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AB-1051 Medi-Cal: specialty mental health services: foster children. (2021-2022)

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Assembly Bill No. 1051

CHAPTER 402

An act to amend Sections 14714 and 14717.1 of, and to add Sections 14717.2, 14717.25, and 14717.26 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, Bennett. Medi-Cal: specialty mental health services: foster children.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services (department), under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Under existing law, specialty mental health services include federal Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services provided to eligible Medi-Cal beneficiaries under 21 years of age. Existing law requires each local mental health plan to establish a procedure to ensure access to outpatient specialty mental health services, as required by the EPSDT program standards, for youth in foster care who have been placed outside their county of adjudication, as described.

Existing law requires the department to issue policy guidance concerning the conditions for, and exceptions to, presumptive transfer of responsibility for providing or arranging for specialty mental health services to a foster youth from the county of original jurisdiction to the county in which the foster youth resides, as prescribed.

Under this bill, commencing July 1, 2023, in the case of placement of foster children in short-term residential therapeutic programs, community treatment facilities, or group homes, or in the case of admission of foster children to children's crisis residential programs, the presumptive transfer provisions would apply only if certain circumstances exist. These circumstances would include (1) that the case plan for the foster child specifies that the child will transition to a less restrictive placement in the same county as the facility in which the child has been placed, or (2) that the placing agency determines, as specified, that the child will be negatively impacted if responsibility for providing or arranging for specialty mental health services is not transferred to the same county as the facility in which the child has been placed. The bill would impose various notification and documentation requirements on the placing agency.

By creating new duties for county agencies with regard to processing requests for presumptive transfer, the bill would impose a state-mandated local program.

The bill would require the department and the State Department of Social Services to adopt regulations by July 1, 2027, to implement these provisions, as specified, and would authorize those departments to implement the provisions through county letters, information notices, or similar written instructions until regulations are adopted.

The bill would condition implementation of these provisions on the availability of federal financial participation and receipt of all necessary federal approvals. The bill would require the department to make a request for any necessary federal approvals no later than July 1, 2024.

In cases of no transfer of responsibility for the foster child's specialty mental health services, the bill would authorize the mental health plan in the county of original jurisdiction and the specialty mental health services provider to utilize an existing contract or to establish one, in order to ensure timely payment for the services provided to the foster child, as specified, or else payment for the services would be made by the mental health plan in the county of original jurisdiction or through an agreement between the mental health plans in the 2 counties.

The bill would require the department and the State Department of Social Services to collect data on the receipt of specialty mental health services by foster children who are placed outside of their county of original jurisdiction. The bill would require the inclusion of these data in the department's Medi-Cal specialty mental health services performance dashboard, as specified.

The bill would define "foster children" for purposes of the above-described provisions to mean Medi-Cal eligible children younger than 21 years of age who have been placed into foster care by a county child welfare agency or a county probation department.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 14714 of the Welfare and Institutions Code is amended to read:

14714. (a) (1) Except as otherwise specified in this chapter, a contract entered into pursuant to this chapter shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary specialty mental health services to Medi-Cal beneficiaries.

(2) If the mental health plan is not administered by a county, the mental health plan shall not transfer the obligation for any specialty mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of Division 5.

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits and services, consistent with state and federal requirements, to Medi-Cal beneficiaries who are residents of that county regardless of where the beneficiary resides, except as provided for in Section 14717.1 or 14717.2. The department shall require that the same definition of medical necessity be used, and the minimum scope of benefits offered by each mental health plan be the same, except to the extent that prior federal approval is received and is consistent with state and federal laws.

(b) (1) Any contract entered into pursuant to this chapter may be renewed if the mental health plan continues to meet the requirements of this chapter, regulations promulgated pursuant to this chapter, and the terms and conditions of the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed-upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.

