

ASSEMBLY BILL

No. 421

Introduced by Assembly Member Beall

February 23, 2009

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 421, as introduced, Beall. 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, until January 1, 2013, would authorize these payments to be made to an out-of-state privately owned residential facility that meets applicable licensing requirements, and that is organized and operated on a for-profit basis, if specified conditions are met. The bill would require the State Department of Mental Health and the State Department of Education to provide prescribed information to the Legislature regarding the out-of-home placement of seriously emotionally disturbed children.

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 the date the bill is enacted, 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.

Vote: $\frac{2}{3}$. 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 18350 of the Welfare and Institutions
2 Code is amended to read:

3 18350. (a) Payments for 24-hour out-of-home care shall be
4 provided under this chapter on behalf of any seriously emotionally
5 disturbed child who has been placed out-of-home pursuant to an
6 individualized education program developed under Section 7572.5
7 of the Government Code. These payments shall not constitute an
8 aid payment or aid program.

9 (b) Payments shall only be made ~~to~~ *on behalf of* children placed
10 in privately operated residential facilities licensed in accordance
11 with the *California Community Care Facilities Act (Chapter 3*
12 *(commencing with Section 1500) of Division 2 of the Health and*
13 *Safety Code)*.

14 (c) ~~Payments~~ *Except as provided in Section 18350.5, payments*
15 *for care and supervision shall be based on rates established in*
16 *accordance with Sections 11460 to 11467, inclusive.*

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

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

3 18350.5. (a) Notwithstanding any other provision of law,
4 effective January 1, 2010, and until January 1, 2013, a payment
5 described by Section 18350 may be made to an out-of-state
6 privately operated residential facility that meets all applicable
7 licensing requirements of the state in which the facility is located,
8 and that is organized and operated on a for-profit basis, if either
9 of the following conditions is met:

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

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

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

30 (2) The individualized education program team agreed, and the
31 placement was made, after a thorough search in which no other
32 comparable private nonprofit or publicly licensed residential care
33 facility was identified that is both willing to accept placement and
34 capable of meeting the child's needs in compliance with federal
35 and state special education and other applicable provisions. The
36 agency or agencies responsible for the child's placement shall
37 document, as part of the individualized education program process,
38 their search efforts and the reasons that no other placement option
39 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 existing procedures, protections, or requirements applicable to the placement of a child in an out-of-state facility.

(d) The State Department of Mental Health and the State Department of Education 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:

(1) 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.

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

(3) 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.

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 the date this section is enacted, 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.

1 SEC. 4. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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

10 In order to ensure payment for necessary out-of-home care for
11 seriously emotionally disturbed children at the earliest possible
12 time, it is necessary for this act to take effect immediately.