Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Corey A. Jackson, Chair
AB 551 (Bennett) – As Amended April 6, 2023

SUBJECT: Medi-Cal: specialty mental health services: foster children

SUMMARY: Delays, by one year, county implementation to shift the responsibility for providing or arranging for specialty mental health services (SMHS) for foster youth from the county of original jurisdiction, to the county in which the foster child resides. Specifically, **this bill**:

1) Delays implementation of the following provisions from July 1, 2023, to July 1, 2024:

    a) Requires a foster child's county of original jurisdiction to retain responsibility to arrange and provide SMHS if the foster child is placed out of the county of original jurisdiction in a community treatment facility, group home, or short-term residential therapeutic program (STRTP), or is admitted to a children's crisis residential program, unless either of the following circumstances exist:

        i) The case plan specifies that the child will transition to a less restrictive placement in the same county as the facility in which the child has been placed; or,

        ii) The placing agency determines, as informed by the child and family team (CFT), that the child will be negatively impacted if responsibility for providing or arranging for SMHS is not transferred to the same county as the facility in which the child has been placed. Requires the placing agency to document the basis for making this determination in the child's case record and may include in a child and family team meeting the mental health plan (MHP) of the receiving county where the facility is located. States legislative intent to encourage local coordination with the receiving county MHP.

    b) Requires the placing agency to provide notification to the MHP that will be responsible for arranging and providing SMHS for the foster child before placing a foster child out of county and allows these notifications to be done through email. Requires, if notification before placement is not possible, the placing agency to notify the appropriate MHP no later than three business days after making the out-of-county placement.

2) Delays by one year, the requirement for the Department of Health Care Services (DHCS), if the department makes the determination that it is necessary to seek federal approval to implement these provisions, to make an official request from the federal government no later than July 1, 2025.

EXISTING LAW:

1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk or have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)

2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)

3) Defines "Early Periodic and Screening Diagnostic, and Treatment Services" (EPSDT) as screening services, vision services, dental services, hearing services, and other necessary health care, diagnostic services, treatment, and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, including SMHS, for certain eligible individuals who are under the age of 21. (42 United States Code 1396d(a)(4)(B))

4) Defines "medical necessity criteria" for purposes of determining Medi-Cal reimbursement for SMHS as including certain diagnoses, including: mood disorders, anxiety disorders, eating disorders, and adjustment disorders, among others. (9 California Code of Regulations 1830.205(a) and 1830.210)

5) States legislative intent to ensure that foster children who are placed outside of their county of original jurisdiction are able to access SMHS in a timely manner, consistent with their individual strengths and needs and the requirements of the federal EPSDT services. (WIC 14717.1(a)(1))

6) States legislative intent 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. (WIC 14717.1(a)(2))

7) Requires the California Health and Human Services Agency (CalHHS) to coordinate with DHCS and the California Department of Social Services (CDSS) to issue policy guidance concerning the conditions for and exceptions to presumptive transfer, and with the input of stakeholders, as specified. (WIC 14717.1(b)(1))

8) Defines "presumptive transfer" as the requirement that, absent any exceptions as established by current law, responsibility for providing or arranging for specialty mental health services promptly transfer from the county of original jurisdiction to the county in which the foster child resides, under certain conditions, as specified. (WIC 14717.1(c))

9) Allows, on a case-by-case basis, and when consistent with the medical rights of children in foster care, presumptive transfer to be waived and requires the responsibility for the provision of SMHS to remain with the county of jurisdiction if certain exceptions exist, as specified. (WIC 14717.1(d)(1))

10) Defines "community treatment facility" as any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. (Health and Safety Code Section [HSC] 1502(a)(8))

11) Defines a "short-term residential therapeutic program" as a residential facility operated by a public agency or private organization and licensed by CDSS that provides an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term, 24-hour care and supervision to children. Further, requires the care and

supervision provided by an STRTP be nonmedical, except as otherwise permitted, as specified. (HSC 1502(a)(18))

12) Allows an STRTP to accept for placement a child who has been assessed as meeting the medical necessity criteria for Medi-Cal SMHS, and the child has been assessed as seriously emotionally disturbed or if the child has been assessed as requiring the level of services provided by the STRTP in order to meet their behavioral or therapeutic needs, as specified. (WIC 11462.01(b)(3)(A),(B), and (D))

13) Enumerates the roles and responsibilities of interagency placement committees as it relates to the placement of dependents and wards into STRTPs, group homes operating at a rate classification level 13 or 14, as specified, and out-of-state residential programs, as specified. (WIC 4096(a))

14) Requires an interagency placement committee to, as appropriate, make certain requirements, with recommendations from the CFT, within 30 days of placement, and further requires the interagency placement committee, if, with recommendations from the CFT, it determines the placement is appropriate, to transmit the approval, in writing, to the county placing agency and the STRTP. (WIC 11462.01(h)(3)(A)(i) and (ii))

