Assembly Bill No. 82

Passed the Assembly September 10, 2009

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Chief Clerk of the Assembly

Passed the Senate September 9, 2009

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Sections 369.6 and 739.6 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 82, Evans. Dependent children: psychotropic medications.

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 his or her parent. Existing law requires court authorization except in an emergency situation, as specified, for the administration of psychotropic medication to be based on a request from a physician, indicating the reasons for the request, a description of the child's or ward's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication. Existing law requires the officer to approve or deny the request for authorization to administer psychotropic medication, or set the matter for hearing, as specified, within 7 court days.

This bill would, in a pilot project operative only until January 1, 2013, in 3 counties that are selected by the State Department of Social Services in consultation with the Judicial Council and 2 other specified entities, expand the authority of a juvenile court judicial officer to make orders regarding the administration of psychotropic medications to include a dependent child or ward who has been removed from the physical custody of his or her parent or guardian, or a child who has been removed from the physical custody of a parent or guardian pending adjudication as a dependent child. The pilot project would require the physician submitting the request for psychotropic medication to have conducted an examination of the child or ward. The pilot project would require the request to indicate additional information, including the child's medical history and a description of any clinically indicated therapy recommended for the child to participate in during the 6-month period until the next court review of the psychotropic medication. The pilot project would require the juvenile court judicial officer, before authorizing the

administration of psychotropic medication, to make certain findings, including that the child's or ward's caregiver has been informed, and the child or ward has been informed in an age and developmentally appropriate manner, about the recommended medications, the anticipated benefits, the nature, degree, duration, and probability of side effects and significant risks, and any other recommended treatments, that the child or ward has been informed of the right to request a hearing, and that a plan is in place for regular monitoring of the medication, as specified.

The pilot project would require a dependent child or ward to be present in court for any hearing on the request for authorization to administer psychotropic medication, except as specified. The pilot project would authorize the court to inquire about specified information in any proceeding in the juvenile court following court authorization for the administration of psychotropic medication to a child or ward.

The bill would require the State Department of Social Services, after consultation with the State Department of Mental Health, to report to the Legislature regarding the pilot project before July 1, 2013, as specified.

The bill would require the Judicial Council to adopt rules and forms to implement these provisions on or before July 1, 2010.

These provisions would remain in effect until January 1, 2014.

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

SECTION 1. Section 369.6 is added to the Welfare and Institutions Code, to read:

369.6. (a) Notwithstanding Section 369.5, this section establishes a pilot project operative only until January 1, 2013, in three counties. The department shall, in consultation with the County Welfare Directors Association, the Judicial Council, and the California Mental Health Directors Association, select the three counties to participate in the pilot project from among those counties expressing an interest in participating.

(b) 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 or guardian under Section 361, or if the child has been removed from the physical custody of a parent or guardian pending adjudication pursuant to Section 319, 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 or guardian upon making findings on the record that the parent or guardian 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 child's medical history, the expected results of the medication, the nature, degree, duration, and probability of side effects and significant risks commonly known by the medical profession and a description of any clinically indicated therapy recommended for the child to participate in during the six-month period until the next court review of psychotropic medication.

(c) The physician submitting the request for psychotropic medication shall have conducted an examination of the child in compliance with Section 2242 of the Business and Professions Code.

(d) Before authorizing the administration of psychotropic medication, the juvenile court judicial officer shall make the following findings:

(1) The child's caregiver has been informed, and the child has been informed in an age and developmentally appropriate manner, about the recommended medications, the anticipated benefits, the nature, degree, duration, and probability of side effects and significant risks commonly known by the medical profession, and any other recommended treatments, and that the child has been informed of the right to request a hearing pursuant to subdivision (h).

(2) A plan is in place for regular monitoring of the child's medication plan, the effectiveness of the medication, and any potential side effects, by the physician in consultation with the child's caregiver, mental health care provider, and others who have contact with the child, as appropriate.

(e) If a hearing is conducted pursuant to subdivision (h), the child shall be present in court for the hearing unless the child waives the right to attend after consulting with counsel or the court finds that there is good cause for the child's absence from the proceedings.

(f) In any proceeding in the juvenile court following court authorization for the administration of psychotropic medication to a child, the court may inquire about all of the following:

(1) As reported by the child's physician or other health care professional, the effectiveness of the medication and any side effects experienced by the child, the child's progress toward meeting the goals outlined in the child's treatment plan and in any concurrent therapy or other mental health treatment, and, if applicable, any steps recommended to increase the effectiveness of the medication, to reduce side effects, or to obviate the need for continued administration of the medication.

