

AMENDED IN ASSEMBLY SEPTEMBER 3, 2015

AMENDED IN ASSEMBLY AUGUST 28, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MARCH 26, 2015

SENATE BILL

No. 319

Introduced by Senator Beall

(Principal coauthor: Senator Mitchell)

(Principal coauthor: Assembly Member Chiu)

(Coauthor: Senator Monning)

(Coauthors: Assembly Members Gatto, Gipson, and Lopez)

February 23, 2015

An act to amend Section 56.103 of the Civil Code, and to amend Sections 5328.04 and 16501.3 of the Welfare and Institutions Code, relating to child welfare services.

LEGISLATIVE COUNSEL'S DIGEST

SB 319, as amended, Beall. Child welfare services: public health nursing.

Existing law requires the State Department of Social Services to establish a program of public health nursing in the child welfare services program, and requires counties to use the services of the foster care public health nurse under this program. Existing law requires the foster care public health nurse to perform specified duties, including participating in medical care planning and coordinating for a child in foster care.

This bill would authorize a foster care public health nurse, as part of his or her requirement to participate in medical care planning and coordinating for a child, to monitor and oversee the child's use of psychotropic medications. The bill would also require a foster care public health nurse to assist a nonminor dependent to make informed decisions about his or her health care. By imposing this additional duty on foster care public health nurses, this bill would impose a state-mandated local program.

Existing law restricts the disclosure of medical and mental health information by providers of health care and mental health care services, but authorizes disclosure of this information to county social workers, probation officers, or any other person who is legally authorized to have custody and care of a minor who is in temporary custody or subject to the jurisdiction of the juvenile court, for the purpose of coordinating medical treatment and health care, mental health, and developmental disability services for the minor.

This bill would authorize the disclosure of this health care and mental health care information to a foster care public health nurse, as specified.

This bill would incorporate changes to Section 16501.3 of the Welfare and Institutions Code proposed by both this bill and SB 238, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

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.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 56.103 of the Civil Code is amended to
- 2 read:
- 3 56.103. (a) A provider of health care may disclose medical
- 4 information to a county social worker, a probation officer, a foster
- 5 care public health nurse acting pursuant to Section 16501.3 of the
- 6 Welfare and Institutions Code, or any other person who is legally
- 7 authorized to have custody or care of a minor for the purpose of
- 8 coordinating health care services and medical treatment provided

1 to the minor, including, but not limited to, the sharing of
2 information related to screenings, assessments, and laboratory tests
3 necessary to monitor the administration of psychotropic
4 medications.

5 (b) For purposes of this section, health care services and medical
6 treatment includes one or more providers of health care providing,
7 coordinating, or managing health care and related services,
8 including, but not limited to, a provider of health care coordinating
9 health care with a third party, consultation between providers of
10 health care and medical treatment relating to a minor, or a provider
11 of health care referring a minor for health care services to another
12 provider of health care.

13 (c) For purposes of this section, a county social worker, a
14 probation officer, foster care public health nurse, or any other
15 person who is legally authorized to have custody or care of a minor
16 shall be considered a third party who may receive any of the
17 following:

18 (1) Medical information described in Sections 56.05 and 56.10.

19 (2) Protected health information described in Section 160.103
20 of Title 45 of the Code of Federal Regulations.

21 (d) Medical information disclosed to a county social worker,
22 probation officer, foster care public health nurse, or any other
23 person who is legally authorized to have custody or care of a minor
24 shall not be further disclosed by the recipient unless the disclosure
25 is for the purpose of coordinating health care services and medical
26 treatment of the minor and the disclosure is authorized by law.
27 Medical information disclosed pursuant to this section may not be
28 admitted into evidence in any criminal or delinquency proceeding
29 against the minor. Nothing in this subdivision shall prohibit
30 identical evidence from being admissible in a criminal proceeding
31 if that evidence is derived solely from lawful means other than
32 this section and is permitted by law.

33 (e) (1) Notwithstanding Section 56.104, if a provider of health
34 care determines that the disclosure of medical information
35 concerning the diagnosis and treatment of a mental health condition
36 of a minor is reasonably necessary for the purpose of assisting in
37 coordinating the treatment and care of the minor, that information
38 may be disclosed to a county social worker, probation officer,
39 foster care public health nurse, or any other person who is legally
40 authorized to have custody or care of the minor. The information

1 shall not be further disclosed by the recipient unless the disclosure
2 is for the purpose of coordinating mental health services and
3 treatment of the minor and the disclosure is authorized by law.