15) Specifies that certain conditions enumerated in current law may not prevent the emergency placement of a youth into a certified STRTP prior to the determination by the interagency placement committee, but only if a licensed mental health professional has made a written determination within 72 hours of the youth's placement, that the youth requires the level of services and supervision provided by the STRTP in order to meet the youth's behavioral or therapeutic needs, as specified. (WIC 11462.01(h)(3))

16) Defines a "child and family team" as a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and their family, and to help achieve positive outcomes for safety, permanency, and well-being. (WIC 16501(a)(4))

17) Requires moneys in the Behavioral Health Subaccount and the Behavioral Health Services Growth Special Account be used exclusively to fund certain activities, including Medi-Cal SMHS, including the EPSDT Program, as specified. (Government Code Section 30025 (f)(16)(B))

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Mental health needs of foster youth.* Children placed in the child welfare services system are removed from their parents' custody because they have suffered abuse or neglect, often at a young age. Research on brain development demonstrates that infancy and early childhood are critical periods in a child's development when it comes to forming attachments, and laying the foundation for future skills such as empathy, trust, and problem solving. In recognition of the mental health needs of foster youth, and pursuant to federal and state laws and regulations, California provides a number of services and supports to meet the mental health needs of children involved in the child welfare system. These supports include child and family teams, functional assessment of needs and useful strengths, and STRTPs, which provide short-

term, 24-hour care and supervision to youth. STRTPs are intended to provide mental health interventions to stabilize, support, and transition youth with high level mental health needs to lower levels of care using trauma-informed, culturally relevant services, including SMHS.

Early Periodic and Screening Diagnostic, and Treatment Services. Medi-Cal, which is California's Medicaid program, provides free or low-cost health coverage to foster youth, among other eligible populations, and is administered by DHCS. Medi-Cal contains a child health component, known as the EPSDT, which provides comprehensive health care services to children under the age of 21 who have full-scope Medicaid eligibility, which includes foster youth, who are categorically eligible for Medi-Cal and, therefore, EPSDT. EPSDT services provide preventive, dental, mental health, developmental and specialty services which include screening, diagnostic, and treatment services that seek to ensure youth receive adequate health care. EPSDT also includes SMHS through county MHPs who are responsible for providing or arranging the provision of SMHS to foster youth in their counties, which are available to children and certain adults who meet specific medical necessity criteria.

Presumptive transfer. A primary goal of the child welfare services system is to preserve familial ties whenever possible, while still providing for the best placement possible that meets the needs of the youth. At times, the best placement for a youth, be it with relatives, approved caregivers, or in a congregate care setting, is located outside of the county in which a youth entered the child welfare services system. The county in which a youth has entered the child welfare services system is known as the "county of original jurisdiction," while the county in which a youth is placed is known as the "county of residence."

Currently, "presumptive transfer" means that absent any exceptions, responsibility for providing or arranging for SMHS shall promptly transfer from the county of original jurisdiction to the county in which the foster child resides.

On a case-by-case basis, presumptive transfer can be waived, and the responsibility for the provision of SMHS can remain within the county of original jurisdiction. Presumptive transfer can be waive if any of the exceptions described below exist:

- It is determined that the transfer would disrupt continuity of care or delay access to services provided to the foster child.
- It is determined that the transfer would interfere with family reunification efforts documented in the individual case plan.
- The foster child's placement in a county other than the county of original jurisdiction is expected to last less than six months.
- The foster child's residence is within 30 minutes of travel time to the child's established specialty mental health care provider in the county of original jurisdiction.

AB 1051 (Bennett), Chapter 402, Statutes of 2022. Because community treatment facilities, group homes, STRTPs, or children's crisis residential programs are not distributed evenly throughout California's 58 counties, some counties are required to absorb the caseload of those counties that do not have the appropriate facilities to treat these youth, which has resulted in some youth not receiving timely and adequate access to the SMHS to which they are entitled. In an effort to coordinate timely access to SMHS treatment for out-of-county youth while balancing

the needs of the counties who have taken a disproportionate number of these youth, AB 1051 allowed an exception if the foster youth is transferred permanently to the new county, or if the transfer of responsibility would result in better care.

The provisions of AB 1051 refined how presumptive transfer operates and instead has a foster youth's county of original jurisdiction retain the responsibility to arrange and provide SMHS if the foster child is placed out of the county of original jurisdiction and unless either of the following circumstances exist:

- The case plan specifies that the child will transition to a less restrictive placement in the same county as the facility in which the child has been placed; or,

- The placing agency determines, as informed by the child and family team, that the child will be negatively impacted if responsibility for providing or arranging for SMHS is not transferred to the same county as the facility in which the child has been placed. Requires the placing agency to document the basis for making this determination in the child's case record and may include in a child and family team meeting the MHP of the receiving county where the facility is located. States legislative intent to encourage local coordination with the receiving county MHP.

These provisions were intended to take effect July 1, 2023; however, this bill is proposing to delay these provisions by another year. Some counties have reported logistical challenges in determining the responsibility of arranging and providing mental health services between counties that these temporary out-of-county transfers create, and this delay would allow for the necessary system changes underway to be completed. The delayed implementation would not impact the services to foster youth as the delay does not impact the onsite mental health staff. The delay would just permit counties and STRTPs sufficient time to update relevant payment structures.

