

State of California—Health and Human Services Agency



EDMUND G. BROWN JR.
GOVERNOR



JULY 14, 2017

ALL COUNTY LETTER (ACL) NO. 17-77
MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES (MHSUDS)
INFORMATION NOTICE NO. 17-032

TO:

- ALL ADOPTION DISTRICT OFFICES
- ALL CHIEF PROBATION OFFICERS
- ALL COUNTY ADOPTION AGENCIES
- ALL COUNTY WELFARE DIRECTORS
- ALL FOSTER FAMILY AGENCIES
- ALL GROUP HOME PROVIDERS
- ALL TITLE IV-E AGREEMENT TRIBES
- COUNTY BEHAVIORAL HEALTH DIRECTORS
- COUNTY DRUG & ALCOHOL ADMINISTRATORS
- COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
- COUNTY WELFARE DIRECTORS ASSOCIATION OF CALIFORNIA
- CHIEF PROBATION OFFICERS OF CALIFORNIA
- CALIFORNIA STATE ASSOCIATION OF COUNTIES
- CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
- COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
- CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
- CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
- CALIFORNIA OPIOID MAINTENANCE PROVIDERS

SUBJECT: IMPLEMENTATION OF PRESUMPTIVE TRANSFER FOR FOSTER CHILDREN PLACED OUT OF COUNTY

REFERENCE: ALL COUNTY LETTER (ACL) NO. 16-84
MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES (MHSUDS) INFORMATION NOTICE (IN) NO.16-049
ALL COUNTY LETTER (ACL) NO. 15-11

This California Department of Social Services (CDSS) All County Letter (ACL) and Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice (IN) establishes policy guidance regarding presumptive transfer as defined in Section 14717.1, subdivision (c), of the Welfare and Institutions Code of Specialty Mental Health Services (SMHS) for foster children and youth. The California Department of Health Care Services (DHCS) and CDSS have authority to establish this policy guidance by issuing this ACL/IN until regulations are adopted (Welfare and Institutions Code § 14717.1, subdivision (g)). County mental health plans (MHP), county probation agencies, and child welfare agencies are responsible for implementing presumptive transfer based on the policy guidance included in this ACL/IN.

BACKGROUND

To provide children and youth in foster care who are placed outside their counties of original jurisdiction¹ access to SMHS in a timely manner, based upon their individual strengths and needs, and consistent with Early and Periodic Screening Diagnostic and Treatment requirements, Assembly Bill 1299 (Ridley-Thomas, Chapter 603, Statutes 2016) was enacted to establish presumptive transfer. Presumptive transfer means a prompt transfer of the responsibility for the provision of, or arranging and payment for SMHS from the county of original jurisdiction to the county in which the foster child resides. Discussions regarding presumptive transfer should occur with the child and his or her parent, with the Child and Family Team (CFT) members, and in consultation with other professionals who serve the child or youth, as appropriate.

THE ROLE OF THE CHILD AND FAMILY TEAM

CFTs provide meaningful opportunities for children, youth and families, and for those who provide them with physical or emotional support, to participate in the development and implementation of their individualized case or treatment plans that are designed to meet their needs. Similarly, CFTs promote collaboration and cooperation among child-serving individuals and agencies. By sharing decision-making and working together, professionals and children, youth and families can work towards positive outcomes.

A CFT is a group of individuals that includes the child or youth, family members, professionals, natural community supports, and other individuals identified by the family who are invested in the child, youth, and family's success. The CFT shares responsibility to assess, plan, intervene, monitor and refine services and supports over time. The CFT process allows members of the team to discuss behavioral issues of

¹ Presumptive transfer only applies to children and youth who experience inter-county moves within California and does not apply to children and youth placed out of state.

concern with the goal of identifying services for the foster child or youth that can be provided in the least-restrictive setting.

Recommendations concerning placement, services and supports should be discussed within the CFT process. As such, the CFT helps to inform the placing agency's decision about placing a child in an out of county family or relative placement, a resource family home, or a Short-Term Residential Therapeutic Program (STRTP).

In the context of presumptive transfer requirements, the CFT provides an important opportunity for the CFT members to engage with the placing agency to consider the length of placement and whether presumptive transfer of SMHS would benefit the foster child or youth and support family reunification efforts or if an exception to presumptive transfer exists (described below).

