# Assembly Committee on Human Services
# and
# Assembly Select Committee on Foster Care

## Joint Informational Hearing
## On

## Foster Youth and Psychotropic Medication

## Tuesday, August 15, 2006

## Background Briefing Paper

This Joint Informational Hearing of the Assembly Committee on Human Services and the Assembly Select Committee on Foster Care will focus on the use of psychotropic medication among foster youth. In addition, the hearing will highlight the access to and availability of mental health services to foster youth.

The same abuse or neglect that causes children to be removed from their parent's custody and placed in foster homes is often the cause of physical, psychosocial and developmental problems. Many foster youth suffer from poor health and undiagnosed medical or mental health conditions due to a lack of health care, or neglect. Unfortunately, establishing and maintaining quality health and mental health care for youth in foster care is additionally hampered by a child's multiple placements or a lack of resources.

All medication given to foster youth is prescribed by a physician, approved by a judicial court order and entered into the CWS/CMS data system by a county social worker. Payment for medication comes through another federal fund source, Medicaid Title XIX. As part of the AB 636 Outcomes and Accountability process which began in 2004, the California Department of Social Services (DSS) began collecting information entered into the CWS/CMS system on the number of foster youth using medication in foster care. DSS reports that soon it will be able to determine the number of foster youth taking psychotropic medication on a county-by-county basis. However, according to the American Academy of Pediatrics, "most (foster) children do not undergo a comprehensive developmental or psychological assessment at any time during their placement." [1]

[1] Committee on Early Childhood, Adoption and Dependent Care, "Health Care of Young Children in Foster Care," American Academy of Pediatrics March 2002: Vol. 109

Administration of psychotropic medication often occurs without the accompanying psychiatric therapy needed to ensure the health and mental health of the patient. A study by Medco Health Solutions Inc., recently made headlines after finding that two-thirds of children did not see a doctor or therapist for mental health care once within a month of beginning drug treatment. Foster youth are no exception. Federal funding does not provide additional dollars to cover the cost of transportation to and from the therapist, and the low reimbursement rates for physicians and psychiatrists have led to a severe shortage of medical providers for foster youth.

Foster Care Rate Structure

When a child is removed from his or her home, the county social worker determines the best placement for the child. Options include a foster family home, a home operated by a foster family agency or a group home. Group home levels range between 1-14, with a level 14 facility serving youth who have a certified, serious mental health diagnosis. Reimbursement rates for each type of home are paid by drawing down federal Title IV-E monies and vary by the costs of board, care and supervision needed to accommodate the child. Traditionally, foster family homes receive the lowest per-child payment and a level 14 group home receives the highest payment. In addition, foster family homes can receive a special needs payment for children with serious medical needs. These supplemental payments vary from county to county and the rate is set according to the county plan.

Studies on Foster Youth and Psychotropic Medication

Many children in the United States receive psychotropic medication, and the use of this medication has increased over time, according to a June 2004 article studying the use of psychotropic medications by youths in foster homes and in group homes in North Carolina.[2] The incidence of foster youth taking psychotropic medication varies depending on the study. In the North Carolina study, all the youth received residential services through mental health referrals and were either seriously disturbed or had exhibited either violent behavior. The study concluded that "(a)pproximately 67% of the youths in therapeutic foster care and 77% of the youths in group homes took psychotropic medications during the four-month focal period." However, when controlled for clinical status and demographic characteristics, there was no appreciable difference between the use of these medications by youth raised by foster parents or in group homes.

In addition, the North Carolina study notes that it was "difficult to ascertain the appropriateness of the prescription of medications…" and that the data do not include detailed information on the pervious use of psychotropic medications and other detailed medical information.

However, in 1999, a Los Angeles-based researcher published a paper describing the level of psychotropic medication use and patterns of treatment among school-aged children in foster

[2] Alfiee M. Breland-Noble et al., "Use of Psychotropic Medications by Youths in Therapeutic Foster Care and Group Homes," Psychiatric Services June 2004: 6.

care.[3] According to the study, sixteen percent of the children studied were found to have taken psychotropic medication during their lifetime. Children who lived in group homes were more likely to have taken psychotropic medication. In addition, the study found that children who were older, or who were boys, were more likely to receive treatment.

