ciccotti**, Deputy Director, Legal Division, Department of State Hospitals
- **Marcelo Acob**, Chief Financial Officer, Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

PROPOSAL

Budget Change Proposal:
DSH requests authority for 1.0 permanent, full-time position and a General Fund augmentation of $3.34 million beginning in fiscal year (FY) 2019-20 and on-going to implement a new and uniform wage structure for DSH's Vocational Rehabilitation Program.

Trailer Bill:
DSH is proposing trailer bill to clarify the employee-employer relationship between DSH and its patient workers, and specifically to clarify that patients are not subject to state minimum wage requirements. Finally, the trailer bill clarifies the applicability of workers' compensation benefits for DSH patients and establishes how workers' compensation benefits are to be dispensed to patient workers.

BACKGROUND

As part of the patient treatment plan and rehabilitation process, DSH offers its patients access to the Vocational Rehabilitation Program, which serves as a therapeutic program to provide a range of vocational skills and therapeutic interventions for patients. DSH clinicians work closely with DSH Vocational Rehabilitation Program managers to incorporate a treatment plan to assist patients in developing social skills, occupational skills, life skills, career skills, and confidence, as well as preparing for discharge and/or transition to next level of care, successful community integration when released, future employment and reducing criminal recidivism.

The program consists of clinicians evaluating the patient's current health to determine if the patient meets the preliminary criteria to participate in the program, which includes medical clearance and approval, determining that the patient is not a danger to self or others and the program will be beneficial for the patient's treatment and care. The

program allows patients to be paid an hourly wage for the work performed which varies by commitment type and work performed at each of the hospitals. Patients' work consists of the following type of jobs: custodial, kitchen worker, product assembler, laundry attendant, landscapes painter, plumbing, barber, horticulture, multimedia production, peer mentor, office clerk, and repair technician.

DSH's Vocational Rehabilitation Program provides an hourly wage to its patients who voluntarily participate in the program to continue their therapeutic treatment and care. The program is offered at each of the hospitals; however, the pay scale and processes vary. The program is considered critical for the care, evaluation, and treatment of DSH patients and the Department is now focused on standardizing the various patient wage structures between the state hospitals.

DSH evaluated the patient wages paid to patient-workers across the DSH system that are either associated with its Vocational Rehabilitation Programs or DSH-Napa's sheltered workshop in response to a December 11, 2016 letter from Disability Rights California (DRC). DRC requested that DSH pay minimum wages and asked that DSH standardize wages across all hospitals. DRC is an advocacy group that educates, investigates, and litigates to advance the rights, dignity, equal opportunities, and choices of all people with disabilities. Specifically, DRC raised equal protection arguments noting the types of work performed and the wages received differs by commitment type and hospital. DSH does not have a system-wide pay structure and most hospitals do not pay state minimum wage. Patients earn different wages depending on commitment type and/or in which hospital they reside.

The federal Fair Labor Standards Act (FLSA) requires employers to pay employees a minimum hourly wage and overtime pay (29 U.S.C.S. §§ 201-2190). Its essential purpose is to provide for workers a minimum standard of living necessary for health, efficiency, and general well-being of workers (29 U.S.C.S. § 202). With respect to DSH's patients participating in Vocational Rehabilitation Program, there is ambiguity in the implementing regulations and procedures. The FLSA's implementing regulations specifically provide that patient workers are employees under the statute, if their work confers an economic benefit to the hospital. (29 C.F.R. §§ 525.5, 525.3(e) (1989).) Although the FLSA's implementing regulations specifically provide that patient workers are employees under the statute, neither the statute nor the regulations specifically address forensically committed mental health patients whose minimum standard of living is provided by the hospital. Moreover, despite the federal regulations, the Department of Labor (DOL) Field Operations Handbook states that "generally, a prisoner/patient who performs work for the hospital or institution is not considered an employee for FLSA purposes" (U.S. DOL Field Operations Handbook section 64c03).

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH to present this Budget Change Proposal and trailer bill, and respond to the following:

1. For what reasons does DSH not want to pay patient workers minimum wage?

2. Please detail the cost recovery statutes and policies for patients leaving the state hospitals.

3. Please explain the workers compensation provisions included in the proposed trailer bill.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 7: OFFICE OF PROTECTIVE SERVICES – HOSPITAL POLICE OFFICER ACADEMY

PANELISTS

- **Stephanie Clendenin**, Director (A), Department of State Hospitals
- **Han Wang**, Finance Budget Analyst, Department of Finance
- **Drew Soderborg**, Managing Principal Analyst, Legislative Analyst's Office

Public Comment

PROPOSAL

The Governor's budget proposes $5.8 million (General Fund) and three permanent positions for DSH to operate the DSH Police Academy at its current, expanded capacity on an ongoing basis—meaning three sessions annually.

