
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: SB 528
AUTHOR: Jones
VERSION: February 17, 2021
HEARING DATE: April 28, 2021
CONSULTANT: Vincent D. Marchand

SUBJECT: Juveniles: health information summary: psychotropic medication

SUMMARY: Requires the Department of Social Services (DSS) to create an electronic health care portal that will permit health care providers of children in foster care to access the health care information of the foster child, including forms that are required relating to the administration of psychotropic medication. Requires physicians who administers psychotropic medication to foster children to provide the child's caseworker and the foster care public health nurse with specified medical information within 72 hours of the administration of psychotropic medication. Adds specified duties to the role of the foster care public health nurse, including updating the electronic health care portal and the child's health and education passport, and providing the child's medical information, including completed forms relating to the administration of psychotropic medication, to the child's health care provider five days before the child's medical appointment, and the to the child or their caregiver within 24 hours of a request from the child or caregiver. Requires counties to provide specified training to foster care public health nurses.

Existing law:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been judged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. [WIC §202]
- 2) Specifies 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 permits the judicial officer to delegate that authority to a parent upon certain findings. [WIC §369.5(a)]
- 3) 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. [WIC §369.5(a)(1)]
- 4) Requires the Judicial Council to amend and adopt rules of court to develop appropriate rules and forms for the administration of authorizing requests for psychotropic medication, including providing an opportunity for a minor's caregiver and court appointed special advocate, if any, to provide input on the medications being prescribed. [WIC §369.5(a)(2)]
- 5) Requires DSS, in consultation with the Department of Health Care Services (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 DSS 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]

- 6) 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]
- 7) Restricts who may inspect a foster child or youth's case file to those listed in statute, which includes members of the children's multidisciplinary teams, and persons, or agencies providing treatment or supervision of the minor. [WIC §827]
- 8) Requires DSS to establish and maintain a program of public health nursing in the child welfare services program to promote and enhance the physical, mental, dental, and developmental well-being of children in the child welfare system. Requires counties to use the services of a foster care public health nurse, and requires the foster care public health nurse to coordinate health care services and serve as a liaison with health care professionals and other providers of health related services. Requires the duties of the foster care public health nurse to include collecting health information and other relevant data on each foster child as available, and expediting referrals to providers in the community. [WIC §16501.3]

This bill:

- 1) Requires DSS to create an electronic health care portal, or use an existing electronic portal, that will provide health care providers with access to both of the following:
 - a) Health information of a child in foster care that is included in the health and education summary, as specified in existing law; and,
 - b) The completed and approved forms developed by the Judicial Council relating to the administration of psychotropic medication for specified dependent children.
- 2) Requires a foster care public health nurse to add and update the information described in paragraph 1) above in the electronic portal.
- 3) Requires health care providers of a child in foster care to have access to the electronic health care portal created pursuant to this bill when providing health care services and medical treatment to the child.
- 4) Adds the following to the duties of a foster care public health nurse:
 - a) Updating the electronic health care portal required by this bill, and the health and education passport, that is required to be part of a foster youth's case plan; and,
 - b) Providing the child's medical, dental, and mental health care information, including the completed and approved forms relating to the administration of psychotropic medication, to the child's health care providers no later than five days before the child's appointment with the health care provider, and the child or their caregiver within 24 hours of a request from the child or caregiver.

- 5) Requires a county to provide training to foster care public health nurses on how to use, and securely share information from, the foster child's health and education passport and the electronic health care portal required by this bill, and how to securely share information from the completed and approved forms relating to the administration of psychotropic medication.
- 6) Requires a county to provide information to minors and nonminor dependents in foster care, caregivers, and health care providers on how to contact the foster care public health nurse and how to request medical records and information and health education materials.
- 7) Permits DSS to provide guidance to counties in implementing 5) and 6) above by means of all-county letters or other similar instructions
- 8) Adds lab tests and results to the information that is required to be included on forms developed for the administration of psychotropic medication for children in foster care.
- 9) Requires the rules of court and forms developed by the Judicial Council for the administration of psychotropic medications for children in foster care to include a requirement that a physician who administers psychotropic medication to provide to the child's caseworker and the foster public health nurse information on the labs, tests, diagnoses, treatment, discharge summary, admitting history and physical, and any prescriptions for the child within 72 hours of the administration of psychotropic medication for the child.
- 10) Requires the county welfare agency or other person or entity who submitted a request for authorization for the administration of psychotropic medication to provide a copy of the court order approving or denying the request to the foster care public health nurse, in addition to the child's caregiver.

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

COMMENTS:

- 1) *Author's statement.* 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. This bill will create a universal electronic health care portal for foster youth, allowing them to stabilize and maintain their personal health regimen.
- 2) *Child Welfare Services (CWS).* California's 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.