Media Attention

In June 2006, at a meeting of the Blue Ribbon Commission on Foster Care, discussion turned to the issue of foster youth and psychotropic medication. Many of the youth speakers shared disturbing stories of their experiences with medication in foster care. As a result of that Commission discussion, the *San Francisco Chronicle* published an editorial calling the issue "one of the dark secrets of California's troubled foster-care system," and asked Attorney General Bill Lockyer's Office to look into the allegations.[4]

The Attorney General, acting as the legal representative for the Department of Social Services, replied, "As an initial step, we've contacted the Department of Social Services and are obtaining information from the department relative to the issues raised…"

This editorial followed a series of opinion pieces by the *Chronicle* written in the last year, highlighting deficiencies and inequities in California's foster care system.

Legislation and Rules of Court

AB 2923 (Bates) of 1994 contained language specifying that a foster child must be informed of the side-effects of any behavior-altering drug by the prescribing physician. Under this bill, no medication of this type could be prescribed without the consent of the court and only after the physician informed and consulted with the child and the child's social worker. In addition, the bill required the social worker to attempt to notify parents or guardians.

This measure was vetoed by Governor Pete Wilson although the veto message does not specifically outline an objection to this provision of the bill.

In 2004, Assemblymember Dick Mountjoy introduced AB 2645 which required the Department of Social Services (DSS) to conduct a study of the administration of psychotropic medication to children in foster care in four counties and report back to the Legislature. AB 2645 was held in the Assembly Appropriations Committee.

Also in 2004, the Judicial Council adopted a measure establishing time frames for judicial approval of requests to administer psychotropic medication. California Rule of Court 1432.5 outlines the authorization to administer, procedure to obtain authorization, delegation of authority and emergency treatment among other rules. It also specifies that a "local rule of court may be adopted providing that authorization for the administration of such medication to a child declared a ward of the court…may be similarly restricted to the juvenile court."

[3] Bonnie T. Zima et al, "Psychotropic Medication Treatment Patterns Among School-Aged Children in Foster Care," Journal of Child and Adolescent Psychopharmacology 1999: Volume 9, Number 3
[4] "The Drugging of Foster Youth," San Francisco Chronicle 11 June 2006

In Los Angeles County, the Juvenile Court recently revised its protocol for court authorization of psychotropic medication for juvenile dependents and wards. This revision, completed by Los Angeles County's Psychotropic Medication Committee, developed consistent procedures for the courts to better track psychotropic authorization requests received by the court as well as to simplify the procedure for prescribing physicians and provide greater due process to litigants. This process includes a letter to the foster child's parent or legal guardian alerting them to the proposition that their child be treated with psychotropic medications.

*Katie A. v. Bonta*

In a three-year-old class action lawsuit known as *Katie A. v. Bonta*,[5] plaintiffs argue that California has failed to provide appropriate mental health care to children who are in, or at risk of entering, foster care. Instead, children in need of mental health services are placed in institutional facilities or in large group homes. According to a 2001 DSS report, there are approximately 9,000 children in group homes and of those, 50% are the highest-level, most expensive group homes.[6]

The plaintiffs in the case contend that they have a fundamental entitlement of appropriate community-based mental health services and seek declaratory and injunctive relief under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) provisions of the Medicaid Act, the Due Process Clause of the Fourteenth Amendment, the Americans with Disabilities Act, the Rehabilitation Act and state statutes.

Less than a year after *Katie A.* was filed, Los Angeles County and the Los Angeles County Department of Children and Family Services entered into a settlement obligating the county to make improvements in identifying mental health needs, enhancing permanency planning and providing individualized services to promote stability and ensure quality care.

On March 14, 2006 a federal district court judge ordered the State to provide mental health services to thousands of Medi-Cal eligible children who are in foster care or at risk of foster care placement. On July 26, 2006, the federal appeals court for the 9th circuit denied the State's request for am emergency stay of an order requiring California to provide community mental health services to those foster youth.

[5] Katie A. v. Diana Bonta. No 02-05662 (C.D. Cal. Filed July 18, 2002)
[6] California Department of Social Services, *Reexamination of the Role of Group Care in a Family-Based System of Care* (June 2001)