SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair
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Bill No:	SB 528		
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Urgency:	No	**Fiscal:**	Yes
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Subject: Juveniles: health information summary: psychotropic medication

SUMMARY

This bill requires the California Department of Social Services (CDSS) to create an electronic health care portal, through which health care providers will be able to access health information included in a foster child or youth's health and education summary, as provided. The portal must also include completed and approved forms developed by the Judicial Council relating to the administration of psychotropic medication for specified dependent children and wards of the juvenile court.

ABSTRACT

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 of abuse and neglect or to have been abused or neglected, as specified. *(WIC 202*)

2) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. *(WIC 300 et seq.)*

3) Provides that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for dependents or wards of the court, and that the judicial officer may delegate that authority to a parent upon certain findings. (*WIC 369.5(a))*

4) Requires court authorization for the administration of psychotropic medication to be based on a request from a physician that indicates the reason for the request, provides a description of the minor's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication. *(WIC369.5(a)(1))*

5) Requires the Judicial Council to amend and adopt rules of court to develop appropriate rules and forms for the implementation of these changes surrounding the administration of authorizing requests for psychotropic medication, including providing an opportunity for the minor's caregiver and court appointed special advocate, if any, to provide input on the medications being prescribed. *(WIC 369.5(a)(2)(A)(i))*

6) Requires CDSS, in consultation with DHCS and other specified stakeholders, to develop county-specific monthly reports that describe each child for whom one or more psychotropic medications have been paid for under Medi-Cal, including paid claims and managed care encounters. Additionally requires CDSS to develop training, in consultation with DHCS and various other agencies that may be provided to county child welfare social workers and others that addresses the use of psychotropic medications. *(WIC 16501.4)*

7) Requires a foster youth's case plan to include a summary of the health and education information or records, including mental health records. Provides for this summary to be maintained in the form of a health and education passport, or comparable format designed by the child protective agency, and further requires it include specified information. *(WIC 16010(a))*

8) Restricts who may inspect a foster child or youth's case file to those listed in statute. This list includes members of the children's multidisciplinary teams, and persons, or agencies providing treatment or supervision of the minor. *(WIC 827)*

This Bill:

1) Requires CDSS to create an electronic health care portal that will provide health care providers with access to:

    a) The health information of a child in foster care that is included in the child's health and education summary; and

    b) The completed and approved forms developed by the Judicial Council relating to the administration of psychotropic medication for specified dependent children and wards of the juvenile court, as specified.

2) Requires counties to provide CDSS with the information needed for the portal.

3) Gives health care providers of foster child access to the electronic health care portal when providing health care services and medical treatment to the foster child.

FISCAL IMPACT

This bill has not yet been analyzed by a fiscal committee.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, "foster youth, some of our most vulnerable children, frequently change the health providers they see or the foster families they live with, for reasons beyond their control. Oftentimes, their changing lives lead to a loss of critical health records, such as the prescription of antidepressants, mood stabilizers, antipsychotics, and other psychotropic medications. Without a documented record, any attempt to resume use of these medications is greatly complicated. SB 528 will create a universal electronic health care portal for foster youth, allowing them to stabilize and maintain their personal health regimen."

Child Welfare Services (CWS)

California's child welfare services (CWS) system is an essential component of the state's safety net. CWS' goal is to keep the child in their own home when it is safe, and when the child is at risk, to develop an alternate plan as quickly as possible. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child's well-being and avoid court involvement, or a child is removed and placed into foster care.

Abused and neglected children who have been removed from their homes fall under the jurisdiction of the county's juvenile dependency court. The dependency court holds legal jurisdiction over the child, while the child is served by a CWS system social worker. This system seeks to ensure the safety and protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. The CWS system provides multiple opportunities for the custody of a foster child, or the child's placement outside of the home, to be evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker to help provide the best possible services to the child. It is the state's goal to reunify a foster child or youth with their biological family whenever possible. In instances where reunification is not possible, it is the state's goal to provide a permanent placement alternative, such as adoption or guardianship, with the second highest placement priority of the CWS system being to unite children with other relatives or nonrelative extended family members.

As of October 1, 2020, there were 60,045 children in California's CWS system.

Psychotropic Medications and Foster Youth

California has been passing legislation in response to concerns over the excessive prescription of psychotropic medication to foster children and youth since 1999. With the passage of SB 543 (*Bowen, Chapter 552, Statutes of 1999*) the legislature provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster children and youth and that the juvenile court may issue a specific order delegating this authority to a parent if the parent poses no danger to the child and has the capacity to authorize psychotropic medications. This legislation was passed due to concerns that foster children were being subjected to excessive use of psychotropic medication and that

judicial oversite was needed to reduce the risk of unnecessary medication. These provisions were then updated in 2004 by AB 2502 *(Keene, Chapter 329, Statutes of 2004*), which required a judicial officer approve or deny a request for authorization to administer psychotropic medication in writing or set the matter for hearing, within seven days.