4 (2) As used in this subdivision, “medical information” does not
5 include psychotherapy notes as defined in Section 164.501 of Title
6 45 of the Code of Federal Regulations.

7 (f) The disclosure of information pursuant to this section is not
8 intended to limit the disclosure of information when that disclosure
9 is otherwise required by law.

10 (g) For purposes of this section, “minor” means a minor taken
11 into temporary custody or as to whom a petition has been filed
12 with the court, or who has been adjudged to be a dependent child
13 or ward of the juvenile court pursuant to Section 300 or 601 of the
14 Welfare and Institutions Code.

15 (h) (1) Except as described in paragraph (1) of subdivision (e),
16 nothing in this section shall be construed to limit or otherwise
17 affect existing privacy protections provided for in state or federal
18 law.

19 (2) Nothing in this section shall be construed to expand the
20 authority of a social worker, probation officer, foster care public
21 health nurse, or custodial caregiver beyond the authority provided
22 under existing law to a parent or a patient representative regarding
23 access to medical information.

24 SEC. 2. Section 5328.04 of the Welfare and Institutions Code
25 is amended to read:

26 5328.04. (a) Notwithstanding Section 5328, information and
27 records made confidential under that section may be disclosed to
28 a county social worker, a probation officer, a foster care public
29 health nurse acting pursuant to Section 16501.3, or any other person
30 who is legally authorized to have custody or care of a minor, for
31 the purpose of coordinating health care services and medical
32 treatment, as defined in subdivision (b) of Section 56.103 of the
33 Civil Code, mental health services, or services for developmental
34 disabilities, for the minor.

35 (b) Information disclosed under subdivision (a) shall not be
36 further disclosed by the recipient unless the disclosure is for the
37 purpose of coordinating health care services and medical treatment,
38 or mental health or developmental disability services, for the minor
39 and only to a person who would otherwise be able to obtain the
40 information under subdivision (a) or any other law.

1 (c) Information disclosed pursuant to this section shall not be
2 admitted into evidence in any criminal or delinquency proceeding
3 against the minor. Nothing in this subdivision shall prohibit
4 identical evidence from being admissible in a criminal proceeding
5 if that evidence is derived solely from lawful means other than
6 this section and is permitted by law.

7 (d) Nothing in this section shall be construed to compel a
8 physician and surgeon, licensed psychologist, social worker with
9 a master's degree in social work, licensed marriage and family
10 therapist, licensed professional clinical counselor, nurse, attorney,
11 or other professional person to reveal information, including notes,
12 that has been given to him or her in confidence by the minor or
13 members of the minor's family.

14 (e) The disclosure of information pursuant to this section is not
15 intended to limit disclosure of information when that disclosure
16 is otherwise required by law.

17 (f) Nothing in this section shall be construed to expand the
18 authority of a social worker, probation officer, foster care public
19 health nurse, or custodial caregiver beyond the authority provided
20 under existing law to a parent or a patient representative regarding
21 access to confidential information.

22 (g) As used in this section, "minor" means a minor taken into
23 temporary custody or for whom a petition has been filed with the
24 court, or who has been adjudged a dependent child or ward of
25 juvenile court pursuant to Section 300 or 601.

26 (h) Information and records that may be disclosed pursuant to
27 this section do not include psychotherapy notes, as defined in
28 Section 164.501 of Title 45 of the Code of Federal Regulations.

29 SEC. 3. Section 16501.3 of the Welfare and Institutions Code
30 is amended to read:

31 16501.3. (a) The State Department of Social Services shall
32 establish and maintain a program of public health nursing in the
33 child welfare services program that meets the federal requirements
34 for the provision of health care to minor and nonminor dependents
35 in foster care consistent with Section 30026.5 of the Government
36 Code. The purpose of the public health nursing program shall be
37 to promote and enhance the physical, mental, dental, and
38 developmental well-being of children in the child welfare system.

39 (b) Under this program, counties shall use the services of a foster
40 care public health nurse. The foster care public health nurse shall

1 work with the appropriate child welfare services workers to
2 coordinate health care services and serve as a liaison with health
3 care professionals and other providers of health-related services.
4 This shall include coordination with county mental health plans
5 and local health jurisdictions, as appropriate. In order to fulfill
6 these duties, the foster care public health nurse shall have access
7 to the child's medical, dental, and mental health care information,
8 in a manner that is consistent with all relevant privacy
9 requirements.