(2) If the contract is not renewed based on the reasons specified in paragraph (1), the department shall notify the Department of Finance, the fiscal and policy committees of the Legislature, and the Controller of the amounts to be sequestered from the Mental Health Subaccount, the Mental Health Equity Account, and the Vehicle License Fee Collection Account of the Local Revenue Fund and the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011, and the Controller shall sequester those funds in the Behavioral Health Subaccount pursuant to Section 30027.10 of the Government Code. Upon this sequestration, the department shall use the funds in accordance with Section 30027.10 of the Government Code.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) Notwithstanding paragraph (1), the mental health plan shall comply with federal and state requirements, including the applicable sections of the state plan and waiver.

(3) A change may be made during a contract term or at the time of contract renewal, when there is a change in obligations required by federal or state law, or when required by a change in the interpretation or implementation of any law or regulation.

(4) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification to affected beneficiaries. The plan may request a hearing by the Office of Administrative Hearings and Appeals.

(e) A mental health plan may terminate its contract in accordance with the contract. The mental health plan shall provide written notice to the department at least 180 days before the termination or nonrenewal of the contract.

(f) Upon the request of the director, the Director of the Department of Managed Health Care may exempt a mental health plan from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. This section does not impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor does it reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated under the Knox-Keene Health Care Service Plan Act of 1975. The director, in consultation with the Director of the Department of Managed Health Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department shall provide oversight to the mental health plans to ensure quality, access, cost efficiency, and compliance with data and reporting requirements. At a minimum, the department shall monitor, through a method independent of any agency of the mental health plan contractor, the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this chapter.

(i) If a county discontinues operations as the mental health plan, the department shall approve any new mental health plan. The new mental health plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) This chapter does not modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2 of Division 5. The county's maximum obligation for services to persons ineligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, and 17609 after fulfilling the Medi-Cal contract obligations.

SEC. 2. Section 14717.1 of the Welfare and Institutions Code is amended to read:

14717.1. (a) (1) For purposes of this section, "foster child" or "foster children" means a Medi-Cal eligible child or children younger than 21 years of age who have been placed into foster care by a county child welfare agency or a county probation department.

(2) It is the intent of the Legislature to ensure that foster children who are placed outside of their county of original jurisdiction are able to access specialty mental health services in a timely manner, consistent with their individual strengths and needs and the requirements of federal Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services.

(3) It is the further intent of the Legislature to overcome any barriers to care that may result when responsibility for providing or arranging for specialty mental health services to foster children who are placed outside of their county of original jurisdiction is retained by the county of original jurisdiction.

(b) In order to facilitate the receipt of medically necessary specialty mental health services by a foster child who is placed outside of their county of original jurisdiction, the California Health and Human Services Agency shall coordinate with the department and the State Department of Social Services to take all of the following actions on or before July 1, 2017:

(1) The department shall issue policy guidance on the conditions for, and exceptions to, presumptive transfer, as described in subdivisions (c) and (d), in consultation with the State Department of Social Services and with the input of stakeholders that include the County Welfare Directors Association of California, the Chief Probation Officers of California, the County Behavioral Health Directors Association of California, provider representatives, and family and youth advocates.

(2) Policy guidance concerning the conditions for, and exceptions to, presumptive transfer shall ensure all of the following:

(A) The transfer of responsibility improves access to specialty mental health care services consistent with the mental health needs of the foster child.

(B) Presumptive transfer does not disrupt the continuity of care.

(C) Conditions and exceptions are applied consistently statewide, giving due consideration to the varying capabilities of small, medium, and large counties.

(D) Presumptive transfer can be waived only with an individualized determination that an exception applies.

(E) A party to the case who disagrees with the presumptive transfer individualized exception determination made by the county placing agency pursuant to subdivision (d) is afforded an opportunity to request judicial review before a transfer or exception being finalized.

(F) There is a procedure for expedited transfer within 48 hours of placement of the child outside of the county of original jurisdiction.

(c) For purposes of this section, "presumptive transfer" means that absent any exceptions as established pursuant to this section, responsibility for providing or arranging for specialty mental health services shall promptly transfer from the county of original jurisdiction to the county in which the foster child resides, under either of the following conditions:

(1) A foster child is placed in a county other than the county of original jurisdiction on or after July 1, 2017.