Despite these early efforts, concerns remained that foster youth were disproportionately prescribed psychotropic medications. This continued to alarm stakeholders due to concerns generally held in regard to the use of psychotropic medications among children and the potential for negative impacts of that usage as documented through research journals and mainstream media. Psychotropic medication is a fairly broad category, including medications intended to treat symptoms of conditions ranging from attention-deficit/hyperactivity disorder (ADHD) to childhood schizophrenia. Some of these medications, such as Ritalin for the treatment of ADHD, are approved by the Federal Drug Administration (FDA) for use in children and adolescents, but many are not. This lack of FDA approval is what lead to concerns regarding the prescription of psychotropic medication to youth, with an estimated more than 75 percent of prescriptions written for psychiatric illness in the juvenile population being "off label" usage, meaning they have not been approved by the FDA for the prescribed use. The practice of "off label" usage is legal and common across a variety of pharmaceuticals.[1] However, the "off label" usage of anti-psychotics among children is high, particularly among foster children, and presents a risk for unintended side effects. This is particularly true when used in combinations of more than one prescribed psychotropic medication, which foster youth are particularly likely to be prescribed, despite limited evidence of clinical efficacy when used in combination.[2]

These concerns were highlighted and publicized by a series of stories published in the San Jose Mercury News, beginning in 2014, and the Los Angeles Times, beginning in 2015. This investigative series, entitled "Drugging our Children," highlighted growing concerns that psychotropic medications were being relied on by California's child welfare and children's mental health systems as a means of controlling, instead of treating, youth who suffer from trauma-related behavioral health challenges. The series detailed significant challenges in accessing pharmacy benefits claims data held by the Department of Health Care Services (DHCS), which was eventually overcome through a Public Records Act request and lengthy negotiations, and demonstrated that prescribing rates were far higher than had been anticipated by child welfare system experts.

This media series and other efforts by stakeholders led to the introduction and passage of SB 238 (*Mitchell, Chapter 534, Statutes of 2015*), which required certification and training programs for foster parents, child welfare social workers, group home administrators, public health nurses, dependency court judges and court appointed council to include training on psychotropic medication, trauma, and behavioral health, as specified, for children receiving child welfare services. SB 238 also required the Judicial Council to amend and adopt rules of court and develop appropriate forms, including the JV-220, pertaining to the authorization of psychotropic medication for foster youth. Also in 2015, SB 1174 *(McGuire, Chapter 840, Statutes of 2015)* was signed into law, requiring DHCS and CDSS to provide the Medical Board of California (MBC) with information regarding Medi-Cal physicians and their prescribing patterns of

[1] https://www.magellanprovider.com/mhs/mgl/providing_care/clinical_guidelines/clin_monographs/psychotropicdrugsinkids.pdf

[2] http://www.ncbi.nlm.nih.gov/pubmed/25022817

psychotropic medications and related services for dependents and wards of the court, and required the MBC to review the data provided to the board, as specified.

As a result of these reforms, more is known about psychotropic prescribing rates and patterns in California and more attention is being paid to the psychotropic medications prescribed to foster children and youth. For example, CDSS, in consultation with DHCS, develops county-specific monthly reports that describe each child for whom one or more psychotropic medications have been paid for under Medi-Cal, including paid claims and managed care encounters. The MBC receives information from CDSS, in consultation with DHCS, and is able to flag patients who fit the description of being on three or more psychotropic medications for 90 days or more, bringing attention to prescribing patterns and individual cases. With the passage of SB 377 *(McGuire, Chapter 547, Statutes of 2019)*, a ward or dependent child or their attorney may provide authorization for the MBC so that the MBC can review additional information to determine whether there is excessive prescribing of psychotropic medication inconsistent with the standard of care.

Although these changes have helped reduce the over prescription of psychotropic medications to California's foster youth, challenges remain in regards to effective behavioral health treatment. Many youth report experiencing lack of access to and disruption of behavioral health treatment due to frequent turnover among their mental health counselors and psychiatrists. Often these challenges and high turnover is attributed to insufficient funding. Deficits have led to closure of community mental health services, there are limitations on what services can be covered, and low reimbursement rates result in some practitioners not accepting Medi-Cal clients, including foster youth. Foster youth report this high turnover as presenting particular challenges for their behavioral health treatment progress, as they often feel re-traumatized by the process of having to share their past trauma and history with each new practitioner. Additionally, these frequent changes prevent them from building a relationship with their therapists and other practitioners.