REQUIREMENTS FOR PRESUMPTIVE TRANSFER

Effective July 1, 2017, the responsibility for authorization, provision, and payment of SMHS will transfer to the MHP in the foster child's county of residence for foster children placed in a county other than the county of original jurisdiction, pursuant to the timeframes outlined in statute, unless any exceptions to presumptive transfer apply, and are determined to necessitate the waiving of presumptive transfer, as specified in the following section. Upon presumptive transfer, the MHP in the county in which the foster child resides shall assume responsibility for the authorization and provision of SMHS, and the payment for services (Welfare and Institutions Code § 14717.1, subdivision (f)).

To provide timely provision of mental health services, the MHP in the foster child's county of residence is required to accept an assessment, if one exists, of needed SMHS for the foster child from the MHP in the county of original jurisdiction. Nothing should preclude the MHP of residence from updating the assessment or conducting a new assessment if clinically indicated, but these updates or new assessments may not delay the timely provision of SMHS to the child.

Presumptive transfer can only be waived by the placing agency if all of the following conditions are met:

- 1) An individualized determination has been made that an exception outlined in statute applies (Welfare and Institutions Code § 14717.1 (b) 2(A)), and
- 2) A demonstration that the MHP in the county of original jurisdiction can contract and provide services within 30 days.

These conditions are described further below.

INFORMING PARTIES CONCERNING PRESUMPTIVE TRANSFER AND WAIVER REQUESTS

Prior to the Transfer or Request: Placing agencies are responsible for informing the foster child, the person or agency responsible for making mental health care decisions on behalf of the foster child, and the child's attorney, of the presumptive transfer requirement under AB 1299, including a description of exceptions, the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency. In a subsequent ACL/IN, DHCS and CDSS will provide a template informing notice that counties may use. Until then, placing agencies shall provide this information verbally or in writing, according to the following:

- For new out of county placements of children currently in care, placing agencies shall include this information in the notice provided pursuant to Welfare and Institutions Code 361.2(h) if such notice is given. If a notice is not provided pursuant to WIC 316.2(h), the placing agency shall provide notice as soon as possible upon placement.
- For foster children currently placed out of county who are currently receiving SMHS, placing agencies shall provide this information either at the next CFT meeting or prior to a status review hearing.
- For children not currently receiving SMHS, the placing agency shall provide this information at the next CFT meeting, and no later than December 31, 2017².

At the Time of a Request: When a request for a waiver of presumptive transfer is received, the placing agency is responsible for informing the foster child, person or agency responsible for making mental health care decisions on behalf of the foster child, and the child's attorney of the waiver request. The placing agency should also inform the CFT coordinator if one exists, or the case carrying social worker or deputy probation officer, and the MHP of original jurisdiction.

CONDITIONS FOR PRESUMPTIVE TRANSFER

Effective July 1, 2017, presumptive transfer applies under the following three conditions:

² Monthly face to face visits may inform a social worker or deputy probation officer that the child's mental health needs are not being met, in such circumstances social workers and deputy probation officers are encouraged to inform the child, family or CFT members regarding the right to request a presumptive transfer consistent with Condition B of this letter.

Condition A: For any foster child who is placed by a placing agency out of the county of original jurisdiction on or after July 1, 2017, the responsibility to provide or arrange for the provision of and payment for SMHS will transfer to the county of residence.

Condition B: For any foster child who resides in a county other than the county of original jurisdiction after June 30, 2017, that is not receiving SMHS consistent with his or her mental health needs as specified in the child's client plan, the responsibility to provide or arrange for the provision of and payment for SMHS will be transferred to the MHP in the county of residence.

Condition C: For any foster child who resides in a county other than the county of original jurisdiction after June 30, 2017, and who continues to reside outside the county of original jurisdiction after December 31, 2017, the responsibility for the provision and payment of SMHS will be transferred to the county of residence no later than the child's first regularly scheduled status review hearing conducted pursuant to Welfare and Institutions Code Section 366 in the 2018 calendar year.

EXCEPTIONS TO THE CONDITIONS OF PRESUMPTIVE TRANSFER

The foster child, the person or agency responsible for making the mental health care decisions on behalf of the foster child³, the county probation agency or the child welfare services agency with responsibility for the care and placement of the child, or the child or youth's attorney may request that the placing agency consider a waiver of presumptive transfer. The placing agency may decide to waive presumptive transfer **on an individual, case-by-case basis only** if one or more of the four exceptions listed below exists. The waiver decision must be documented in the child's case plan, and communicated to all other members of the CFT through a CFT coordinator if one exists, or the placing agency's case carrying social worker or deputy probation officer, and the MHP in the county of jurisdiction.