(2) A foster child who resides in a county other than the county of original jurisdiction after June 30, 2017, and is not receiving specialty mental health services consistent with their mental health needs, requests transfer of responsibility. A foster child who resided in a county other than the county of original jurisdiction after June 30, 2017, and who continues to reside outside the county of original jurisdiction after December 31, 2017, shall have jurisdiction transferred no later than the child's first regularly scheduled status review hearing conducted pursuant to Section 366 in the 2018 calendar year unless an exception described under subdivision (d) applies.

(d) (1) On a case-by-case basis, and when consistent with the medical rights of children in foster care, presumptive transfer may be waived and the responsibility for the provision of specialty mental health services shall remain with the county of original jurisdiction if any of the exceptions described in paragraph (5) exist.

(2) A request for waiver in a manner established by the department may be made by the foster child, the person or agency that is responsible for making mental health care decisions on behalf of the foster child, the county probation agency or the child welfare services agency with responsibility for the care and placement of the child, or any other interested party who owes a legal duty to the child involving the child's health or welfare, as defined by the department.

(3) The county probation agency or the child welfare services agency with responsibility for the care and placement of the child, in consultation with the child and their parent, the child and family team, as defined in paragraph (4) of subdivision (a) of Section 16501, if one exists, and other professionals who serve the child as appropriate, is responsible for determining whether waiver of the presumptive transfer is appropriate pursuant to the conditions and exceptions established under this section. The person who requested the exception, along with any other parties to the case, shall receive notice of the county agency's determination.

(4) The individual who requested the exception or any other party to the case who disagrees with the determination made by the county agency pursuant to paragraph (3) may request judicial review before the county's determination becoming final. The court may set the matter for hearing and may confirm or deny the transfer of jurisdiction or application of an exception based on the best interest of the child.

(5) Presumptive transfer may be waived under any of the following exceptions:

(A) It is determined that the transfer would disrupt continuity of care or delay access to services provided to the foster child.

(B) It is determined that the transfer would interfere with family reunification efforts documented in the individual case plan.

(C) The foster child's placement in a county other than the county of original jurisdiction is expected to last less than six months.

(D) The foster child's residence is within 30 minutes of travel time to the child's established specialty mental health care provider in the county of original jurisdiction.

(6) A waiver processed based on an exception to presumptive transfer shall be contingent upon the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into a contract, single case agreement, or other service payment mechanism within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the foster child. That information shall be documented in the child's case plan.

(7) A request for waiver, the exceptions claimed as the basis for the request, a determination whether a waiver is determined to be appropriate under this section, and any objections to the determination shall be documented in the foster child's case plan pursuant to Section 16501.1.

(e) If the mental health plan in the county of original jurisdiction has completed an assessment of needed services for the foster child, the mental health plan in the county in which the foster child resides shall accept that assessment. The mental health plan in the county in which the foster child resides may conduct additional assessments if the foster child's needs change or an updated assessment is needed to determine the child's needs and identify the needed treatment and services to address those needs.

(f) (1) Upon presumptive transfer, the mental health plan in the county in which the foster child resides shall assume responsibility for the authorization and provision of specialty mental health services and payments for services. The foster child transferred to the mental health plan in the county in which the foster child resides shall be considered part of the county of residence caseload for claiming purposes from the Behavioral Health Subaccount and the Behavioral Health Services Growth Special Account, both created pursuant to Section 30025 of the Government Code.

(2) To support service delivery, continuity of care, and timely payment, the placing agency shall provide notification to the mental health plan that will be responsible for arranging and providing specialty mental health services for the foster child before placing a foster child out of county. The placing agency may complete these notifications through email. If notification before placement is not possible, the placing agency shall notify the appropriate mental health plan no later than three business days after making the out-of-county placement.