10 (c) The duties of a foster care public health nurse shall include,
11 but need not be limited to, the following:

12 (1) Documenting that each child in foster care receives initial
13 and followup health screenings that meet reasonable standards of
14 medical practice.

15 (2) Collecting health information and other relevant data on
16 each foster child as available, receiving all collected information
17 to determine appropriate referral and services, and expediting
18 referrals to providers in the community for early intervention
19 services, specialty services, dental care, mental health services,
20 and other health-related services necessary for the child.

21 (3) Participating in medical care planning and coordinating for
22 the child. This may include, but is not limited to, assisting case
23 workers in arranging for comprehensive health and mental health
24 assessments, interpreting the results of health assessments or
25 evaluations for the purpose of case planning and coordination,
26 facilitating the acquisition of any necessary court authorizations
27 for procedures or medications, monitoring and oversight of
28 psychotropic medications, advocating for the health care needs of
29 the child, and ensuring the creation of linkage among various
30 providers of care.

31 (4) Providing followup contact to assess the child's progress in
32 meeting treatment goals.

33 (5) At the request of and under the direction of a nonminor
34 dependent, as described in subdivision (v) of Section 11400,
35 assisting the nonminor dependent in accessing physical health and
36 mental health care, coordinating the delivery of health and mental
37 health care services, advocating for the health and mental health
38 care that meets the needs of the nonminor dependent, assisting the
39 nonminor dependent to make informed decisions about his or her
40 health care by, at a minimum, providing educational materials,

1 and assisting the nonminor dependent to assume responsibility for
2 his or her ongoing physical and mental health care management.

3 (d) The services provided by foster care public health nurses
4 under this section shall be limited to those for which reimbursement
5 may be claimed under Title XIX of the federal Social Security Act
6 at an enhanced rate for services delivered by skilled professional
7 medical personnel. Notwithstanding any other law, this section
8 shall be implemented only if, and to the extent that, the department
9 determines that federal financial participation, as provided under
10 Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396
11 et seq.), is available.

12 (e) (1) The State Department of Health Care Services shall seek
13 any necessary federal approvals for child welfare agencies to
14 appropriately claim enhanced federal Title XIX funds for services
15 provided pursuant to this section.

16 (2) Commencing in the fiscal year immediately following the
17 fiscal year in which the necessary federal approval pursuant to
18 paragraph (1) is secured, county child welfare agencies shall
19 provide health care oversight and coordination services pursuant
20 to this section, and may accomplish this through agreements with
21 local public health agencies.

22 (f) (1) Notwithstanding Section 10101, prior to the 2011–12
23 fiscal year, there shall be no required county match of the
24 nonfederal cost of this program.

25 (2) Commencing in the 2011–12 fiscal year, and each fiscal
26 year thereafter, funding and expenditures for programs and
27 activities under this section shall be in accordance with the
28 requirements provided in Sections 30025 and 30026.5 of the
29 Government Code.

30 *SEC. 3.5. Section 16501.3 of the Welfare and Institutions Code*
31 *is amended to read:*

32 16501.3. (a) The State Department of Social Services shall
33 establish and maintain a program of public health nursing in the
34 child welfare services program that meets the federal requirements
35 for the provision of ~~healthcare~~ *health care* to minor and nonminor
36 dependents in foster care consistent with Section 30026.5 of the
37 Government Code. The purpose of the public health nursing
38 program shall be to ~~identify, respond to,~~ *promote* and enhance the
39 physical, mental, dental, and developmental well-being of children
40 in the child welfare system.

1 (b) Under this program, counties shall use the services of a foster
2 care public health nurse. The foster care public health nurse shall
3 work with the appropriate child welfare services workers to
4 coordinate health care services and serve as a liaison with health
5 care professionals and other providers of health-related services.
6 This shall include coordination with county mental health plans
7 and local health jurisdictions, as appropriate. *In order to fulfill*
8 *these duties, the foster care public health nurse shall have access*
9 *to the child's medical, dental, and mental health care information,*
10 *in a manner that is consistent with all relevant privacy*
11 *requirements.*

12 (c) The duties of a foster care public health nurse shall include,
13 but need not be limited to, the following:

14 (1) Documenting that each child in foster care receives initial
15 and followup health screenings that meet reasonable standards of
16 medical practice.

