



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

March 25, 2022

Dr. Mark Ghaly, MD
Secretary, California Health and Human Services Agency
1215 O Street
Sacramento, CA 95814

RE: CARE Court Comments

Dear Secretary Ghaly:

On behalf of the Rural County Representatives of California (RCRC), we write to provide comments and recommendations on the Governor's Community Assistance, Recovery and Empowerment (CARE) Court proposal. RCRC is an association of thirty-nine rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties.

Rural counties appreciate the commitment by the Administration to explore new pathways to encourage individuals with serious mental illness to receive treatment. While CARE Court could play an important role in helping individuals with specific mental health conditions (schizophrenia and psychosis), we regret this proposal will not solve the homelessness crisis in rural communities. However, the Governor's CARE Court framework does provide an opportunity to work collaboratively on solutions to better serve individuals with mental health conditions. Increasing access to healthcare services in rural California, particularly for those in need of mental health treatment, is a top priority within RCRC's 2022-2025 Strategic Plan. A key strategy within our goal of equitable access, centers around partnering with "organizations and service providers to enhance health access and behavioral health services in underserved rural areas, including outreach efforts to identify unmet needs in rural healthcare services." In an effort to partner with the State to find solutions that work for all Californians, whether they live in rural, suburban, or urban counties, we provide the following comments, questions, and recommendations on the CARE Court proposal.

Fiscal Impacts

As presented, the CARE Court framework outlines new responsibilities that require additional resources at the county level. Those additional responsibilities and resources span multiple functions, including county behavioral health, public defender, housing, and public guardian. Rural counties have limited personnel and fiscal resources to infuse into

1215 K Street, Suite 1650, Sacramento, CA 95814 | www.rcrcnet.org | 916.447.4806 | Fax: 916.448.3154

this new program. Counties will likely need to redirect resources, creating a new gap in our system and impacting existing services. While we understand the importance of caring for our most vulnerable populations, expanding or creating new programs without providing counties with additional resources jeopardizes our ability to continue providing current services. With the additional mandated workload for counties outlined in CARE Court, we believe it is essential for the State to provide guaranteed ongoing funding for this workload, in line with constitutional protections for state reimbursable mandates and Proposition 30 (2012) impacted programs. In rural California there is just not enough “flex” in our resources to re-direct from other program areas.

Behavioral Health Infrastructure

In addition to our concerns regarding fiscal impacts, we believe significant gaps exist in behavioral health infrastructure throughout rural counties. Rural communities often lack access to health care and behavioral health care services, including acute care facilities and fewer or in some cases no community-based organizations that partner with counties to provide services. Financing restrictions on the primary sources of funding for the county behavioral health safety net have limited the ability of county behavioral health agencies to invest in building out the full continuum of community-based treatment services across California. RCRC is appreciative of the Governor's investment in the 2021-22 Budget to build out the behavioral health continuum. However, this funding is in the early stages of deployment, and we are still years away from seeing the results of this investment. We are also concerned that the funding is primarily through competitive grants, which disadvantage rural communities. Rural counties lack sufficient technical staff to pursue state funding and often lack the capital required for match requirements. In addition, a greater investment in pre-development support for rural projects is required to get sites shovel-ready. Without a rural set-aside or plan to ensure behavioral health infrastructure funds are deployed equitably throughout the State, we fear rural communities will not have the funds to improve the behavioral health continuum of care required to implement Care Court successfully.

Housing Challenges

The Care Court proposal would also require a housing component that would be difficult to fulfill based on the current housing gaps within rural counties. It remains incredibly difficult to site, fund, and build supportive housing and affordable housing projects in rural communities, many of which are located in the WUI's or forested areas, already under threat of wildfire. We are concerned about how sanctions will be assessed regarding identification and placement into appropriate housing, particularly with limited availability for supportive housing in rural counties. For example, utilizing the No Place Like Home program has been challenging because rural communities do not have the economy of scale to entice developers and builders to come to our counties. Unlike infill housing in urban settings, rural communities often lack the pre-development infrastructure like sewer, utilities, and roads needed to incentive a builder to develop in rural areas. In

the case of Project Homekey many rural communities have limited to no qualifying building types for funding. In addition to the challenges in building supportive housing, hiring qualified individuals to provide wrap-around services essential to an individual's success is extremely difficult with our current workforce shortages.

Workforce Shortages

Addressing behavioral health workforce shortages is foundational to expanding services and managing the workforce crisis facing many of our communities. Many county behavioral health agencies and providers that counties contract with for behavioral health services, are grappling with high vacancy rates. In some rural regions, counties struggle to even find providers in their area for services. Many of our communities are designated as behavioral health workforce shortage areas and medically underserved areas. If rural communities do not have the adequate providers or county mental health workers to provide expanded services, this program is being set up for failure in rural regions and disappointing those most in need of these services. While the Governor recognizes the behavioral health workforce needs by proposing funding in the 2022-23 Budget, these investments will not solve the shortage problems overnight. To ensure workforce investment dollars reach all parts of California, we request the Administration consider setting aside funding specifically for recruitment, retention, and pipeline development in rural communities. Without targeted workforce investments in rural counties, we remain concerned that we will not have adequate staffing to take on Care Court implementation.