California Mental Health Services Authority (CalMHSA). CalMHSA was formed in 2009 by counties as a Joint Powers of Authority and focuses on multi-county projects aimed at improving behavioral health care using pooled resources and is included in the efforts to help counties transition to DHCS' California Advancing and Innovating Medi-Cal (CalAIM) initiatives. CalMHSA, in collaboration with DHCS and CDSS, administers the inter-county transfer of health information and payments for counties to administer the presumptive transfer process. Currently, 34 of the 58 counties in California participate and are actively involved in the presumptive transfer program, which is centered around a web portal that includes information about each individual served, confirms eligibility, and permits transfer of funds by participating counties, which pool resources. Counties also receive monthly reports relating to all finances in the portal.

According to the sponsors, CalMHSA is in the process of upgrading the portal to simplify its use, including automatic population of certain data elements. These changes include streamlining the Health Insurance Portability and Accountability Act (HIPAA) 835 insurance transaction report, which will allow for invoices to be created much more quickly. The 835 transaction is the HIPAA-compliant format that allows for receiving third party reimbursement payments and adjustment information in an electronic format.

Author's Statement: According to the Author, "This bill simply delays of the implementation of AB 1051 (Bennett,'22) by a year to bring the program in line with existing efforts to implement

CalAIM by the State and Counties. It is crucial that we ensure that these programs are successful so that we don't interrupt the continuum of care for our most vulnerable youth."

Need for this bill: The provisions of this bill are seeking to delay by one year, implementation of presumptive transfer for SMHS provided to foster children placed in group homes, community treatment facilities, children's crisis residential programs, or STRTPs outside of their counties of original jurisdiction. AB 1051 clarified the responsibility associated with providing and paying for mental health services when a foster youth is temporarily placed in an STRTP outside of their original county, by requiring the county of origin to retain financial responsibility when placing a foster youth. AB 1051 allowed an exception if the foster youth is transferred permanently to the new county, or if the transfer of responsibility would result in better care. This delay would allow for system changes, local guidance and training intended to streamline its use and make the presumptive transfer process more efficient locally, facilitate participation by more counties, and will ease connections among counties and their STRTP partners.

Equity Impact: It is well documented that foster youth encounter greater barriers to receiving mental health services, especially when they are moved to a home or other placement outside of the county in which they entered care. Youths who are placed across county lines, or "out-of-county," often experience lengthy delays or denials in accessing treatment. Children of color are overrepresented in the foster system. As an example, 8% of children in California are Black, while they make up 23% of the state's youth foster system. This bill will enable children in foster care to maintain effective services across county transfers. Given the high number of children of color in the foster care system, any work we do to ensure more equitable services will have a greater impact on them.

Policy Considerations: This bill delays AB 1051 presumptive transfer provisions by one year. More specifically, current law requires these provisions to be implemented by July 1, 2023, and this bill is proposing a delayed date of July 1, 2024. Should this bill move forward without an urgency clause, counties would still be required to implement AB 1051 on July 1, 2023, until this bill, if chaptered, went into effect on January 1, 2024. Therefore, in order for this bill to be implemented as intended, an urgency clause is required so that the bill may take an immediate effect. The author intends to adopt an urgency clause in the Assembly Health Committee.

Double referral: This bill will be referred to the Assembly Health Committee should it pass out of this committee.

RELATED AND PRIOR LEGISLATION:

AB 1051 (Bennett), Chapter, Statutes of 2022, required a foster child or probation-supervised youth's county of original jurisdiction to retain responsibility to arrange and provide SMHS if placed out of the county of original jurisdiction in a community treatment facility, group home, or STRTP unless specified circumstances exist.

AB 826 (Reyes) of 2019, as introduced, was substantially similar to this bill and would have excluded foster youth placed in STRTPs outside of their county of original jurisdiction from being subject to presumptive transfer unless a specific exception is invoked, among other requirements. *AB 826 was amended on July 2, 2020, to pertain to emergency food assistance.*

AB 1299 (Ridley-Thomas), Chapter 603, Statutes of 2016, provided for presumptive transfer of SMHS for foster youth placed out of county, and required CalHHS to coordinate with DHCS and CDSS to facilitate the prompt receipt of specialty mental health services, among other things.

AB 785 (Steinberg), Chapter 469, Statutes of 2007, required the Department of Mental Health (now, DHCS) to standardize certain contracts, authorization procedures, and documentation standards and forms, and required the provision of specialty mental health services for certain foster youth to transfer from the county of jurisdiction to the county of residence of their legal guardians or adoptive parents.

SB 745 (Escutia), Chapter 811, Statutes of 2000, adopted, among other things, the requirement that each local MHP establish a procedure for ensuring access to EPSDT-required outpatient specialty mental health services for any youth in foster care who has been placed outside of their county of jurisdiction.

REGISTERED SUPPORT / OPPOSITION:

Support

County Behavioral Health Directors Association of California (Sponsor)
Alliance of Child and Family Services
RCRC
Urban Counties of California (UCC)

Opposition

None on file

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