

# Assembly Bill 1299

Los Angeles County Department of Mental Health

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# AB 1299 Intent

- \* ACL No. 17-77
- \* MHSUDS Information Notice No. 17-032
- \* Establishes policy guidance of presumptive transfer, to provide children and youth in foster care who are placed outside their counties of original jurisdiction access to specialty mental health services (SMHS) in a timely manner, based upon their individual strengths and needs, consistent with Early and Periodic Screening Diagnostic and Treatment requirements (EPSDT).

# AB 1299 Background

- \* Presumptive Transfer is the automatic shift of specialty mental health services and EPSDT obligation to the county in which the child is placed (host), by the county of jurisdiction (placing).
- \* Presumptive Transfer means a prompt transfer of the responsibility for the provisions of, or arranging and payment for SMHS from the county of original jurisdiction to the county in which the foster youth resides.

# AB 1299 - Implementation

- \* Effective **July 1, 2017**, presumptive transfer applies under the following three conditions:
  - \* **Condition A:** For any foster child who is placed 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.

# AB 1299 - Implementation

- \* **Condition C:** For any foster child who resides in a county outside of 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.

# AB 1299 – Role of CFT

- \* 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 professional who serve the child or youth, as appropriate.
- \* A CFT is a group of individuals that includes the 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.

# AB 1299 – Role of CFT

- \* **Recommendations concerning placement, services and supports should be discussed within the CFT process**, allowing the CFT 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).
- \* CFT provides an important opportunity for engagement 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.

# AB 1299 – Host County Responsibility

- \* **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 outside of their county of original jurisdiction, unless any exceptions to presumptive transfer apply, and are determined to necessitate the waiving of presumptive transfer, as specified in the following section.



# AB 1299 – Timely Access to SMHS

- \* 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.

# Exceptions to 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 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 outside of the county of original jurisdiction is expected to last **less than six months**; or
  - \* 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.

# Exceptions to Presumptive Transfer

- \* Similarly, the foster child, the person or agency responsible for making the mental health care decisions on behalf of the foster child, the county probation agency, 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 above exists.

# Exceptions to Presumptive Transfer

- \* 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.

# Exceptions to Presumptive Transfer

- \* 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.**
- \* The MHP in the county of original jurisdiction shall inform the placing agency (verbally or in writing).
- \* This information shall be documented in the child's case plan.

# Exceptions to Presumptive Transfer

- \* 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.

# Informing Parties

- \* ***Prior to the Transfer or Request for Waiver:*** Placing agencies are responsible for informing the following 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:
  - \* the foster child,
  - \* person or agency responsible for making mental health care decisions on behalf of the foster child,
  - \* the child's attorney,
  - \* The CFT coordinator, if one exists, or the case carrying social worker,
  - \* The deputy probation officer,
  - \* The MHP of original jurisdiction

# Procedures for Presumptive Transfer

- \* **STILL BEING DEVELOPED BY STATE & COUNTY**
- \* 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.



# Procedures for Presumptive Transfer

## ***Presumptive Transfer: Condition A***

- \* 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 OFT) of the transfer to the county of residence within 3-business days of this decision. Notification shall include the following information:
  - \* Name, location, and contact information of the referring placing agency;
  - \* The county of the placement; and
  - \* 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.

# Procedures for Presumptive Transfer

## ***Presumptive Transfer: Condition A***

- \* 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 Medi-Cal Eligibility Data System (MEDS) within 2-business days of making the determination. This notification shall include the following information:
  - \* Identifying information about the child: name, date of birth, and address;
  - \* Name, location, and contact information of the referring placing agency;
  - \* Name and contact information of who can sign releases of information;
  - \* Name and contact information of who can sign consents;
  - \* Send, or arrange to have sent to, the MHP the most recent consent for services, and consent for medication, including the JV-220; and
  - \* 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

# Procedures for Presumptive Transfer

## ***Presumptive Transfer: Condition A***

- \* 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.

# Procedures for Presumptive Transfer

## ***Presumptive Transfer: Condition B***

- \* Counties must follow steps described for Condition A in 1 through 3 above; and
- \* 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.

# Procedures for Presumptive Transfer

## ***Presumptive Transfer: Condition C***

- \* 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.
- \* 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.

# Procedures for Presumptive Transfer

## ***Presumptive Transfer: Condition C***

- \* 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.
- \* 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.

# Procedures for Presumptive Transfer

## **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.
- \* 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.

# Procedures for Presumptive Transfer

## ***Waiver Requests***

- \* 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.
- \* The placing agencies shall make their determination of the waiver request in consultation with the CFT.
- \* 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



# Procedures for Presumptive Transfer

## ***Waiver Requests***

- \* 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.
- \* 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.
- \* 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.

# Procedures for Presumptive Transfer

## ***Waiver Requests***

- \* 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.

# Procedures for Presumptive Transfer

## ***Waiver Requests***

- \* 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.
- \* 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.

# Procedures for Presumptive Transfer

## *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.
- \* 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.**

# DRAFT AB 1299 Flow Chart for Presumptive Transfer when **No Waiver is Requested**

Counties should use this flow chart as a companion to DHCS Information Notice (IN) 17-032: Implementation of Presumptive Transfer for Foster Children Placed Out of County