Conservatorship

Care Court participants who do not successfully complete Care Plans may be referred to conservatorship, thereby creating additional workloads for county Public Administrators-Public Guardians-Public Conservators, which are primarily funded through county general fund. If Care Court increases conservatorship and the workload of the Public Administrators-Public Guardians-Public Conservators, additional resources should be directed to counties to increase capacity. More broadly, the Care Court proposal depends upon accountability – and therefore meaningful consequences – for all parties. Conservatorship is not, and will not be, an appropriate and effective response for everyone with mental health or substance use disorders. Further, that prospect exists under current law for persons who do not successfully complete less restrictive forms of treatment, and has often been ineffective to motivate the hardest to serve individuals. Without other accountability measures and potential consequences for Care Court participants, it may be impossible for counties to ensure that the newly mandated level of service is actually delivered to those most in need.

Sanctions

That the proposal allows the Court to impose sanctions on counties for failing to provide mental health services to CARE Court participants, raises significant concerns.

Counties should not be penalized for issues outside of their control. Counties should not incur fiscal penalties if they comply with Medi-Cal network adequacy requirements. It is also essential to ensure that counties are not compelled to expend resources otherwise available to provide care, litigating continual sanctions motions from individuals or groups dissatisfied with discretionary policy decisions, or the results in individual cases. Sanctions, if any, should be reserved for deliberate and chronic deficiencies, and should be imposed only after meaningful engagement with the responsible state agencies. Specifically, there should be no private right of action for sanctions or other relief under this proposal, and no ability for private individuals or groups to ask the Court to impose sanctions "on its own motion." Any penalties should require state-level enforcement action in Court, and should require appropriate findings, such as deliberate indifference - not strict liability for any arguable service deficiency.

Questions

We appreciate the Administration's focus on a creative way to provide enhanced mental health services for individuals with serious mental illness with the Care Court proposal. The framework is the starting point in the discussion and raises several questions on what Care Court implementation will entail. We look forward to more information on the following questions in the coming weeks.

- The State has identified Care Court would potentially serve 7,000-10,000 individuals. Does the State have data on what counties these identified individuals reside? We are particularly interested in the estimates for rural county participation.
- Has the State considered regional approaches for rural areas that do not have the economy of scale to stand up Care Court?
- Will the State provide long-term funding to support new county responsibilities and services?
- Are judges being given the ability to penalize counties for not meeting elements of the care plan? What form can the sanctions/penalties take?
- Can the judge compel a county to provide services that are not available today?
- Does the judge have to approve the CARE plan developed by county behavioral health agencies? If so, do the courts have the appropriate staff required to evaluate the CARE plans?
- If Care Court results in increased referrals to conservatorship, will the State provide additional resources to Public Administrators-Public Guardians-Public Conservators?
- Who is going to evaluate whether CARE Court works?
- Who will evaluate the impact of CARE Court on other systems, such as the impact on public conservators and adult protective services?

Recommendations

To foster collaboration and partnership between the Administration and rural counties, we have outlined recommendations below to assist in refining the proposal to consider the unique needs of rural communities while providing the most vulnerable populations the services they need.

A January 1, 2023, timeline for courts and mental health services to prepare for the creation of CARE Court is an aggressive timeline for all 58 counties, due to the capacity deficiencies and funding issues noted above. RCRC recommends the State first start with a pilot CARE Court in several jurisdictions statewide, focusing on areas with the highest concentration of the 7,000-10,000 potentially eligible individuals identified by the State. A pilot program will provide vital information to understand the usage level for CARE Court, the workforce investments required, the level of long-term funding needed, impacts to conservatorship workload, and data on Care Court outcomes to analyze if the model is successful. While we appreciate the investments in behavioral health infrastructure and workforce development, it takes time to build capacity. Creating a pilot program will allow the Administration more time to develop a phase-in implementation plan to facilitate capacity building at the local level. RCRC recommends as part of the pilot program, the Administration convenes a rural working group to evaluate regional CARE Court approaches that take into account economy of scale issues within rural communities.

RCRC is concerned with capacity issues with lack of acute care facilities, supportive housing, and workforce shortages. RCRC is currently developing strategies to gather and provide data that describes, and documents rural behavioral health care needs and workforce capacity issues so rural counties can respond to state-level funding initiatives with concrete information about where funding is needed and where investments should be focused. RCRC recommends the Administration consider dedicated funding to rural counties to build out the continuum of care and ensure all of California benefits from these investments. In light of the potential impacts to public defenders and public guardians within this proposal, the Administration may want to consider expanding the current Care Economy Workforce proposal to target these positions.

RCRC requests the Administration provide adequate permanent funding to support the increased level of services and new responsibility outlined in the Care Court proposal. Redirecting local funding from other vital programs will negatively affect the other behavioral health clients whom counties serve.

Thank you for the opportunity to provide the Administration with comments that reflect the unique needs of rural counties. RCRC looks forward to working collaboratively with the Administration in finding innovative ways to deliver mental health services within the rural landscape to those in need. We welcome the opportunity to meet and discuss

Dr. Mark Ghaly, MD
CARE Court Comments
March 25, 2022
Page 6

further our comments, questions, and recommendations. Please feel free to reach out to Sarah Dukett, Policy Advocate, at sdukett@rcrcnet.org with any questions you may have.

Sincerely,



SARAH DUKETT
Policy Advocate

cc: Stephanie Welch, Assistant Secretary, California Health and
Human Services Agency
Kim McCoy Wade, Office of the Governor
Jessica Devencenzi, Deputy Legislative Secretary
Jason Elliott, Senior Advisor, Office of the Governor