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AB-2119 Foster care: gender affirming health care and mental health care. (2017-2018)

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Assembly Bill No. 2119

CHAPTER 385

An act to amend Sections 16001.9 and 16010.2 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2119, Gloria. Foster care: gender affirming health care and mental health care.

Existing law provides that it is the policy of the state that all minors and nonminors in foster care have specified rights, including, among others, the right to receive medical, dental, vision, and mental health services, the right to be involved in the development of their own case plans and plans for permanent placement, and the right to be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records.

This bill would provide that the rights of minors and nonminors in foster care, as described above, include the right to be involved in the development of case plan elements related to placement and gender affirming health care, with consideration of their gender identity. The bill would also provide that the right of minors and nonminors in foster care to health care and mental health care includes covered gender affirming health care and gender affirming mental health care, as defined. The bill would require the State Department of Social Services, in consultation with the State Department of Health Care Services and other stakeholders, to develop guidance and describe best practices to identify, coordinate, and support foster youth seeking access to gender affirming health care and gender affirming mental health care and to incorporate current guidance on ensuring access to Medi-Cal services for transgender beneficiaries. The bill would require the department to issue written guidance by January 1, 2020. The bill would also include a statement of legislative findings and declarations.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) It is the intent of the Legislature to ensure the health and well-being of all foster children and nonminor dependents, including those who are transgender or gender nonconforming (TGNC).

(b) When their families, schools, and communities support and nurture their developing identities, TGNC children, like all children, thrive and succeed.

(c) TGNC children and adolescents who experience rejection and mistreatment based on their gender identity or expression are at significantly elevated risk for negative health outcomes, school dropout or exclusion, homelessness, and involvement in foster care and juvenile justice systems.

(d) Based, in part, on family rejection and societal bias, TGNC children and adolescents experience worse outcomes than their nontransgender peers and are significantly overrepresented in California's child welfare system.

(e) TGNC foster children and nonminor dependents need accurate and timely information related to gender identity and expression, and access to gender affirming medical and behavioral health care.

(f) TGNC foster children and nonminor dependents are at additional risk of harm because unclear policies and a shortage of knowledgeable gender affirming providers create barriers to accessing medically necessary care.

(g) Foster youth who are 12 years of age or older have established rights to privately seek and consent to outpatient mental health counseling and treatment, including pursuant to Section 6924 of the Family Code and Section 124260 of the Health and Safety Code.

(h) Depending on a foster youth's custody situation, a foster youth's parent, social worker, licensed caregiver, judge, or the youth may give consent for the foster youth's medical, surgical, dental, or other remedial care.

(i) Nonminor dependents give consent for their own medical, surgical, dental, and other health care.

(j) The Insurance Gender Nondiscrimination Act, pursuant to Section 1365.5 of the Health and Safety Code and Section 10140 of the Insurance Code, prohibits health plans from discriminating against individuals because of a person's sex, gender, gender identity, or gender expression.

(k) It is the role of the child welfare agency, within the parameters set forth in Section 369 of the Welfare and Institutions Code, to support dependent children's ability to access medically necessary care, including gender affirming health care and gender affirming behavioral health services.

All children in foster care, as well as former foster youth up to 26 years of age, are entitled to Medi-Cal coverage without cost share or income or resource limits. The Medi-Cal program provides transition-related health care services when those services are determined to be medically necessary.

SEC. 2. Section 16001.9 of the Welfare and Institutions Code is amended to read:

16001.9. (a) It is the policy of the state that all minors and nonminors in foster care shall have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in a room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level, with minimal disruptions to school attendance and educational stability.

(14) To work and develop job skills at an age-appropriate level, consistent with state law.

(15) To have social contacts with people outside of the foster care system, including teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets the age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To be involved in the development of his or her own case plan and plan for permanent placement. This involvement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of their gender identity.

(20) To review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

(21) To be free from unreasonable searches of personal belongings.

(22) To the confidentiality of all juvenile court records consistent with existing law.

(23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(24) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records.

(25) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

(26) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

(27) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older.

(b) This section does not require and shall not be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (26) of subdivision (a).

SEC. 3. Section 16010.2 of the Welfare and Institutions Code is amended to read:

16010.2. (a) The department, in consultation with pediatricians, other health care experts, including public health nurses, and experts in and recipients of child welfare services, including parents, shall develop a plan for the ongoing oversight and coordination of health care services for a child in a foster care placement. The plan shall ensure a coordinated strategy to identify and respond to the health care needs of foster children, including mental health and dental needs, consistent with Section 205 of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

(b) (1) The right of minors and nonminors in foster care to health care and mental health care described in paragraph (4) of subdivision (a) of Section 16001.9 includes covered gender affirming health care and gender affirming mental health care. This right is subject to existing laws governing consent to health care for minors and nonminors and does not limit, add, or otherwise affect applicable laws governing consent to health care.

(2) The department shall, in consultation with the State Department of Health Care Services and other stakeholders, develop guidance and describe best practices to identify, coordinate, and support foster youth seeking access to gender affirming health care and gender affirming mental health care and shall incorporate current guidance on ensuring access to Medi-Cal services for transgender beneficiaries. This consultation may be incorporated into existing departmental workgroups focused on foster youth rights or on foster youth sexual orientation, gender identity, and gender expression. The department shall issue written guidance by January 1, 2020.

(3) For purposes of this section, the following definitions apply:

(A) "Gender affirming health care" means medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:

(i) Interventions to suppress the development of endogenous secondary sex characteristics.

(ii) Interventions to align the patient's appearance or physical body with the patient's gender identity.

(iii) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

(B) "Gender affirming mental health care" means mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance.