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Notice of Proposed Rulemaking: Labor Code Private Attorneys General Act of 2004 – OAL Notice File Number Z2026-0121-03

Dear Labor and Workforce Development Agency Leadership:

On behalf of the California Behavioral Health Association (CBHA), we appreciate the opportunity to provide comments on the California Labor and Workforce Development Agency's proposed regulations implementing the Private Attorneys General Act of 2004 (PAGA).

CBHA represents behavioral health providers throughout California, the vast majority of whom are community-based organizations that contract with counties and the state to provide essential mental health and substance use disorder services. These providers work within a publicly funded system, under significant contractual and regulatory requirements, and on extremely narrow operating margins. PAGA-related litigation can divert resources away from direct services and toward costly litigation, settlements, attorney fees, and administrative activities.

CBHA appreciates the Agency's continued efforts to improve the administration of PAGA and recognizes several meaningful improvements in the current proposal. CBHA supports efforts to establish greater consistency and specificity in PAGA notices. These standards are essential in clarifying administrative procedures, strengthening oversight of high-frequency filers, and improving reporting and transparency around litigation and settlements. These changes have the potential to make PAGA more transparent, predictable, and effective.

At the same time, based on continued feedback from behavioral health providers, CBHA believes more modifications are necessary to ensure that the regulations achieve their intended purpose without imposing disproportionate burdens on publicly funded behavioral health organizations.

Publicly Funded Behavioral Health Providers Should Receive Protections Comparable to Public Agencies

Behavioral health providers often function as an extension of the public behavioral health system, delivering services under contracts with counties and following Medi-Cal requirements, state regulations, accreditation standards, and other government-imposed requirements. Their funding is often restricted and tied directly to the delivery of services. As a result, PAGA liability does not create an ordinary business expense for these organizations. Instead, costs associated with PAGA claims can directly reduce the resources available to provide behavioral health care.

CBHA therefore reiterates its recommendation that providers contracting with government entities receive protections or considerations comparable to those afforded to public agencies. As CBHA noted in our March comments, these organizations deliver essential, publicly funded services and should not be subject to disproportionate litigation risk that undermines service delivery. The regulatory framework should recognize the public nature of these services and the consequences that litigation costs can have on access to care.

The Definition of "Small Employer" Should Account for Publicly Funded Service Providers

CBHA also remains concerned about the proposed definition and application of protections for "small employers." Many community-based behavioral health organizations may employ more than 100 individuals while simultaneously running on public funding. A simple employee-count threshold does not accurately reflect the financial resources, operating structure, or service obligations of these organizations. Many behavioral health providers could be excluded from important cure protections simply because they exceed an employee threshold, despite working in circumstances more like small or publicly funded organizations than traditional private employers. Publicly funded service providers do not have the ability to adjust rates to remediate payments of settlements, many of which are not often substantial or assessed for intent or malice. CBHA urges Agency to expand the definition of "small employer" or set up a separate category for publicly funded social service providers so that organizations are not denied meaningful cure protections based solely on employee count.

Cure Procedures Should Provide Ample Opportunity to Resolve Violations

CBHA supports the Agency's efforts to clarify and expand cure procedures. Providing employers with an opportunity to correct violations before incurring substantial PAGA liability is an essential step toward making PAGA function as a compliance mechanism rather than a litigation vehicle. Early resolution can avoid unnecessary litigation and promote faster remediation. The cure process may be less effective where allegations potentially involve multiple programs, employee classifications, supervisors, or distinct operational practices. In a

large behavioral-health organization, identifying the affected employee population and investigating relevant practices may require coordination across program leadership, HR, payroll, compliance, and legal. The proposed regulations should allow employers to request an extension when additional time is necessary to investigate and evaluate alleged violations. The regulations should also recognize operational remediation, such as changes to scheduling practices, timekeeping procedures, training, auditing, or managerial oversight, in addition to monetary remediation, where appropriate.

Providers also need assurance that taking part in a cure process will not create added legal exposure. Where an allegation is unclear, disputed, or based on incomplete information, taking corrective action should not later be characterized as an admission that a violation occurred. Conversely, where a violation is clear, responsible providers want to correct the issue promptly and should not continue to gain penalties after compliance has been achieved. The public nature of this process has essentially created an opportunity to target nonprofit providers repeatedly.

The regulations should make clear that participation in a cure process is not an admission of liability and that corrective action undertaken in good faith cannot independently be used as evidence of a prior violation. Most importantly, a successful cure should provide meaningful finality and protection against later litigation based on the same underlying violation. Providers should not be forced to choose between attempting to correct a potential compliance issue and assuming that doing so will increase their litigation exposure. Clear documentation confirming completion of the cure process would also provide important certainty for employers and employees alike. These additional reforms are necessary to save essential services delivered by provider agencies caring for California's most vulnerable residents.

High-Frequency Filers Should Be Subject to a Meaningful, Lower Threshold

CBHA strongly supports the Agency's recognition that high-volume PAGA filing activity calls for more oversight. However, the proposed threshold of 200 or more notices annually is still too high to function as an effective deterrent. The purpose of a high-frequency filer designation should be to find problematic filing patterns before they result in significant harm to employers and employees. Waiting until an attorney or firm has filed hundreds of notices allows the type of high-volume activity the regulations are intended to address to continue unchecked. CBHA providers have expressed serious concerns about the current threshold for high frequency filings. 200 filings accounts for a new filing nearly every working day of a year. Additionally, the filing definition should be sure to capture repeated filings by attorneys and firms, not one or the other.

