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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1299

Introduced by Assembly Member Ridley-Thomas
(Coauthor: Assembly Member Cristina Garcia)
(Coauthors: Senators Anderson, Hertzberg, and Huff)

February 27, 2015

An act to amend Section 14714 of, and to add Section ~~14717.5~~ *14717.1* to, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1299, as amended, Ridley-Thomas. Medi-Cal: specialty mental health services: foster children.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, 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. Existing law provides that specialty mental health services and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for any individual under 21 years of age are covered under Medi-Cal, consistent with the requirements of federal law. Federal law defines EPSDT mental health services to include screening services, vision services, dental services, hearing services, and other necessary services to correct or ameliorate defects and physical

and mental illnesses and conditions discovered by the screening services, whether or not the services are covered under the state plan. Existing law provides that specialty mental health services include 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 children in foster care who have been placed outside their county of adjudication. Existing law includes standardized contracts, procedures, documents, and forms, to facilitate the receipt of medically necessary specialty mental health services by a foster child who is placed outside his or her county of original jurisdiction.

This bill would declare the intent of the Legislature to ensure that foster children who are placed outside of their county of original jurisdiction, are able to access mental health services in a timely manner consistent with their individualized strengths and needs and the requirements of EPSDT program standards and requirements. The bill would require the department to issue policy guidance that establishes the conditions for and exceptions to presumptive transfer of responsibility for providing or arranging for mental health services to a foster child from the county of original jurisdiction to the county in which the foster child resides, as prescribed. The bill would define presumptive transfer for these purposes. The bill would authorize any interested party who owes a legal duty to the child involving the child's health or welfare to seek a waiver of presumptive transfer and would provide that the county probation agency or child welfare services agency with responsibility for the care and placement of the child is responsible for determining whether presumptive transfer is appropriate under specified conditions, including when a determination is made that the transfer of mental health services would disrupt continuity of care or timely access to services, as specified. The bill would require the mental health plan in the host county to assume responsibility for the authorization and provision of mental health services, and payments for services, upon the presumptive transfer. By increasing the responsibilities of county probation agencies or child welfare services agencies with respect to determining whether presumptive transfer is appropriate, the bill would impose as state-mandated local program.

This bill would require the department to seek approval from the United States Department of Health and Human Services, federal

Centers for Medicare and Medicaid Services (CMS) prior to implementing these provisions if the department determines that approval is necessary. The bill would authorize the department and the State Department of Social Services to adopt regulations to implement these provisions by July 1, 2019, as specified.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated 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 ~~14717.5.~~ *14717.1.* 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) In the event 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 the provisions of 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 provisions in the contract. The mental health plan shall provide written notice to the department at least 180 days prior to 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. Nothing in this chapter shall be construed to 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 shall anything in this chapter be construed to 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, through a method independent of any agency of the mental health plan contractor, monitor 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) Nothing in this chapter shall be construed to 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 not eligible 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 ~~14717.5~~*14717.1* is added to the Welfare and Institutions Code, to read:

~~14717.5.~~

14717.1. (a) (1) 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, Diagnosis, and Treatment (EPSDT) services.

(2) 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 his or her 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 concerning 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 that:

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

(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 prior to 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) "Presumptive transfer," for the purposes of this section, 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 youth 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 his or her 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 his or her parent, the child and family team 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 prior to 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 his or her 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 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) 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.

(g) The State Department of Social Services and the State Department of Health Care Services shall adopt regulations by July 1, 2019, 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 State Department of Health Care Services 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) 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 (CMS) prior to implementing this section.

(i) If the department makes the determination that it is necessary to seek CMS approval pursuant to subdivision (h), the department shall make an official request for approval from CMS no later than January 1, 2017.

(j) 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. 3. 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.

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