- The transfer would negatively impact mental health services being provided to the child or youth or delay access to services provided to the foster child;
- The transfer would interfere with the family reunification efforts documented in the individual case plan;
- The foster child's placement in a county other than the county of original jurisdiction is expected to last less than six months; or

³ The person or agency responsible for making mental health care decisions on behalf of the foster child is the person or entity who has the legal authority to consent to mental health treatment on behalf of the child. In a foster care case, this is usually the parent or legal guardian, unless the court has suspended those rights or the child has been freed for adoption.

- The foster child's residence is within 30 minutes of travel time to his or her established SMHS care provider in the county of original jurisdiction.

A waiver processed based on an exception to presumptive transfer shall be contingent upon the MHP in the county of original jurisdiction demonstrating an existing contract with a SMHS provider, or the ability to enter into a contract with a SMHS provider within 30 days of the waiver decision, and the ability to deliver timely SMHS directly to the foster child. Such information may be obtained by the placing agency verbally or in writing from the MHP in the county of original jurisdiction. That information shall be documented in the child's case plan.

The placing agency is responsible for informing the child, his or her parent, the CFT coordinator if one exists, or the placing agency's case carrying social worker or deputy probation officer, the MHP in the county of original jurisdiction and the county of residence, and the child's attorney of a waiver request.

PROCEDURAL STEPS FOR PRESUMPTIVE TRANSFER

As counties implement procedural steps for presumptive transfer, they should identify a single point of contact or unit and have a dedicated phone number and/or e-mail address at the MHP and each placing agency and post that information to a public website to ensure timely communication.

All parties must comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 requirements and all applicable Federal and State regulations promulgated from HIPAA when making presumptive transfers, providing notifications, and requesting information regarding the foster child.

Presumptive Transfer: Condition A

1. If no exception exists to presumptive transfer, the placing agency shall inform the foster child and the CFT coordinator if one exists, or the placing agency's case carrying social worker or deputy probation officer, the child's attorney, the biological parent(s) when appropriate (if they are not already a member of the CFT) of the transfer of responsibility to provide, or arrange for the provision of and payment for SMHS transfer to the county of residence within 3-business days of this decision. Notification shall include the following information:
 - a. Name, location, and contact information of the referring placing agency;
 - b. The county of the placement; and

- c. The date when the child will be physically placed or the date the physical placement did occur in cases where the youth's physical placement is expedited within the county of residence.
2. The placing agency shall notify the MHP where the child resides through their posted single point of contact within 3-business days of the presumptive transfer decision and ensure that the foster child's residence address is updated in the Medical Eligibility Data System (MEDS) within 2-business days of making the determination. This notification shall include the following information:
 - a. Identifying information about the child: name, date of birth, and address;
 - b. Name, location, and contact information of the referring placing agency;
 - c. Name and contact information of who can sign releases of information;
 - d. Name and contact information of who can sign consents;
 - e. Send, or arrange to have sent to, the MHP the most recent consent for services, and consent for medication, including the JV-220; and
 - f. Send, or arrange to have sent to, the MHP the most recent mental health records, including the most recent mental health assessment. Nothing should preclude the MHP of residence from updating the assessment or conducting a new assessment if clinically indicated, but these updates or new assessments may not delay the provision of SMHS to the child.
3. All determinations regarding waiver of presumptive transfer are required to be made in consultation with the child's CFT members, and other professionals who serve the child as appropriate, and documented in the foster child's case plan and client plan.

Presumptive Transfer: Condition B

1. Counties must follow steps described for Condition A in 1 through 3 above; and
2. For children subject to Condition B the following additional steps shall be followed:
 - a. The placing agency shall ensure that the child or youth has been provided a mental health screening prior to completing the steps for presumptive transfer, unless a waiver is requested.
 - b. If a foster child has been screened and assessed as needing SMHS but is not receiving SMHS, the applicable placing agency will transfer the foster child utilizing steps described for Conditions A in 1 through 3 above unless a waiver is requested.

Presumptive Transfer: Condition C

1. At least 10-calendar days prior to the child's next status review hearing that occurs after December 31, 2017, the placing agency shall notify the foster child and the CFT coordinator if one exists, or the placing agency's case carrying social worker or deputy probation officer, the child's attorney, the biological parent(s) when

appropriate (if they are not already a member of the CFT) of the transfer of responsibility to provide, or arrange for the provision of, SMHS and payment for SMHS to the county of residence when a youth is placed outside of the county of original jurisdiction.

2. All determinations regarding waiver of presumptive transfer are required to be made in consultation with the child's CFT members, and other professionals who serve the child as appropriate and documented in the foster child's case plan and client plan.
3. The placing agency shall notify the MHP where the child resides through their posted single point of contact within 10-calendar days of the presumptive transfer decision and ensure that the foster child's residence address is updated in the MEDS.
4. Placing agencies may discuss and initiate the transfer of SMHS with the foster child, CFT, child's attorney, and biological parents earlier than the next status review hearing.