This bill seeks to ensure a foster child or youth's health care providers have access to the health information included in the child or youth's health and education summary and completed and approved JV-220 forms by requiring the creation of an electronic health care portal. It is intended that this portal would allow these health care providers to access the foster child or youth's medical history and JV-220 records in real time, thus allowing them access to important case history information at the time of treatment. Though this would not necessarily decrease turnover, it may help health care providers' better treat foster children and youth, as it would improve their access to necessary case history.

Foster Youth Health Passport

A "health passport" is a foster child or youth's health and education summary. When a child or youth is placed into foster care, their case plan is required to include a summary of their health and education information or records, including mental health information or records. This summary, or health passport, is supposed to include, but not limited to, the following information:

- Names and addresses of the child's health, dental, and education providers;

- The child's grade level performance, the child's school record, assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
- A record of the child's immunizations and allergies;
- The child's known medical problems;
- The child's current medications, past health problems and hospitalizations,
- A record of the child's relevant mental health history;
- The child's known mental health condition and medications; and
- Any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate.

A health passport is intended to provide a central location for a summary of the child's health and education information. It is supposed to follow the child throughout the life of their child welfare case and must be provided to new caregivers for the child. This is supposed to ensure the child caretaker is aware of any ongoing health needs or other important medical information. Additionally, the information containing in the health passport must be provided to a youth when they emancipate from foster care, providing them with as comprehensive a record as possible of their education, medical, and dental records.

Current law requires the county child welfare department to provide a copy of the child's health passport to their caregiver. However, the health passport is a confidential document, and social workers should make caregivers aware of this, as well as instruct them to keep it in a secure location and either destroy it or return it to the child welfare department when the child is no longer in their care. There is no authority in current law for the health passport to be provided to school officials or other individuals. Furthermore, sensitive information, including history of sexually transmitted diseases or birth control information, should only be included in the health passport when it is relevant to the minor's current care and allowed per state rules. The one exception to this is psychotropic medication, because it is sensitive health history that is required to be included in the youth's health passport.

This bill requires information from the child or youth's health passport to be provided to the CDSS by the county and then put into an electronic health care portal by CDSS for health care providers to access. Statute does not currently expressly provide for the provision of a child or youth's health passport to a child's health care provider. Yet, the California Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care 2018 Edition, recommends a child or youth's prescriber should review documents such as the health passport. This guidance goes onto recommend that the health passport and other psychosocial history should be shared with the prescriber by the child or youth's social worker at least five business days prior to the appointment, thus allowing ample time for the provider to review. This supports a child's health care provider having access to their health passport for the purpose of deciding whether to prescribe psychotropic medication.[3]

State law is clear that caregivers are supposed to receive the health passport for children in their care. The law provides for the social worker to have 30 days to put together this health history following a child or youth's initial entry into care. For all future placement changes, the social

[3] https://www.dhcs.ca.gov/provgovpart/pharmacy/Documents/QIP_Guidelines_18.pdf

worker is supposed to provide the caregiver with the child's health passport within 48 hours of placement. This is intended to provide caregivers with critical information such as whether the child has any known allergies, the name and contact information for their current doctors, what medications they may be on, among other relevant care details. Stakeholders report that this necessary information often is not provided to caregivers within these timelines, if at all. Additionally, stakeholders report youth continue to face challenges when seeking their own health records or medical information. Therefore, the author's office may wish to consider ways to improve access to this information for caregivers and youth, in addition to providers, in ways that continue to protect the confidential nature of the documents at issue.

A JV-220 Form

A JV-220 is part of an application for psychotropic medication to be prescribed to a foster child or youth. Once a health care provider recommends a psychotropic medication as part of a treatment plan, a social worker or probation officer must provide a completed JV-220 to the Court, along with a JV-220 (A) or (B) that has been completed and signed by the prescribing doctor. The JV-220 acts as a cover sheet for the application to give or continue psychotropic medication to a child or youth in foster care. It provides the court with information about the child, where they live, contact information for the social worker or probation officer, the social worker or probation officers input regarding the requested medication, and any history of other recent medications and/or treatments. It is accompanied by a number of supporting documents including but not limited to prior psychological evaluations and treatment plan documents, prior health records, history of placements, and any significant court documents or reports about the child or family. These attachments and the application should be reviewed by both the prescribing doctor and the court.

The prescribing doctor also completes a JV-220(A) (request for a new order to administer psychotropic medication) or JV-220(B) (request for continuing medication). These forms provide the physician's statement, providing the court with information about the prescribing physician, their assessment of the child, description of the child's symptoms, duration of those symptoms, treatment plan, reasons for recommending information, and other key information.