BACKGROUND

Office of Protective Services (OPS). OPS is a law enforcement agency within DSH that provides security, enforces laws, and provides investigatory services at the five state hospitals. Currently, OPS is approved for 657 hospital police officer positions to carry out these responsibilities. The 2018-19 budget includes $9.6 million for the operation of OPS.

DSH Police Academy. After being hired by DSH, hospital police cadets are required to attend a 14-week DSH Police Academy. At the academy, cadets must complete 548 hours of training in multiple disciplines. Some of the courses offered include leadership, professionalism, and ethics; laws of arrest; search and seizure; and cultural diversity/discrimination. Prior to 2017-18, the DSH Police Academy was located at DSH-Atascadero and ran two sessions annually with each session graduating 32 cadets each, in order to address the typical officer attrition rate. (As discussed below, the academy was later moved to accommodate a larger number of cadets.) After graduating from the academy, individuals are assigned to one of the state hospitals. The Department has historically had some difficulty recruiting and retaining hospital police officers. For example, its officer vacancy rate has exceeded 20 percent in prior years. This is likely due to a variety of factors, such as the higher salary similar agencies (such as CDCR) pay officers.

Academy Temporarily Expanded in 2017-18. Due to the planned activation of 236 beds at DSH-Metropolitan that required the hiring of over 70 additional hospital police officers and the desire to reduce the officer vacancy rate, the Legislature provided additional General Fund resources over a two-year period beginning in 2017-18 for DSH to temporarily expand its academy. Specifically, DSH received $7.8 million in 2017-18 and

$12.4 million in 2018-19, as well as three, two-year limited-term positions. The additional funding allowed the academy to run three sessions annually, with each session consisting of 50 cadets. Given that not all cadets successfully complete the academy, DSH estimates that this is enough to result in 138 additional hospital police officers each year. The funds were also used to move the academy from DSH-Atascadero to a location in San Luis Obispo that is shared with the California Military Department, in order to provide more space for the larger number of cadets. According to the Department, the academy needs to continue operating at its expanded capacity due to the following reasons:

- ***Increased Officer Attrition Rates.*** According to the Department, the current attrition rate is 5.1 officers per month, an increase over the 2017-18 monthly attrition rate of 4.2, and the 2016-17 rate of 2.7. DSH projects that the rate will continue to increase to 7.1 officer per month by 2019-20 and by an additional officer per month in each subsequent year due to a projected increase in the number of officer retirements.

- ***High Officer Vacancy Rates.*** The Department reports that the 2018 vacancy rate for officers was 15 percent—about three times the rate typically assumed for most classifications. DSH expects to have a total of 132.1 vacancies by the beginning of 2019-20.

LAO Concerns and Recommendations

Under the Governor's proposal to provide $5.8 million on an ongoing basis, the academy could be producing more graduates than necessary beginning in 2022-23, according to the LAO. This is because at the end of 2022-23 DSH would have roughly seven more officers than needed. The LAO notes that this assumes the attrition rate continues to increase over the next four years. To the extent the actual attrition rate is less than assumed, the academy could be producing excess graduates at an even earlier date. For example, if the attrition rate remained at 5.1 officers per month, the academy could begin producing excess graduates in 2020-21. Therefore, the LAO recommends:

1. ***Approve Funding for Three Years.*** Given the uncertainty regarding the number of academy graduates that will be needed in the long run to account for officer turnover and vacancies, the LAO recommends that the Legislature approve the resources requested to maintain the expanded DSH Police Academy for three years, rather than on an ongoing basis as proposed by the Governor. This would allow the academy to continue to produce additional officers to address the projected increase in the attrition rate and lower the vacancy rate without resulting in an excess number of officers in the future. After the three-year period, the Legislature could reevaluate as part of its deliberations on the 2022-23 budget the number of academy graduates needed to meet the security needs of the state's hospitals.

2. ***Require Report on Officer Recruitment and Retention.*** In order to ensure that the Legislature has sufficient information to provide oversight of hospital police officer recruitment and retention and assess future academy graduate needs, the LAO recommends that the Legislature approve trailer bill language requiring the Department to report annually on (1) the officer vacancy rate, (2) the officer attrition rate, (3) the number of cadets entering the academy, (4) the number of cadets who successfully graduate the academy, and (5) retention rates for successful graduates. This information would also allow the Legislature to determine whether adjustments to the level of funding for the DSH Police Academy are needed prior 2022-23.

STAFF COMMENTS/QUESTIONS

The Subcommittee requests DSH present this request, requests the LAO explain their concerns and recommendations, and requests DSH to then provide reactions to the LAOs concerns and recommendations.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

NON-DISCUSSION ITEMS

The Subcommittee does not plan to have a presentation of the items in this section of the agenda, unless a Member of the Subcommittee requests that an item be heard. Nevertheless, the Subcommittee will ask for public comment on these items.