Waiver Requests

A request for waiver may be made by the foster child, the person or agency that is responsible for making mental health care decisions on behalf of the foster child, the probation agency, or the child welfare services agency with responsibility for the care and placement of the child, or the child's attorney. Once a waiver request is made, the presumptive transfer is on hold pending the final decision by the placing agency or court.

- 1) The waiver request must be made to the placing agency within 7-calendar days of the placing agency's determination of where the foster child will be placed out of county. The waiver request must include, at a minimum the following information:
 - a. Name of the child;
 - b. Name and contact information of the requester and their legal relationship to the child; and
 - c. A brief description of which exception(s) are believed to apply to waive presumptive transfer.
- 2) The placing agency shall inform the foster child, person or agency responsible for making mental health care decisions on behalf of the foster child, the child's attorney of the waiver request, and the CFT coordinator if one exists, or the placing agency's case carrying social worker or deputy probation officer.
- 3) The placing agencies shall make their determination of the waiver request in consultation with the CFT.

- 4) Once a determination is made, the person who requested the waiver of presumptive transfer, along with any other parties to the child's welfare or probation case, shall receive notice of the county placing agency's determination of whether to waive presumptive transfer.
- 5) The individual who requested the waiver or any other party to the case who disagrees with the determination made by the placing agency may request judicial review prior to the county's determination becoming final.
- 6) The court may set the matter for hearing and may confirm or deny the transfer of responsibility or application of an exception based on the best interest of the child.
- 7) If the court confirms the waiver request, the responsibility for authorization of and payment for SMHS shall remain with the child's county of original jurisdiction.
- 8) If the waiver request is denied, the responsibility for authorization and payment of SMHS shall transfer to the child's county of residence. The placing agency shall notify the MHP of county of original jurisdiction and the MHP of the county of residence within 3-business days of the receipt of the judicial denial, provide the required documentation and change the foster child's residence address in the MEDS to the child's address in the county of residence. The placing agency will notify the MHP where the child resides that the change in MEDS has occurred within 2-business days of making the change. The MHP where the child resides shall include the foster child in its caseload for claiming purposes.
- 9) The placing agency shall inform the MHP in the county of original jurisdiction within 3-business days of all final determinations for a waiver regarding a foster child receiving SMHS under the responsibility of the county of original jurisdiction. The following information shall be provided:
 - a. Determination of the exception(s) that support the waiver; and
 - b. Exception(s) claimed as the basis for the request.
- 10) A request for a waiver, the exception (s) claimed as the basis for the request, a determination of whether a waiver is determined to be appropriate, and any objections to the determination shall be documented in the child's case plan.

Expedited Transfer

AB 1299 provides for a process of expedited presumptive transfer. DHCS and CDSS will issue a future joint All County Letter and MHSUDS Information Notice on the process for expedited transfers. However, MHPs are required to provide or arrange for the provision of SMHS to beneficiaries that meet SMHS medical necessity criteria. For all children and youth who are under 21 years of age and have full-scope Medi-Cal

coverage, Early and Periodic Screening Diagnostic and Treatment SMHS are available and are to be provided consistent with the child or youth's treatment needs and goals as documented in the mental health client plan. In emergency situations and when the child is in imminent danger to themselves or others, MHPs must provide SMHS without prior authorization, regardless of the child's county of residence.

Next Steps

This policy guidance provided by DHCS and CDSS describes the process for foster children and youth placed out of their county of original jurisdiction to access SMHS in a timely manner and will assist local programs serving foster youth in identifying the procedural steps necessary to implement presumptive transfer. DHCS and CDSS will continue to collaborate with stakeholders in the development of future ACL/INs concerning procedural steps for expedited transfers, informing notices, and address other key elements as well as to identify practices, tools, and information to ensure that presumptive transfer is successfully implemented.

Questions regarding the CFT process and or placing agency responsibilities may be directed to the CDSS Integrated Services Unit, at (916) 651-6600, or via email at CWScoordination@dss.ca.gov. Questions regarding authorization and payment of SMHS may be directed to the DHCS Mental Health Services Division County Support Unit Liaison for your county. A current list of county assignments can be found at: <http://www.dhcs.ca.gov/services/MH/Pages/CountySupportUnit.aspx>.

Sincerely,



KAREN BAYLOR, Ph.D., LMFT
Deputy Director
Mental Health & Substance Use
Disorder Services
Department of Health Care Services



GREGORY E. ROSE, MSW
Deputy Director
Children and Family Services Division
California Department of Social Services