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SB-377 Juveniles: psychotropic medications: medical information. (2019-2020)

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Senate Bill No. 377

CHAPTER 547

An act to amend Sections 369.5 and 739.5 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 07, 2019. Filed with Secretary of State October 07, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 377, McGuire. Juveniles: psychotropic medications: medical information.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge a child to be a dependent or ward of the court under certain circumstances. Existing law authorizes only a juvenile court judicial officer to make orders regarding the administration of psychotropic medications for a dependent child or a ward who has been removed from the physical custody of their parent. Existing law requires that court authorization for the administration of psychotropic medications to a child be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication, and requires the Judicial Council to develop appropriate forms for the implementation of these provisions. Existing law requires, upon the approval or denial by the juvenile court judicial officer of a request for authorization for the administration of psychotropic medication, the county child welfare agency, probation department, or other person or entity who submitted the request to provide a copy of the court order approving or denying the request to the child's caregiver.

Existing law requires the Medical Board of California to review specified data provided by the State Department of Health Care Services and the State Department of Social Services regarding Medi-Cal physicians and their prescribing patterns of psychotropic medications and related services for dependents and wards of the juvenile court in order to determine if any potential violations of law or excessive prescribing of psychotropic medications inconsistent with the standard of care exist and, if warranted, to conduct an investigation.

This bill would require, by September 1, 2020, the forms developed by the Judicial Council to include a request for authorization by the child or the child's attorney to release the child's medical information to the Medical Board of California in order to ascertain whether there is excessive prescribing of psychotropic medication inconsistent with a specified standard of care. The bill would limit the authorization to medical information relevant to the investigation of the prescription of psychotropic medication, and would limit the use of that information for the purpose of these provisions. If the medical information is admitted as an exhibit in an administrative hearing, the bill would require that information to be sealed.

The bill would require, by January 1, 2020, the State Department of Social Services to convene a working group to consider various options for seeking authorization from a dependent child, a ward, or their attorney, for release of the dependent child's or ward's medical information regarding psychotropic medication prescribed between January 1, 2017, and July 1, 2020, and to report to the Legislature by April 15, 2020, on any recommendations to best reach those children and their attorneys to seek authorization.

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

SECTION 1. Section 369.5 of the Welfare and Institutions Code is amended to read:

369.5. (a) (1) If a child is adjudged a dependent child of the court under Section 300 and the child has been removed from the physical custody of the parent under Section 361, only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for that child. The juvenile court may issue a specific order delegating this authority to a parent upon making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications. Court authorization for the administration of psychotropic medication shall be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.

(2) (A) The Judicial Council shall amend and adopt rules of court and develop appropriate forms for the implementation of this section, in consultation with the State Department of Social Services, the State Department of Health Care Services, and stakeholders, including, but not limited to, the County Welfare Directors Association of California, the County Behavioral Health Directors Association of California, the Chief Probation Officers of California, associations representing current and former foster children, caregivers, and children's attorneys. This effort shall be undertaken in coordination with the updates required under paragraph (2) of subdivision (a) of Section 739.5.

(B) The rules of court and forms developed pursuant to subparagraph (A) shall address all of the following:

(i) The child and their caregiver and court-appointed special advocate, if any, have an opportunity to provide input on the medications being prescribed.

(ii) Information regarding the child's overall mental health assessment and treatment plan is provided to the court.

(iii) Information regarding the rationale for the proposed medication, provided in the context of past and current treatment efforts, is provided to the court. This information shall include, but not be limited to, information on other pharmacological and nonpharmacological treatments that have been utilized and the child's response to those treatments, a discussion of symptoms not alleviated or ameliorated by other current or past treatment efforts, and an explanation of how the psychotropic medication being prescribed is expected to improve the child's symptoms.

(iv) Guidance is provided to the court on how to evaluate the request for authorization, including how to proceed if information, otherwise required to be included in a request for authorization under this section, is not included in a request for authorization submitted to the court.