This process is due to only a juvenile court judicial officer being authorized under California law to make orders regarding the administration of psychotropic medication to children or youth in foster care. The JV-220 form and process is intended to provide judicial officers with the information necessary to make decisions in the child's best interest regarding the issuance of an order to prescribe psychotropic medication.

This bill would require JV-220 forms and other completed and approved forms developed by the Judicial Council relating to the administration of psychotropic medication to be accessible to health care providers through the CDSS created electronic health care portal. There are currently methods for the JV-220 and related forms to be submitted electronically, at least in some counties. The author's office may wish to explore this with Judicial Council to further examine ways to ensure a prescribing doctor has access to the necessary completed forms and attachments.

Related/Prior Legislation:

SB 377 (McGuire, Chapter 547, Statutes of 2019) created a process for a ward or dependent child or their attorney to provide authorization for the MBC to review their medical information to determine whether there is excessive prescribing of psychotropic medication inconsistent with the standard of care.

SB 1174 (McGuire, Chapter 840, Statutes of 2015) required DHCS and CDSS to provide the MBC with information regarding Medi-Cal physicians and their prescribing patterns of psychotropic medications and related services for dependents and wards of the court, and required the MBC to review the data provided to the board, as specified.

SB 238 (Mitchell, Chapter 534, Statutes of 2015) required, among other things, the rules of court and forms to address specified concerns regarding authorizing psychotropic medications for dependents and wards of the court, including that guidance be provided to the court on how to evaluate the request for authorization.

SB 253 (Monning, 2015) would have added more requirements for juvenile court authorization of psychotropic medications for dependents of the court or wards of the court. The bill was vetoed by then Governor Brown.

AB 2117 (Evans, 2008) would have, among other things, expanded the authority of a juvenile court office to make orders regarding the administration of psychotropic medication to dependents of the court or wards of the court. The bill died in the Senate Appropriations Committee.

AB 1514 (Maze, Chapter 120, Statutes of. 2007) applied the provisions relating to psychotropic medications for dependents of the court to wards of the court.

AB 2502 (Keene, Chapter 329, Statutes of 2004) required a judicial officer to approve or deny, in writing, a request for authorization to administer psychotropic medication to a dependent of the court, or set the matter for hearing, within seven days.

SB 543 (Bowen, Chapter 552, Statutes of 1999) provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for dependents of the court, as specified.

COMMENTS

Existing law places strict restrictions on who has access to a foster child or youth's case file. Due to the sensitive nature of this information, the Legislature has typically acted cautiously when it comes to increasing access to this information, in support of its belief that juvenile court records should, in general, be confidential. A foster child or youth's case file includes their health and education summary, sometimes known as a health passport, and any JV-220 forms. This bill would require CDSS staff to put foster youth's health passport information and JV-220 forms into an online health portal that would then be accessed by their health care providers. Existing law regarding access to a foster youth's case file should not be at issue here, as existing law

provides both CDSS staff and members of a child's multidisciplinary team, persons, or agencies providing treatment or supervision of the child with access to the child's case file.

However, statute currently only provides for a youth's health passport to be provided to the youth's caregiver or the emancipating youth. Guideline documents discussed above suggest a child's prescribing doctor should review the child's health passport when making an evaluation regarding the prescribing of psychotropic medications. Yet some other materials suggest that caregivers be instructed the information contained in the health passport should not be shared, thus clarification around who has access to the health passport could help increase access to relevant information for health care providers as appropriate. Given the sensitive nature of this information, there may be some privacy considerations to be made in terms of the process prescribed in this bill for the provision of this information by the counties to CDSS for input into an online portal and then access to that portal. There may also be some implementation issues to be further finessed. For example, there is an ongoing effort to create a new CARES computer system for county welfare departments to replace the current computer based information system. This system will contain the information contain the child's health and education summary, as well as the juvenile court forms related to psychotropic medications. It is not currently being created with a health portal component, thus it is not currently being created to provide health care providers access to the information contained in the system. However, this might be an option that would allow health care providers with improved access to relevant health information, as sought by this bill.

As this bill proceeds through the legislative process, the author may wish to work with CDSS, DHCS, the County Welfare Directors, the County Behavioral Health Directors, and other stakeholders to ensure the privacy of this information will protected and access to the resulting online portal will be limited. Additionally, the author may wish to work with the afore mentioned stakeholders to consider whether there are existing online databases, such as the CARES computer system, or other programs used by the county child welfare departments, the Judicial Council for JV-220 and related forms, or others that may be utilized to meet the goal of this legislation – i.e. ensuring a foster child or youth's health care provider has access to their medical and treatment history.

POSITIONS

Support:
None received.

Oppose:
None received.

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