4440 DEPARTMENT OF STATE HOSPITALS

ISSUE 8: PRIVACY PROTECTION PROGRAM BUDGET CHANGE PROPOSAL

PROPOSAL

DSH Legal Division (LD) requests 9.0 permanent full-time positions and $1,263 million in General Fund augmentation to establish a system-wide Privacy Office that will establish the DSH privacy program and provide oversight over system-wide and hospital-specific privacy compliance.

DSH states that it does not currently have the resources to address deficiencies in compliance with state and federal requirements regarding health information privacy. Moreover, LD does not have sufficient resources to timely and thoroughly respond to corrective action required by a recent audit or the increase in privacy and security incidents since 2017.

BACKGROUND

In May 2018, the California Office of Health Information Integrity (CalOHII) performed an audit of DSH's health information privacy and security activities from both system-wide and hospital-specific perspectives. CalOHII audited four compliance categories related to privacy, security, administrative (policies and procedures), and patient rights. CalOHII's methodology, as stated in their compliance review report, is limited to an evaluation of areas of potential high risk and their review does not cover all HIPAA-impacted program areas or requirements. CalOHII's review covered two hospitals and six system-wide programs. Nevertheless, CalOHII's audit contained 61 findings, of which 34 were high risk, 24 were medium risk, and three were low risk. Figure 1 below shows DSH's level of compliance for the four categories of the review. Importantly, this public audit report indicates that DSH's headquarters and individual hospitals scored less than 50 percent compliant in most categories and almost zero percent compliant in the category of Patient Rights

The most significant finding was that DSH lacks a system-wide privacy program responsible for policies and procedures, training, monitoring and oversight over compliance, incident and breach response, and risk mitigation. CalOHII requires DSH to

complete all corrective action and adequately address all deficiencies within 18 months of the date of the final report - November 2019. Necessary corrective action includes establishing missing privacy processes at all five hospitals and standardizing and updating existing ones. Each hospital will need additional staff to perform HIPAA-required tasks which are in addition to existing workload. To accomplish the corrective action, and to be fully compliant with federal and state laws, DSH will need additional resources.

Further, in 2018, the California Information Security Office (CISO) implemented a new requirement that state departments perform an intensive self-assessment of all mission critical systems. CISO is now in review of DSH's assessment via the California Compliance and Security Incident Reporting System Risk Module. The assessment confirmed findings from CalOHII that DSH lacks an adequate privacy program. CISO will likely require corrective action to address deficiencies designed to ensure adequate compliance with the State Administrative Manual Chapter 5300.

DSH currently has only one position dedicated to privacy compliance work, an Attorney IV, who is also the DSH Privacy Officer. With a staff of over 10,000 and approximately 12,000 patients served annually at five hospitals and multiple jail-based facilities, additional positions are needed to timely and thoroughly address incidents.

CalOHII's May 2018 audit findings and the CISO self-assessment demonstrate DSH's need for a system-wide privacy compliance and oversight function to: develop, manage, and improve DSH policies and procedures in compliance with state and federal requirements; standardize implementation of policies and procedures; monitor and oversee compliance with policies and procedures; and ensure corrective action occurs for any deficiencies.

DSH operates five hospitals and one headquarters facility. Each facility has its own fiscal, personnel, contracts, purchasing, and facilities staff. Historically, the hospitals functioned as relatively autonomous entities with broad oversight by DSH-Sacramento. Currently, each hospital has its own individual privacy policies and procedures with varying levels of sophistication and compliance. DSH lacks uniformity in its privacy policies and procedures because of differing interpretations and applications of federal and state laws and policies.

The requested staffing will allow DSH to develop and maintain a system-wide privacy program for headquarters and five forensic psychiatric hospitals that provide direct patient care. DSH is requesting 9.0 permanent full-time positions, including one Associate Governmental Program Analyst (AGPA) at each hospital, to adequately staff privacy program workload as follows:

- 1.0 Attorney III
- 1.0 Attorney I

- 6.0 Associate Governmental Program Analyst (AGPA) (5.0 at hospitals)
- 1.0 Staff Services Manager I (SSM I) Specialist

STAFF COMMENTS/QUESTIONS

The Subcommittee staff has no concerns with this proposal at this time.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 9: ATASCADERO: POTABLE WATER BOOSTER PUMP CAPITAL OUTLAY PROPOSAL

PROPOSAL

The Administration requests $113,000 for preliminary plans to install a potable water booster pump system at DSH-Atascadero. The project includes installing a potable water booster pump system to serve the DSH-Atascadero. Total project costs are estimated at $2,100,000, including preliminary plans ($113,000), working drawings ($229,000), and construction ($1,758,000). The construction amount includes $1,462,000 for the construction contract, $102,000 for contingency, $134,000 for architectural and engineering services, $60,000 for other project costs. Construction is scheduled to begin in December 2021 and will be completed in September 2022.

BACKGROUND

This project will ensure the successful and uninterrupted operation of DSH-Atascadero's main fire sprinkler system. DSH-Atascadero's water supply is generated from five underground wells located at the northeast part of the campus. Each well station has a pump that sends water from the wells to an adjacent underground reservoir. Water is then pumped nightly from the reservoir to a one-million gallon storage tank located on top of a hill at the northern part of the campus. The storage tank then supplies water by gravity feed to the facility. The hospital's fire sprinkler system is fed from this main gravity line with the tank serving as the water reservoir for the sprinklers.

Since this is a gravity-based system, as the hospital increases its water usage, the water pressure decreases across the hospital. When multiple users draw water, such as for patient showers, dishwashing, bathroom usage, etc., the water pressure drops considerably. This drop in pressure puts the main fire sprinkler system at risk, as consistent water pressure is needed for the system to function effectively. DSH-Atascadero water pressure during normal operations averages between 40 to 50 psi, which is deficient by approximately 20 psi. Should the pressure be insufficient during a fire, the risk for property damage and patient/staff injury or death is increased greatly.

Additionally, the drop in water pressure also impacts to domestic water operations, such as water flow in patient showers and sinks, staff and patient toilets and urinals, and plant operations systems such as the water softening system and cooling towers.

To address this issue, and in accordance with recommendations made in a study prepared by the Department of General Services on September 28, 2017, this project will include the installation of a booster pump station parallel to the existing main line. The pump station will consist of five pumps that will turn on when the inlet water pressure drops. When the pressure rises to an acceptable level, the booster pump station will shut

off and the gravity system will provide the required pressure to the buildings. A second in-line booster pump will also be installed parallel to the distribution line at the central plant feeding the water system to handle the peak demand needs.

STAFF COMMENTS/QUESTIONS

The Subcommittee staff has no concerns with this proposal at this time.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.

ISSUE 10: DEFERRED MAINTENANCE ADJUSTMENT

PROPOSAL

DSH requests $35 million one-time General Fund in 2019-20 to address deferred maintenance projects that represent critical infrastructure deficiencies. State Hospital facilities require routine maintenance and repair to keep them in acceptable condition and to preserve and extend their useful lives. This funding was determined by criticality of project by hospital and will be made available for encumbrance or expenditure until June 30, 2022.

BACKGROUND

DSH reports that it has a total of roughly $400 million in deferred maintenance projects. Outside of resources from periodic statewide deferred maintenance proposals—such as the one proposed by the Governor in this year's budget—it is only able to dedicate around $1.9 million annually for these projects. Accordingly, the Department does not currently have a plan for how it will address this backlog.

LAO Concerns and Recommendations:

The LAO recommends that the Legislature seek additional information at budget hearings on DSH's plan for addressing the accumulation of deferred maintenance on an ongoing basis. For example, this could include an estimate of the ongoing level of maintenance funding that would be needed to prevent the future accumulation of deferred maintenance. The LAO states that this would provide the Legislature with additional information on the status of the Department's ongoing efforts to maintain their facilities.

Additionally, the LAO recommends that the Legislature adopt supplemental reporting language (SRL) that requires that, no later than January 1, 2023, DSH identify how its deferred maintenance backlog has changed since 2019. They further recommend that the SRL require that, to the extent that its backlog has grown in the intervening years, the Department to identify the reasons for the increase and the specific steps it plans to take to improve its maintenance practices on an ongoing basis. The LAO explains that, if a department experienced a large increase in its backlog, it might suggest that its routine maintenance activities are insufficient to keep up with its annual needs and that it should improve its maintenance program to prevent the further accumulation of deferred maintenance. In such cases, it would be important for the Legislature to understand this, so it can direct DSH to take actions to improve its maintenance programs. The LAO recommends adoption of the following SRL:

Item 4440-001-0001.
No later than January 1, 2023, the Department of State Hospitals shall submit to the fiscal committees of the Legislature and the Legislative Analyst's Office a report identifying the total size of its deferred maintenance backlog as of the 2018-19 fiscal year and September 2022. To the extent that the total size of the deferred maintenance backlog has increased over that period, the department's report shall also identify the reasons for the increase in the size of the backlog and the specific steps the department plans to take to improve its maintenance practices on an ongoing basis.

STAFF COMMENTS/QUESTIONS

The Subcommittee staff has no concerns with this proposal at this time, and recommends that the Subcommittee seriously consider the LAO's recommended SRL requiring DSH to produce a report on the Department's total deferred maintenance.

Staff Recommendation: No action is recommended at this time to allow for additional discussion and debate.