(C) The rules of court and forms developed pursuant to subparagraph (A) shall include a process for periodic oversight by the court of orders regarding the administration of psychotropic medications that includes the caregiver's and child's observations regarding the effectiveness of the medication and side effects, information on medication management appointments and other followup appointments with medical practitioners, and information on the delivery of other mental health treatments that are a part of the child's overall treatment plan. The periodic oversight shall be facilitated by the county social worker, public health nurse, or other appropriate county staff. This oversight process shall be conducted in conjunction with other regularly scheduled court hearings and reports provided to the court by the county child welfare agency.

(D) (i) By September 1, 2020, the forms developed pursuant to subparagraph (A) shall include a request for authorization by the child or the child's attorney to release the child's medical information to the Medical Board of California in order to ascertain whether there is excessive prescribing of psychotropic medication that is inconsistent with the standard of care described in Section 2245 of the Business and Professions Code. The authorization shall be limited to medical information relevant to the investigation of the prescription of psychotropic medication, and the information may only be used for the purpose set forth in this subparagraph and Section 2245 of the Business and Professions Code.

(ii) The Medical Board of California or its representative shall request the medical information obtained pursuant to this section to be sealed if the medical information is admitted as an exhibit in an administrative hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(iii) In updating the forms, as required by this subparagraph and subparagraph (D) of paragraph (2) of subdivision (a) of Section 739.5, the Judicial Council shall consult with the State Department of Social Services, the Medical Board of California, the County Welfare Directors Association of California, the Chief Probation Officers of California, and groups representing foster children, dependency counsel, and children's advocates to help ensure that the child and the child's

attorney are provided with sufficient information to understand the request for authorization to obtain the child's medical information and the reasons for the request. The Judicial Council may include in the form a requirement that the person completing the form affirm that the child or child's attorney has been asked about the authorization.

(iv) (I) By January 1, 2020, the State Department of Social Services shall convene a working group consisting of the Judicial Council, the Medical Board of California, the County Welfare Directors Association of California, the Chief Probation Officers of California, and groups representing foster children, dependency counsel, and children's advocates to consider various options for seeking authorization from a dependent child, a ward, or their attorney, for release of the dependent child's or ward's medical information regarding psychotropic medication prescribed between January 1, 2017, and July 1, 2020, and shall report to the Legislature by April 15, 2020, on those options and on any recommendations to best reach those children and their attorneys to seek authorization.

(II) (ia) The requirement for submitting a report imposed under subclause (I) is inoperative on January 1, 2024, pursuant to Section 10231.5 of the Government Code.

(ib) A report to be submitted pursuant to subclause (I) shall be submitted in compliance with Section 9795 of the Government Code.

(b) (1) In counties in which the county child welfare agency completes the request for authorization for the administration of psychotropic medication, the agency is encouraged to complete the request within three business days of receipt from the physician of the information necessary to fully complete the request.

(2) This subdivision does not change current local practice or local court rules with respect to the preparation and submission of requests for authorization for the administration of psychotropic medication.

(c) (1) Within seven court days from receipt by the court of a completed request, the juvenile court judicial officer shall either approve or deny in writing a request for authorization for the administration of psychotropic medication to the child, or shall, upon a request by the parent, the legal guardian, or the child's attorney, or upon its own motion, set the matter for hearing.

(2) Notwithstanding Section 827 or any other law, upon the approval or denial by the juvenile court judicial officer of a request for authorization for the administration of psychotropic medication, the county child welfare agency or other person or entity who submitted the request shall provide a copy of the court order approving or denying the request to the child's caregiver.

(d) Psychotropic medication or psychotropic drugs are those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorders or illnesses. These medications include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

(e) This section does not supersede local court rules regarding a minor's right to participate in mental health decisions.

(f) This section does not apply to nonminor dependents, as defined in subdivision (v) of Section 11400.