(g) The State Department of Social Services and the department shall adopt regulations by July 1, 2027, to implement this section. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the department may implement and administer the changes made by this legislation through all-county letters, information notices, or similar written instructions until regulations are adopted.

(h) (1) If the department determines it is necessary, it shall seek approval from the United States Department of Health and Human Services, federal Centers for Medicare and Medicaid Services before implementing this section.

(2) If the department makes the determination that it is necessary to seek federal approval pursuant to paragraph (1), the department shall make an official request for approval from the federal government no later than January 1, 2017.

(i) This section shall be implemented only if, and to the extent that, federal financial participation under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is available and all necessary federal approvals have been obtained.

(j) Commencing July 1, 2023, in the case of placement of foster children in short-term residential therapeutic programs, community treatment facilities, or group homes, or in the case of admission of foster children to children's crisis residential programs, this section shall apply only if the circumstances described in paragraph (1) or (2) of subdivision (b) of Section 14717.2 exist.

SEC. 3. Section 14717.2 is added to the Welfare and Institutions Code, to read:

14717.2. (a) (1) For purposes of this section, "foster child" or "foster children" means a Medi-Cal eligible child or children younger than 21 years of age who have been placed into foster care by a county child welfare agency or a county probation department.

(2) It is the intent of the Legislature to ensure that foster children who are placed in community treatment facilities, group homes, or short-term residential therapeutic programs, or who are admitted to children's crisis residential programs, outside of their county of original jurisdiction, are able to access specialty mental health services in a timely manner, consistent with their individual strengths and needs and the requirements of federal Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services.

(3) The Legislature finds that because group home placements or short-term residential therapeutic program placements are intended to be short term, and because community treatment facility placements and children's crisis residential program admissions are intended to be time-limited based on medical necessity, the responsibility for the provision of or arrangement for specialty mental health services for a foster child throughout the short-term or time-limited placement or admission shall remain with the county of original jurisdiction.

(4) The Legislature intends that the placement of a foster child in a group home, community treatment facility, or short-term residential therapeutic program, or the admission of the child to a children's crisis residential program outside of the county of original jurisdiction should not disrupt continuity of care or adversely impact timely payment to the provider of specialty mental health services.

(b) Commencing July 1, 2023, a foster child's county of original jurisdiction shall retain responsibility to arrange and provide specialty mental health services if the foster child is placed out of the county of original jurisdiction in a community treatment facility, group home, or short-term residential therapeutic program, or is admitted to a children's crisis residential program, as these settings are defined in paragraph (8), (13), (18), or (21), respectively, of subdivision (a) of Section 1502 of the Health and Safety Code, unless either of the following circumstances exist:

(1) The case plan for the foster child specifies that the child will transition to a less restrictive placement in the same county as the facility in which the child has been placed.

(2) The placing agency determines, as informed by the child and family team, as defined in paragraph (4) of subdivision (a) of Section 16501, that the child will be negatively impacted if responsibility for providing or arranging for specialty mental health services is not transferred to the same county as the facility in which the child has been placed. The placing agency shall document the basis for making this determination in the child's case record and may include in a child and family team meeting the mental health plan of the receiving county where the facility is located. It is the intent of the Legislature to encourage local coordination with the receiving county mental health plan.

(c) If the circumstances in paragraph (1) or (2) of subdivision (b) exist, the process for presumptive transfer of responsibility for arranging and providing specialty mental health services set forth in Section 14717.1 shall apply.

(d) (1) To support service delivery, continuity of care, and timely payment, the placing agency shall provide notification to the mental health plan that will be responsible for arranging and providing specialty mental health services for the foster child before placing a foster child out of county in a community treatment facility, group home, or short-term residential therapeutic program, or admitting a foster child to a children's crisis residential program. The placing agency may complete these notifications through email. If notification before placement or admission is not possible, the placing agency shall notify the appropriate mental health plan no later than three business days after making the out-of-county placement.