(2) Any behavior changes and possible side effects that have been observed by individuals who have regular contact with the child.

(3) Any statements or concerns expressed by the child regarding the medication.

(g) (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) 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.

(h) 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.

(i) 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.

(j) Consistent with subdivision (d) of Section 369, psychotropic medications may be administered without court authorization in

an emergency situation. In that situation, court authorization shall be sought as soon as possible thereafter consistent with the provisions of this section and related rules of the court developed pursuant to subdivision (d) of Section 369.

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

(*l*) The Judicial Council shall adopt rules and forms to implement the provisions of this section on or before July 1, 2010.

(m) The department, after consultation with the State Department of Mental Health, shall report to the Legislature regarding the findings of the pilot project established pursuant to this section before July 1, 2013. The report shall include demographic data on foster youth and probation youth on psychotropic medications and data on mental health outcome measures for these youth. The report shall include input from stakeholders about reportable outcomes. Each pilot county and the courts in the county may develop outcome measures based on the available data and data that is feasible to measure given the information system used by that county and its courts. The data shall be collected to the extent possible using existing resources or private funding sources.

(n) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 739.6 is added to the Welfare and Institutions Code, to read:

739.6. (a) Notwithstanding Section 739.5, this section establishes a pilot project operative only until January 1, 2013, in three counties. The department shall, in consultation with the County Welfare Directors Association, the Judicial Council, and the California Mental Health Directors Association, select the three counties to participate in the pilot project from among those counties expressing an interest in participating.

(b) 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 or guardian 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 or guardian upon making findings on the record that the parent or guardian 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 minor's medical history, the expected results of the medication, the nature, degree, duration, and probability of side effects and significant risks commonly known by the medical profession, and a description of any clinically indicated therapy recommended for the minor to participate in during the six-month period until the next court review of psychotropic medication.

(c) The physician submitting the request for psychotropic medication shall have conducted an examination of the minor in compliance with Section 2242 of the Business and Professions Code.

(d) Before authorizing the administration of psychotropic medication, the juvenile court judicial officer shall make the following findings:

(1) The minor's caregiver has been informed, and the minor has been informed in an age and developmentally appropriate manner, about the recommended medications, the anticipated benefits, the nature, degree, duration, and probability of side effects and significant risks commonly known by the medical profession, and any other recommended treatments, and that the minor has been informed of the right to request a hearing pursuant to subdivision (h).

(2) A plan is in place for regular monitoring of the minor's medication plan, the effectiveness of the medication, and any potential side effects, by the physician or in consultation with the minor's caregiver, mental health care providers, and others who have contact with the minor, as appropriate.

(e) If a hearing is conducted pursuant to subdivision (h), the minor shall be present in a court for the hearing unless the minor waives the right to attend after consulting with counsel or the court finds that there is good cause for the minor's absence from the proceedings.

(f) In any proceeding in the juvenile court following court authorization for the administration of psychotropic medication to a minor, the court may inquire about all of the following:

(1) As reported by the minor's physician, the effectiveness of the medication and any side effects experienced by the minor, the minor's progress toward meeting the goals outlined in the minor's treatment plan and in any concurrent therapy or other mental health treatment, and, if applicable, any steps recommended to increase the effectiveness of the medication, to reduce side effects, or to obviate the need for continued administration of the medication.

(2) Any behavior changes and possible side effects that have been observed by individuals who have regular contact with the minor.

(3) Any statements or concerns expressed by the minor regarding the medication.

(g) (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.

(h) 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.

(i) 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.

(j) Consistent with subdivision (d) of Section 739, psychotropic medications may be administered without court authorization in an emergency situation. In that situation, court authorization shall

be sought as soon as possible thereafter consistent with the provisions of this section and related rules of the court developed pursuant to subdivision (d) of Section 739.

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

(*l*) The Judicial Council shall adopt rules and forms to implement the provisions of this section on or before July 1, 2010.

(m) The department shall, after consultation with the State Department of Mental Health, report to the Legislature regarding the findings of the pilot project established pursuant to this section before July 1, 2013. The report shall include demographic data on foster youth and probation youth on psychotropic medications and data on mental health outcome measures for these youth. The report shall include input from stakeholders about reportable outcomes. Each pilot county and the courts in the county may develop outcome measures based on the available data and data that is feasible to measure given the information system used by that county and its courts. The data shall be collected to the extent possible using existing resources or private funding sources.

(n) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

Approved _____, 2009

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Governor