SEC. 2. Section 739.5 of the Welfare and Institutions Code is amended to read:

739.5. (a) (1) If a minor who has been adjudged a ward of the court under Section 601 or 602 is removed from the physical custody of the parent under Section 726 and placed into foster care, as defined in Section 727.4, only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for that minor. The juvenile court may issue a specific order delegating this authority to a parent upon making findings on the record that the parent poses no danger to the minor and has the capacity to authorize psychotropic medications. Court authorization for the administration of psychotropic medication shall be based on a request from a physician, indicating the reasons for the request, a description of the minor's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.

(2) (A) The Judicial Council shall amend and adopt rules of court and develop appropriate forms for the implementation of this section, in consultation with the State Department of Social Services, the State Department of Health Care Services, and stakeholders, including, but not limited to, the County Welfare Directors Association of California, the County Behavioral Health Directors Association of California, the Chief Probation Officers of California, associations representing current and former foster children, caregivers, and minor's attorneys. This effort shall be undertaken in coordination with the updates required under paragraph (2) of subdivision (a) of Section 369.5.

(B) The rules of court and forms developed pursuant to subparagraph (A) shall address all of the following:

(i) The minor and the minor's caregiver and court-appointed special advocate, if any, have an opportunity to provide input on the medications being prescribed.

(ii) Information regarding the minor's overall mental health assessment and treatment plan is provided to the court.

(iii) Information regarding the rationale for the proposed medication, provided in the context of past and current treatment efforts, is provided to the court. This information shall include, but not be limited to, information on other pharmacological and nonpharmacological treatments that have been utilized and the minor's response to those treatments, a discussion of symptoms not alleviated or ameliorated by other current or past treatment efforts, and an explanation of how the psychotropic medication being prescribed is expected to improve the minor's symptoms.

(iv) Guidance is provided to the court on how to evaluate the request for authorization, including how to proceed if information, otherwise required to be included in a request for authorization under this section, is not included in a request for authorization submitted to the court.

(C) The rules of court and forms developed pursuant to subparagraph (A) shall include a process for periodic oversight by the court of orders regarding the administration of psychotropic medications that includes the caregiver's and minor's observations regarding the effectiveness of the medication and side effects, information on medication management appointments and other followup appointments with medical practitioners, and information on the delivery of other mental health treatments that are a part of the minor's overall treatment plan. This oversight process shall be conducted in conjunction with other regularly scheduled court hearings and reports provided to the court by the county probation agency.

(D) (i) By September 1, 2020, the forms developed pursuant to subparagraph (A) shall include a request for authorization by the minor or the minor's attorney to release the minor's medical information to the Medical Board of California in order to ascertain whether there is excessive prescribing of psychotropic medication that is inconsistent with the standard of care described in Section 2245 of the Business and Professions Code. The authorization shall be limited to medical information relevant to the investigation of the prescription of psychotropic medication, and the information may only be used for the purpose set forth in this subparagraph and Section 2245 of the Business and Professions Code.

(ii) The Medical Board of California or its representative shall request the medical information obtained pursuant to this section to be sealed if the medical information is admitted as an exhibit in an administrative hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) (1) The agency that completes the request for authorization for the administration of psychotropic medication is encouraged to complete the request within three business days of receipt from the physician of the information necessary to fully complete the request.

(2) Nothing in this subdivision is intended to change current local practice or local court rules with respect to the preparation and submission of requests for authorization for the administration of psychotropic medication.

(c) (1) Within seven court days from receipt by the court of a completed request, the juvenile court judicial officer shall either approve or deny in writing a request for authorization for the administration of psychotropic medication to the minor, or shall, upon a request by the parent, the legal guardian, or the minor's attorney, or upon its own motion, set the matter for hearing.

(2) Notwithstanding Section 827 or any other law, upon the approval or denial by the juvenile court judicial officer of a request for authorization for the administration of psychotropic medication, the county probation agency or other person or entity who submitted the request shall provide a copy of the court order approving or denying the request to the minor's caregiver.

(d) Psychotropic medication or psychotropic drugs are those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorders or illnesses. These medications include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

(e) Nothing in this section is intended to supersede local court rules regarding a minor's right to participate in mental health decisions.

(f) This section does not apply to nonminor dependents, as defined in subdivision (v) of Section 11400.