17 (2) Collecting health information and other relevant data on
18 each foster child as available, receiving all collected information
19 to determine appropriate referral and services, and expediting
20 referrals to providers in the community for early intervention
21 services, specialty services, dental care, mental health services,
22 and other health-related services necessary for the child.

23 (3) Participating in medical care planning and coordinating for
24 the child. This may include, but is not limited to, assisting case
25 workers in arranging for comprehensive health and mental health
26 assessments, interpreting the results of health assessments or
27 evaluations for the purpose of case planning and coordination,
28 facilitating the acquisition of any necessary court authorizations
29 for procedures or medications, *monitoring and oversight of*
30 *psychotropic medications*, advocating for the health care needs of
31 ~~the child~~ *child*, and ensuring the creation of linkage among various
32 providers of care.

33 (4) Providing followup contact to assess the child's progress in
34 meeting treatment goals.

35 (5) At the request of and under the direction of a nonminor
36 dependent, as described in subdivision (v) of Section 11400, ~~assist~~
37 *assisting* the nonminor dependent in accessing physical health and
38 mental health care, coordinating the delivery of health and mental
39 health care services, advocating for the health and mental health
40 care that meets the needs of the nonminor dependent, ~~and to assist~~

1 *assisting the nonminor dependent to make informed decisions*
2 *about his or her health care by, at a minimum, providing*
3 *educational materials, and assisting the nonminor dependent to*
4 *assume responsibility for his or her ongoing physical and mental*
5 *health care management.*

6 (d) The services provided by foster care public health nurses
7 under this section shall be limited to those for which reimbursement
8 may be claimed under Title XIX *of the federal Social Security Act*
9 at an enhanced rate for services delivered by skilled professional
10 medical personnel. Notwithstanding any other ~~provision of law,~~
11 this section shall be implemented only if, and to the extent that,
12 the department determines that federal financial participation, as
13 provided under Title XIX of the federal Social Security Act (42
14 U.S.C. Sec. 1396 et seq.), is available.

15 (e) (1) The State Department of Health Care Services shall seek
16 any necessary federal approvals for child welfare agencies to
17 appropriately claim enhanced federal Title XIX funds for services
18 provided pursuant to this section.

19 (2) Commencing in the fiscal year immediately following the
20 fiscal year in which the necessary federal approval pursuant to
21 paragraph (1) is secured, county child welfare agencies shall
22 provide health care oversight and coordination services pursuant
23 to this section, and may accomplish this through agreements with
24 local public health agencies.

25 (f) (1) Notwithstanding Section 10101, prior to the 2011–12
26 fiscal year, there shall be no required county match of the
27 nonfederal cost of this program.

28 (2) Commencing in the 2011–12 fiscal year, and each fiscal
29 year thereafter, funding and expenditures for programs and
30 activities under this section shall be in accordance with the
31 requirements provided in Sections 30025 and 30026.5 of the
32 Government Code.

33 (g) *Public health nurses shall receive training developed*
34 *pursuant to subdivision (d) of Section 16501.4.*

35 *SEC. 4. Section 3.5 of this bill incorporates amendments to*
36 *Section 16501.3 of the Welfare and Institutions Code proposed by*
37 *both this bill and Senate Bill 238. It shall only become operative*
38 *if (1) both bills are enacted and become effective on or before*
39 *January 1, 2016, (2) each bill amends Section 16501.3 of the*
40 *Welfare and Institutions Code, and (3) this bill is enacted after*

1 *Senate Bill 238, in which case Section 3 of this bill shall not*
2 *become operative.*

3 ~~SEC. 4.~~

4 SEC. 5. To the extent that this act has an overall effect of
5 increasing the costs already borne by a local agency for programs
6 or levels of service mandated by the 2011 Realignment Legislation
7 within the meaning of Section 36 of Article XIII of the California
8 Constitution, it shall apply to local agencies only to the extent that
9 the state provides annual funding for the cost increase. Any new
10 program or higher level of service provided by a local agency
11 pursuant to this act above the level for which funding has been
12 provided shall not require a subvention of funds by the state nor
13 otherwise be subject to Section 6 of Article XIII B of the California
14 Constitution.

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