

Assembly Bill No. 1805

Passed the Assembly September 16, 2008

Chief Clerk of the Assembly

Passed the Senate September 16, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 18350 of, and to add Section 18350.5 to, the Welfare and Institutions Code, relating to foster care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 1805, Committee on Budget. Seriously emotionally disturbed children: out-of-home placement.

Existing law requires payments, issued by county welfare departments, for 24-hour out-of-home care to be provided on behalf of any seriously emotionally disturbed child who has been placed out of home pursuant to an individualized education program (IEP) developed under a specified provision of existing law. Existing law restricts payments for this purpose to children placed in privately operated residential facilities licensed in accordance with the California Community Care Facilities Act.

This bill would specify that payments on behalf of children placed in privately operated residential facilities located in California be made to facilities licensed in accordance with the California Community Care Facilities Act and that payments for children placed in residential facilities that are located in a state outside of California be made to facilities that meet the licensing standards of that state, as required under the Interstate Compact on the Placement of Children. The bill would repeal this requirement, with respect to facilities located in a state outside of California, on January 1, 2011.

This bill, from January 1, 2009, until January 1, 2011, would authorize these payments to be made to an out-of-state privately owned residential facility that meets applicable licensing requirements, and that is operated on a for-profit basis, if specified conditions are met. The bill would require the State Department of Mental Health, in collaboration with the California Mental Health Directors Association, to provide prescribed information to the Legislature regarding the out-of-home placement of seriously emotionally disturbed children, as provided.

This bill would also deem reimbursable specified costs of care for a seriously emotionally disturbed child with an individualized

education program developed on or before January 1, 2009, that would otherwise satisfy the requirements of the bill.

By increasing available placement options for seriously emotionally disturbed children, this bill would require additional duties of county welfare departments, and would thus impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 18350 of the Welfare and Institutions Code is amended to read:

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out of home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made on behalf of children placed in privately operated residential facilities located in California that are licensed in accordance with the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code).

(c) (1) Payments shall only be made on behalf of children placed in privately operated residential facilities that are located outside of California that meet the licensing standards of that state, as required under the Interstate Compact on the Placement of Children, which is set forth in Section 7901 of the Family Code.

(2) This subdivision shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

(d) Except as provided in Section 18350.5, payments for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467, inclusive.

(e) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

SEC. 2. Section 18350.5 is added to the Welfare and Institutions Code, to read:

18350.5. (a) Notwithstanding any other provision of law, effective January 1, 2009, and until January 1, 2011, a payment described by Section 18350 may be made to an out-of-state privately operated residential facility that meets all applicable licensing requirements of the state in which the facility is located, and that is organized and operated on a for-profit basis, if either of the following conditions is met:

(1) The county or the local educational agency (LEA) placed the child in a for-profit facility after due process proceedings were initiated pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of Title 2 of the Education Code, and either of the following occurred:

(A) Following a due process hearing, the hearing officer issued a decision including a finding that, after a thorough search, no other comparable private nonprofit or publicly licensed residential facility was identified that is both willing to accept placement and capable of providing an appropriate education in compliance with federal and state special education law and other applicable provisions.

(B) A written mediation or settlement agreement was reached and the agreement includes, but is not necessarily limited to, documentation that a thorough search was conducted and no other comparable private nonprofit or publicly licensed residential facility was identified that is both willing to accept placement and capable of providing an appropriate education in compliance with federal and state special education law and other applicable provisions.

(2) The individualized education program team agreed, and the placement was made, after a thorough search in which no other comparable private nonprofit or publicly licensed residential care facility was identified that is both willing to accept placement and capable of meeting the child's needs in compliance with federal

and state special education and other applicable provisions. The agency or agencies responsible for the child's placement shall document, as part of the individualized education program process, their search efforts and the reasons that no other placement option can be identified for the child.

(b) County reimbursement claims for placements pursuant to subdivision (a) shall not exceed the cost of services provided.

(c) Nothing in this section is intended to change or duplicate existing procedures, protections, or requirements applicable to the placement of a child in an out-of-state facility, including out-of-state community care licensing requirements.

(d) (1) The State Department of Mental Health, in collaboration with the California Mental Health Directors Association, shall annually provide information to the Legislature, during Senate and Assembly budget committee hearings, regarding residential placements that may be affected by this section. The information shall include, but not be limited to, all of the following information by county:

(A) The annual number of in-state and out-of-state placements of children with serious emotional disturbances in nonprofit and in for-profit residential facilities.

(B) The average length of stay of those children in nonprofit and for-profit in-state and out-of-state facilities.

(C) The number of those children who were dependents, wards, or children voluntarily placed in foster care at the time of their placement into a nonprofit or for-profit residential facility.

(2) To the extent that any county fails to voluntarily provide the information described in paragraph (1), the department shall note that as reason for the omission of information relevant to that county.

SEC. 3. (a) Notwithstanding any other provision of law, with respect to the handicapped and disabled students state-mandated local program, county reimbursement claims submitted to the Controller for reimbursement for services associated with providing, pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, allowable mental health treatment services required by, and state reimbursement for 24-hour care of, a seriously emotionally disturbed child placed out of home in an out-of-state for-profit residential facility pursuant to an individualized education program

developed pursuant to Section 7572.5 of the Government Code, on or before January 1, 2009, and that otherwise satisfy the requirements of this act are deemed to be reimbursable. Placements made pursuant to this act shall be authorized to the extent permitted by federal law.

(b) Subdivision (a) does not abridge the right of the Controller to otherwise dispute claims on the basis of allowable costs. With the exception of those costs claimed in excess of what is allowable, claims that satisfy the requirements of subdivision (a) shall be fully paid in the amount originally submitted.

(c) No new past claims shall be reimbursed based on these changes.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that specified costs of necessary placements and care for seriously emotionally disturbed children are deemed reimbursable at the earliest possible time, it is necessary that this act take effect immediately.

Approved _____, 2008

Governor