- 3) *Background and legislative history on psychotropic medications and foster youth.* In response to concerns over the excessive prescription of psychotropic medication to foster children and youth, the California legislature has enacted several reforms since 1999. With the passage of SB 543 (Bowen, Chapter 552, Statutes of 1999), the legislature required 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 oversight was needed to reduce the risk of unnecessary medication. These provisions were then updated 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. 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. It is estimated that more than 75% of prescriptions written for psychiatric illness in the juvenile population are for "off label" usage, which is permitted, but it means that it has not been approved by the FDA for the prescribed use.

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. These investigative articles 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 articles detailed significant challenges in accessing pharmacy benefits claims data held by the 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 form, pertaining to the authorization of psychotropic medication for foster youth.

- 4) *Health and Education Passport*. A “Health and Education Passport” (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 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 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 contained in the 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 youth’s Passport to their caregiver. Statute does not currently expressly provide for the provision of a Passport to a health care provider. However, the California Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care 2018 Edition, recommends that a prescriber should review documents such as the Passport. This guidance goes onto recommend that the 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.

- 5) *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 required because only a juvenile court judicial officer is 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 an 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.

- 6) *2015 California State Auditor Report.* In 2015, the California State Auditor released a report regarding California's foster care system and found that the state and counties failed to adequately oversee the prescription of psychotropic medications to children in foster care. According to this report, the fragmented structure of the state's child welfare system has contributed to its failure to ensure it has the data necessary to monitor the prescription of psychotropic medications to foster children. The two state entities most directly involved in overseeing foster children's mental health are DSS and DHCS, and even when combined, results from data systems these two departments operate still contain inaccurate and incomplete data related to foster children who are prescribed psychotropic medications. Consequently, neither agency can completely identify which foster children statewide are prescribed psychotropic medications or which medications those children are prescribed. Further, the inaccurate and incomplete information in DSS' data system is used to produce the Passports, which are critical documents that are meant to follow foster children should their placement change. All 80 of the Passports the State Auditor reviewed contained instances of incorrect start dates for psychotropic medications. Moreover, 13 of these 80 Passports did not identify all the psychotropic medications that the courts authorized, and all 80 were missing information about the corresponding psychosocial services the foster children should have received for at least one psychotropic medication. According to the Auditor, these errors and omissions appear to have been caused in large part by a lack of county staff to enter foster children's health information into DSS' data system and an unwillingness of some county departments to share foster children's information with each other. However, caretakers, health care providers, social workers, and others rely on the Passports to make decisions about foster children's care; without accurate information, they may inadvertently make decisions that do not reflect the children's best interests.

Among the recommendations in the State Auditor's report was that DSS should collaborate with counties and other relevant stakeholders to develop and implement a reasonable oversight structure that addresses, at a minimum, the monitoring and oversight weaknesses and that ensures the accuracy and completeness of DSS' data system and the resulting Passports.

- 7) *DSS in process of transitioning to new computerize system for managing child welfare.* The Child Welfare Services/Case Management System (CWS/CMS) is the current electronic system utilized by the child welfare system to serve children who have been removed from their homes. With CWS/CMS, case workers have the ability to record medical appointments, medication, and the child's Passport document. DSS notes that the psychotropic medication fields are not mandatory data fields and are dependent on the social worker or foster care public health nurse receiving medical records in order to enter the data. According to DSS, CWS/CMS is an antiquated computer system that essentially serves as a "filing cabinet" of information, and only has 24% of the functionality needed to support social workers. CWS/CMS system change requests take at least 18 months to implement, and that is assuming that such functionality is even achievable, noting that CWS/CMS was developed almost three decades ago using programming language that is no longer supported by Microsoft. According to DSS, it is currently transitioning to a new system, the California Automated Response and Engagement System (CWS-CARES) to improve the timely delivery of services and supports for children, youth, and families, but that system is still a minimum of several years out from initial releases. DSS states that there is no definitive scope for how much of the medical information will be available in that system, and how likely it is that medical providers will have access either directly or indirectly. According to current federally approved planning and funding documents, CWS-CARES version 1 is due to be implemented starting in March 2024.
- 8) *Double referral.* This bill was heard in the Senate Human Services Committee on March 9, 2021, and passed with a 4-0 vote.
- 9) *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 Medical Board of California 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.

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.

10) *Support.* This bill is sponsored by the California Academy of Child and Adolescent Psychiatry, which states that it has conducted a survey within its membership, and found that 40% reported access to the Passport less than 10% of the time, and another 40% of its members reporting that they have never had access to the Passport when treating foster youth. This bill would allow health providers access to critical information in real time for foster children. The California State Association of Psychiatrists also supports this bill, pointing to the State Auditor report that found many of the foster care youth's Passports did not identify all the psychotropic medications that the courts authorized, and none contained complete summaries of the psychosocial services that the children had received.

SUPPORT AND OPPOSITION:

Support: California Academy of Child and Adolescent Psychiatry (sponsor)
California State Association of Psychiatrists

Oppose: None received

-- END --