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THIRD READING

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Bill No: SB 528  
Author: Jones (R)  
Amended: 5/25/21  
Vote: 21

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SENATE HUMAN SERVICES COMMITTEE: 4-0, 3/9/21  
AYES: Hurtado, Jones, Cortese, Pan

SENATE HEALTH COMMITTEE: 11-0, 4/28/21  
AYES: Pan, Melendez, Eggman, Gonzalez, Grove, Hurtado, Leyva, Limón, Roth,  
Rubio, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21  
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

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**SUBJECT:** Juveniles: health information summary: psychotropic medication

**SOURCE:** California Academy of Child and Adolescent Psychiatry

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**DIGEST:** 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.

**ANALYSIS:**

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, contingent on an appropriation for this purpose, 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: health information of a child in foster care that is included in the health and education summary, as specified in existing law; and, 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: 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, 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 five business days 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.

## Comments

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."

*Child Welfare Services (CWS)*. California's child welfare services (CWS) system is an essential component of the state's safety net. Abused and neglected children who have been removed from their homes fall under the jurisdiction of the county's juvenile dependency court. This system seeks to ensure the safety and

protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. 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. Despite these early efforts, concerns remained that foster youth were disproportionately prescribed psychotropic medications. 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.

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 training on psychotropic medication, trauma, and behavioral health, as specified, for children receiving child welfare services to key components of the child welfare system, including resource families, public health nurses, and social workers. 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 psychotropic medications to foster youth, 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.

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, and requiring public health nurses log necessary and up to date information into this 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. For more information on the history of psychotropic medication and foster youth, JV-220 forms, and other

information that would be shared through this bill, see the Senate Human Services Committee analysis.

*CDSS 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 information, but CDSS 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 CDSS, 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.

### **Related/Prior Legislation**

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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- CDSS reports a cost range for year of implementation of \$5 to \$15 million General Fund with ongoing annual costs of \$5 million General Fund. (For details Staff Comments below)
- Judicial Council unknown costs develop forms.
- Juvenile Dependency Court—Unknown, potential workload cost pressures to the courts. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund-Trial Court Trust Fund)
- CWS County caseworkers, public health nurses, physicians and other staff to complete forms and enter them into the system. Following 2011 realignment, state-mandated local costs are not reimbursable, but instead must be funded by the state pursuant to Proposition 30

**SUPPORT:** (Verified 5/20/21)

California Academy of Child and Adolescent Psychiatry (source)  
California State Association of Psychiatrists  
County Behavioral Health Directors Association of California

**OPPOSITION:** (Verified 5/20/21)

SEIU California

**ARGUMENTS IN SUPPORT:** The California Academy of Child and Adolescent Psychiatry writes:

“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 the foster care system. Specifically, they found that many of the foster care youth’s Health and Education Passports (HEP) did not identify all the psychotropic medications that the courts authorized, and none contained complete summaries of the psychosocial services that the foster children had received. Furthermore, CALACAP conducted a survey within our membership and found 40% of these members reported access to the HEP less than 10% of the time and 40% report never having access to the HEP when treating foster youth. When HEP contains inaccurate and incomplete

health information, health care providers may not have the critical information they need to make sound health care decisions for these vulnerable children.

“SB 528 would create a universal electronic health care portal which would include the judicial authorization form for prescribing psychotropic medication (JV-220) and the HEP information allowing health care providers access to critical information in real time for any foster child. For these reasons, the California Academy of Child and Adolescent Psychiatry is pleased to SPONSOR AND SUPPORT SB 528. Thank you for authoring this important piece of legislation.”

**ARGUMENTS IN OPPOSITION:** SEIU California writes:

“In addition to the costs noted in the committee analysis we are concerned additional costs would arise given (1) the lack of coordination between this measure and proposed comprehensive systemic changes pursuant to CalAIM; (2) the bill’s impartation of obligations to public health nurses who are not currently under law or practice those in possession of the information required to be in-put into the system, nor whose time for undertaking these obligations would be compensable; (3) the likelihood not only of duplicative but contradictory requirements and obligations thereby not only undermining the intent of the measure, but undermining the unique obligations counties have to foster children and youth; and, (4) the lack of consideration towards very the serious health privacy rights concerns of these same foster children and youth.

“An integral component of CalAIM is the Foster Care Model of Care Working Group which has been working diligently to address all of the various and sundry issues and concerns related to coordination of and improvement in care for foster children and youth. As we wait for the work to be completed by this working group, and CalAIM in general, it is important to consider the potential for unintended consequences which may arise via the implementation of potentially contradictory measures such as SB 528.”

Prepared by: Marisa Shea / HUMAN S. / (916) 651-1524  
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