(2) Upon accepting placement or admission of a foster child, a group home, short-term residential therapeutic program, community treatment facility, or children's crisis residential program may notify the mental health plan that will be responsible for arranging and providing specialty mental health services for the foster child that the foster child has been admitted to a children's crisis residential program or placed in a group home, short-term residential therapeutic program, or community treatment facility.

(e) If the circumstances in paragraph (1) or (2) of subdivision (b) exist at any point during the foster child's placement or admission out of county, Section 14717.1 shall apply.

(f) The placing agency shall document which mental health plan is responsible for providing or arranging for specialty mental health services.

(g) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department and the State Department of Social Services may implement, interpret, or make specific this section, in whole or in part, by means of plan or county letters, information notices, plan or provider bulletins, or similar written instructions, until regulations are adopted.

(2) By July 1, 2027, the department and the State Department of Social Services shall adopt regulations to implement this section in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) (1) If the department determines it is necessary, it shall seek approval from the United States Department of Health and Human Services, federal Centers for Medicare and Medicaid Services before implementing this section.

(2) If the department makes the determination that it is necessary to seek federal approval pursuant to paragraph (1), the department shall make an official request for approval from the federal government no later than July 1, 2024.

(i) This section shall be implemented only if, and to the extent that, federal financial participation under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is available and all necessary federal approvals have been obtained.

SEC. 4. Section 14717.25 is added to the Welfare and Institutions Code, immediately following Section 14717.2, to read:

14717.25. (a) (1) For purposes of this section, “foster child” or “foster children” means a Medi-Cal eligible child or children younger than 21 years of age who have been placed into foster care by a county child welfare agency or a county probation department.

(2) It is the intent of the Legislature to support timely payment to the provider for services to help ensure foster children placed out of county receive the care and treatment that they need.

(b) If a foster child who needs to receive, or who is already receiving, specialty mental health services is placed out of county in a group home, community treatment facility, children’s crisis residential program, or short-term residential therapeutic program, and responsibility for providing and arranging for the child’s specialty mental health services is not transferred, in accordance with Sections 14717.1 and 14717.2, the mental health plan in the county of original jurisdiction and the specialty mental health services provider may choose one of the following options in order to ensure timely payment for specialty mental health services provided to the foster child:

(1) Utilize an existing contract between the mental health plan in the county of original jurisdiction and the specialty mental health services provider for payment of services within a mutually agreed upon timeframe.

(2) Establish a contract for payment of specialty mental health services for a foster child or multiple foster children for payment of services within a mutually agreed upon timeframe.

(c) (1) If neither of the options described in paragraph (1) or (2) of subdivision (b) is available, and if the responsibility for arranging and providing specialty mental health services was not transferred, in accordance with Sections 14717.1 and 14717.2, payment for the specialty mental health services shall be made by the mental health plan in the county of original jurisdiction or through an agreement between the mental health plan in the county of residence and the mental health plan in the county of original jurisdiction.

(2) The mental health plan in the county of original jurisdiction and the mental health plan in the county of residence shall enter into the agreement for payment of services within 30 days of notice, by either the placing agency or the placement provider, of the out-of-county placement.

SEC. 5. Section 14717.26 is added to the Welfare and Institutions Code, to read:

14717.26. (a) For purposes of this section, “foster children” means Medi-Cal eligible children younger than 21 years of age who have been placed into foster care by a county child welfare agency or a county probation department.

(b) The department and the State Department of Social Services shall collect data on the receipt of specialty mental health services by foster children who are placed outside of their county of original jurisdiction. These data shall be included in the department’s Medi-Cal specialty mental health services performance dashboard, in compliance with all applicable state and federal privacy and confidentiality laws, and shall contain all of the following statewide information:

(1) The number of foster children placed out of county.

(2) The number of foster children placed out of county who receive specialty mental health services.

(3) For foster children placed out of county who receive specialty mental health services, the number of foster children for whom the county of original jurisdiction is responsible for providing or arranging for those services, and the number of foster children for whom the county of residence is responsible for that provision or arrangement.

SEC. 6. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.