

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1031 (Nazarian) – As Amended March 25, 2019

Policy Committee: Health

Vote: 15 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill requires the Department of Health Care Services (DHCS) to adopt regulations to support the development of a statewide system of youth-focused substance use disorder (SUD) treatment programs and establishes a number of related requirements. Specifically, this bill:

- 1) Repeals inoperative provisions of law that authorized DHCS to establish community-based nonresidential and residential recovery programs to intervene and treat the problems of alcohol and other drug use among youth.
- 2) Requires DHCS to establish regulations regarding SUD treatment and recovery programs for youth.
- 3) Requires the regulations to include criteria for participation, programmatic requirements, treatment standards and terms and conditions for funding.
- 4) Requires the regulations to define and describe a comprehensive, evidence-based continuum of care that includes specified residential and community-based services.
- 5) Allows DHCS to implement and administer the new provisions through all-county information notices or similar written instructions until regulations are adopted.
- 6) Requires DHCS to report to the Legislature beginning January 1, 2021, and annually thereafter
- 7) Contains the following funding provisions:
  - a) Allows DHCS to seek funding from federal financial participation for all services covered by Medi-Cal, or from foundations or other nongovernmental sources.
  - b) Expresses intent that no more than 4% of funds be expended for purposes of developing regulations, standards and procedures to implement this chapter.
  - c) Requires each county that administers the new provisions to continue to use current behavioral health funding sources as applicable, including, but not limited to, the Behavioral Health Subaccount of the Local Revenue Fund 2011 and Drug Medi-Cal funds, including FFP, to fund the described youth SUD services.
- 8) Requires DHCS to update its Medi-Cal billing codes, based upon what is medically necessary for individuals under 21 years of age, to include all of the following:

- a) Screening for early identification and intervention.
- b) Assessment using the American Society of Addiction Medicine criteria.
- c) Residential treatment and withdrawal management.
- d) Outpatient substance use therapies, including substance use education and individual and group counseling.
- e) Family counseling.
- f) Intensive outpatient treatment.
- g) Medications for addiction treatment when clinically indicated.
- h) Case management.
- i) Recovery services and supports.

#### **FISCAL EFFECT:**

- 1) Ongoing administrative staff costs to DHCS to develop regulations and funding criteria, as specified, likely in the low hundreds of thousands of dollars at least (GF/federal) to draft and implement regulations and for oversight and annual reporting.
- 2) Although it is not clear precisely what is envisioned, this bill creates cost pressure for the state to provide additional funding to provide additional youth SUD services. The bill notes federal and nongovernmental sources should be used, as well as existing county realignment dollars. However, even though the bill does not appear to require coverage beyond current requirements since children's coverage under Medi-Cal is already very broad, the bill appears to call for a level of programmatic activity beyond what is currently provided and funded.

Substance use services provided through Medi-Cal were realigned to counties in 2011. Pursuant to Proposition 30 of 2012, legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by 2011 Realignment apply to local agencies only to the extent that the state provides annual funding for the cost increase. This means the state may be required to compensate counties for increased costs to provide additional services that align with the developed regulations and updated billing codes (GF (in absence of an alternate funding source)/federal). Unlike the state-reimbursable mandate process, there is no process for counties to file Prop 30 claims. Without more legal clarity and a formal mechanism for resolving potential disputes, it is difficult to predict with certainty whether an increase in services and spending on youth SUD would trigger Proposition 30 concerns. But regardless of the funding protections under Proposition 30, to the extent providing more youth SUD services puts pressure on realigned funding sources, it creates cost pressure to increase the amount of state funding available to provide realigned services.

- 3) Even without more services being provided, the creation of new billing codes may also result in a greater ability of counties to draw down federal financial participation for currently provided services. For instance, county behavioral health stakeholders note in a county not participating in a Medi-Cal waiver program, SUD case management services provided to a youth are not able to be claimed for purposes of federal reimbursement, even though they are covered under the Medi-Cal Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. This bill requires DHCS to create billing codes that would be applicable

statewide and allow counties to be federally reimbursed for services otherwise wholly funded through local dollars.

#### COMMENTS:

- 1) **Purpose.** According to the author, although California counties manage publicly funded treatment programs, they lack systemic guidance to establish a comprehensive set of services for youth with SUDs. This bill seeks to create treatment standards for SUD youth services. This bill is co-sponsored by the California Psychiatric Association and the County Behavioral Health Directors Association.

- 2) **Youth Substance Use Treatment in Medi-Cal.** Medi-Cal covers SUD treatment services and age-appropriate mental health and substance use health screening. However, the system for delivering SUD services has not been designed around the needs of youth. DHCS currently convenes a Youth Advisory Group (YAG), the mission of which is to collaborate with DHCS to develop and implement a substance use disorder services system of care for youth. YAG members consist of representatives of various counties, state departments and subcommittee chairs of the County Behavioral Health Directors Association of California.

Medi-Cal enrolled youth under age 21 are covered by the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit, which provides comprehensive and preventive health care services for children. States are required to provide any additional health care services that are coverable under the federal Medicaid program and found to be medically necessary to treat, correct or reduce illnesses and conditions discovered regardless of whether the service is covered in a state's Medicaid plan. Diagnostic and treatment services are similarly required to be provided if screening indicates these services are necessary. EPSDT includes mental health and substance use treatment services, including in non-traditional settings such as a school, a workplace or at home.

- 3) **Proposition 64.** In November 2016, voters approved Proposition 64, the Adult Use of Marijuana Act, which legalized the recreational sale and use of cannabis to people over the age of 21. This proposition also levied new excise taxes on the cultivation and retail sale of both adult-use cannabis and medical cannabis. Tax revenue is dedicated to specific purposes. The proposition first allocates specified dollar amounts to enumerated programs, then directs 60% of revenue in excess of these allocations to the Youth Education, Prevention, Early Intervention and Treatment Account administered by DHCS. The amount of revenue to be generated by Proposition 64 is highly uncertain, and estimates are continually updated as more information about tax collections becomes available. However, the Legislative Analyst's Office recently indicated the Youth Account could generate between \$30 and \$60 million for use in the 2019-20 budget year. This bill's findings mention a goal of Proposition 64 was to support a continuum of care for youth SUDs.

According to a 2012 statewide report by DHCS, roughly 8% of California youth age 12 to 17 years has an SUD, which is similar to the statewide prevalence estimate for adults.

- 4) **Related Legislation.** AB 1098 (O'Donnell and Wood) establishes procedures for the implementation and administration of programs funded by the Proposition 64 Youth Education Prevention, Early Intervention and Treatment Account aimed at providing substance abuse education and prevention programs and SUD treatment, including the identification of targeted outcomes with unspecified metrics, the establishment of a technical

advisory committee, required information to be provided by applicants for program funding and progress reports to the Legislature. AB 1098 is pending in the Assembly Education Committee.

SB 445 (Portantino) similarly requires DHCS to adopt regulations to establish youth SUD treatment quality standards, as specified, for any publicly funded direct services intended to treat SUD for individuals from birth to 26 years of age, inclusive. SB 445 is pending in the Senate Appropriations Committee.

- 5) **Prior Legislation.** AB 2328 (Nazarian), of the 2017-18 Legislative Session, which was held in this committee, similarly required DHCS to set up a continuum of care for youth SUD treatment services. AB 2328 was held on this committee's Suspense File.

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