In response to high-frequency and vexatious filings, the Agency should consider requiring certifications that claimants and their counsel have conducted a reasonable factual

investigation, that allegations are based on specific facts rather than boilerplate assertions, and that repeat filers have independently reviewed each matter before filing. Additional transparency regarding substantially similar filings and pre-filing remediation efforts could also help the Agency distinguish legitimate claims from abusive or repetitive filings and better allocate enforcement resources.

Vexatious Filer Provisions Must Include Meaningful Consequences

CBHA similarly supports stronger safeguards for vexatious filers but believes the proposed framework should include meaningful consequences for repeated abusive conduct. Merely identifying or publicly listing a filer as vexatious does not provide an adequate deterrent without enforceable consequences. The regulations should establish clear standards for figuring out when a filer is vexatious, a transparent screening process, and meaningful consequences for repeated abusive or noncompliant filings. These consequences can include filing restrictions or pre-filing requirements. This is particularly important for behavioral health providers because responding to a PAGA claim can require significant staff time, legal expense, and production of employment records that would otherwise support patient care. This is especially problematic when notices lack sufficient evidence or validation of claims, which has become increasingly common from frequent filers.

PAGA Notices Should Contain Specific, Evidence-Based Allegations

CBHA appreciates the Agency's efforts to move away from vague and boilerplate PAGA notices. Requiring notices to have specific facts and legal theories is an important improvement. However, the requirement should be sufficiently robust to prevent general allegations from shifting the burden to employers. The proposed notice requirements should help employers identify the relevant program, employee population, records, and circumstances at issue and determine whether an allegation reflects an isolated event, a supervisor-specific practice, or a broader policy concern. PAGA notices should provide enough information for an employer to understand what conduct is alleged, when it allegedly occurred, and the basis for the claimant's allegations. Additionally, CBHA members request that notices include the affected program or worksite and employee classification along with essential information like alleged time of infraction.

Where a notice does not provide sufficient information, employers should not have to undertake extensive and costly production of records simply to figure out what conduct is alleged. The proposed regulations should ensure that greater specificity in PAGA notices results in a meaningful reduction in unnecessary litigation and discovery costs, rather than simply creating additional procedural requirements.

Agency Review of Filings and Settlements Should Be Efficient and Predictable

CBHA supports proper Agency review of settlements but urges LWDA to set up clear standards and predictable timelines for that review. Prolonged uncertainty can create significant financial and operational challenges for behavioral health providers, particularly when organizations are operating under highly constrained reimbursement arrangements. The settlement review process should provide oversight without unnecessarily delaying otherwise resolutions.

CBHA continues to request clarity from the Agency on how it will handle the evaluation of all filings and determine recourse for unsubstantiated claims. While we appreciate this proposed rulemaking's focus on standardization related to settlement procedures, our members recognize there are major gaps in standardization relating to filings in general. Because of this gap, providers are facing severe financial impacts relating to the management or response of invalid claims. As the Agency reports in this rulemaking, there are so many filings that there is limited ability for the Agency to review them all in a timely manner. As such, action can be taken relating to filings based on meritless or inaccurate claims, ultimately limiting providers' ability to deliver essential services to vulnerable populations.

Electronic Filing Requirements May Pose Additional Challenges for Providers

In general, CBHA members support electronic filing and service and expect the system to improve efficiency and consistency. The primary challenge for behavioral-health providers will be internal routing rather than electronic transmission itself. A notice may concern a specific facility, program, employee classification, or historical period. Ensuring the matter is routed to the appropriate operational, HR, payroll, compliance, and legal personnel is important to an effective response. The electronic system should make the program or worksite, employee population, Labor Code provisions, and relevant timeframe readily identifiable. Additionally, electronic filings should also clearly link amended notices and related filings to the original matter. Providers also ask for the Agency to be considerate of the time commitment and slight learning curve that may accompany a transition to electronic filing requirements and new document standardization.

Conclusion

The overarching concern CBHA continues to hear from members is that PAGA-related litigation imposes costs that are fundamentally different for publicly funded behavioral health organizations than for traditional private employers. Behavioral health providers cannot increase prices or shift litigation expenses to consumers. Many operate under fixed reimbursement arrangements, and every dollar spent responding to unnecessary litigation is a dollar that may otherwise support staffing, services, compliance activities, or access to care.

The purpose of PAGA was to promote compliance with California labor law and provide an effective mechanism for addressing legitimate violations, not to create an economic incentive

for high-volume litigation against organizations delivering essential, publicly funded services. CBHA appreciates the Agency's continued efforts to strengthen the administration of PAGA and recognizes the meaningful steps reflected in the current proposal. However, we urge the Agency to further strengthen the regulations to ensure that they adequately protect publicly funded behavioral health providers and other community-based organizations that operate within California's safety-net.

CBHA appreciates the Agency's consideration of these comments and looks forward to continued engagement throughout the rulemaking process.

For more information about CBHA or these comments, please contact me at lclarkharvey@calbha.org or Carli Stelzer, Senior Policy and Legislative Affairs Advisor, at cstelzer@calbha.org.

Sincerely,

Le Ondra Clark Harvey, Ph.D.
Chief Executive Officer, CBHA