

Mental Health Services for Foster Youth in California

A Fact Sheet Prepared by the Youth Law Center

Do children in foster care have a right to mental health services?

Yes. All children in foster care have a right to receive medical, dental, vision, and mental health services.¹ Children in state care also have a constitutional right to necessary health care services.²

What types of mental health services are available to children in foster care?

Medi-Cal and EPSDT

Most foster children are eligible for Medi-Cal, which provides a full spectrum of care, including mental health services, for eligible children and youth up to age 21.³ Youth who age out of foster care are eligible for transitional Medi-Cal under the program for Former Foster Care Children (FFCC) as long as they are in foster care on their 18th birthday.⁴

Medi-Cal services include the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program required by federal Medicaid law.⁵ Under EPSDT, the state must provide screening, including a developmental screen, according to established periodicity schedules based on the age of the child. The state must also provide inter-periodic screens.⁶

When a child has a condition that requires treatment, the state must provide or arrange for treatment to correct or ameliorate that condition.⁷ A more complete description of Medi-Cal Mental Health Services for children is available in *A Guide to Children's Mental Health Services Under Medi-Cal* published by Protection and Advocacy.⁸

¹ Cal. Welf. & Inst. Code § 16001.9(a)(4).

² See, e.g., *DeShaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 200 (1989); *Norfleet v. Arkansas Dep't of Human Service*, 989 F.2d 289, 293 (8th Cir.1993); *K.H. v. Morgan*, 914 F.2d 846, 856 (7th Cir. 1990); *Hernandez v. Hines*, 159 F. Supp.2d 378, 384 (N.D. Tex. 2001); *Del A. v. Roemer*, 777 F. Supp. 1297, 1318 (E.D.La. 1991); *Wilder v. City of New York*, 568 F. Supp. 1132, 1137 (E.D.N.Y. 1983).

³ 42 U.S.C. §§ 1396d(a), 1396d(h), 1396d(r); 9 C.C.R. § 1810.247; see also *Katie A. v. Los Angeles County*, 481 F.3d 1150, 1154 (9th Cir. 2007) ("The EPSDT obligation is thus extremely broad.")

⁴ Cal. Welf. & Inst. Code § 14005.28; California Department of Health Services, ACWDL 00-41 (August 14, 2000) and ACWDL 00-61 (November 22, 2000.)

⁵ 42 U.S.C. § 1396d(a)(xiii)(4)(B).

⁶ 42 U.S.C. § 1396d(r)(1)(A); "Inter-periodic screen" means a visit to the doctor not included in the EPSDT screening schedule. 22 C.C.R. § 51184(a)(3). An "inter-periodic screen" may include an encounter with a provider prior to Medicaid eligibility, or a provider that otherwise does not participate in Medi-Cal. 17 C.C.R. §§ 6800 et. seq., 22 C.C.R. § 51184.

⁷ 42 U.S.C. §§ 1396d(r)(5), 1396a(a)(43)(C).

⁸ Available at: <http://www.pai-ca.org/pubs/518801.htm> or <http://www.pai-ca.org/pubs/518801.pdf>

Special Education

For children who are eligible for special education, mental health services that are necessary for the child to benefit from his or her education should be included in the child's Individual Education Program (IEP).⁹ These services are sometimes referred to as AB 3632 services.¹⁰ The parent (or person holding education rights,) the IEP team, or the school district, with parental authorization, can refer the child to the appropriate mental health department for assessment.¹¹ The mental health department must provide the mental health services included in the child's IEP,¹² but the school district remains responsible for ensuring that the child receives them.¹³

For more information about mental health services related to special education, see Chapters Five and Nine of Disability Rights California's publication *Special Education Rights and Responsibilities*.¹⁴

What is the social worker's responsibility for identifying and meeting the mental health needs of a child in foster care?

The social worker has a responsibility to monitor the child's physical and emotional condition and take necessary action to safeguard the child's growth and development while in placement.¹⁵

Assessment

The social worker must conduct an assessment of each child that includes (among other things) a) social, cultural, and physical factors relevant to the child; b) social services provided to the child or the family and the results of those services; c) the need for health or medical care; and d) any condition that would require placement of a child who is seriously emotionally disturbed in a community treatment facility.¹⁶

The social worker must also ensure that the child receives periodic assessments in accordance with the Child Health and Disability Prevention (CHDP) periodicity schedule.¹⁷ CHDP, which provides the screening portion of EPSDT, provides a full range of health screening services including a developmental history and behavioral

⁹ Cal. Gov. Code §§ 7572 & 7576.

¹⁰ See, Cal. Gov. Code §§ 7570-7588.

¹¹ Cal. Gov. Code § 7572 & 7576(b); 2 Cal. Code Regs. 60040.

¹² Cal. Gov. Code § 7576; 2 Cal. Code Regs. §§ 60030 - 60200.

¹³ Cal. Gov. Code § 7573; 20 U.S.C. §§ 1412(a)(11)-(12). See *specifically*, 20 U.S.C. § 1412(a)(12)(B)(ii). Federal law requirements apply to all public agencies involved in the education of children with disabilities, including state mental health departments. 34 C.F.R. §§ 300.2(b).

¹⁴ Available at: <http://www.pai-ca.org/pubs/504001SpecEdIndex.htm>

¹⁵ California Department of Social Services, Manual of Policies and Procedures (MPP) 31-405.1(l). (available at: <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws3.pdf>)

¹⁶ MPP 31-205.1 (a)(1), (f), (h), & (j) (available at: <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws2.pdf>)

¹⁷ MPP 31-206.361 & 405.1(n).

assessment as well as a complete physical examination, an oral health assessment, a nutritional assessment, and vision and hearing screening.¹⁸ CHDP follows the periodicity schedule of the American Academy of Pediatrics.¹⁹

Case Plan and Placement

The child's case plan must include an assessment of the child's placement needs and the type of home or institution that will meet those needs.²⁰ The social worker must base the placement decision on the particular needs of the child including (among other things) a) health and emotional factors; b) anticipated special needs, including the need for psychological care; and c) the capability, willingness, and ability of the caregiver to meet the specific needs of the child.²¹

When a child is placed in a group care or treatment setting, specific criteria must be met. No foster child may be placed in a group home unless the placement is necessary to meet the treatment needs of the child and the group home has a treatment program that meets those treatment needs.²² If the case plan provides for placement in a community treatment facility, the plan must specify why that is the most appropriate placement and how the continuing stay criteria will be met.²³

A child under the age of six may not be placed in a group home or temporary shelter care facility unless the placement is needed to provide specialized treatment or for defined family reunification services.²⁴ When the placement is for the purpose of providing specialized treatment, the case plan must identify the need for, nature of, and anticipated duration of the treatment. The placement may not exceed 120 days unless additional time is needed and that need is documented in the case plan and approved by the social worker's supervisor.²⁵

The case plan must also include a plan to ensure the child receives medical care that places attention on preventive care through the Child Health and Disability Prevention (CHDP) program or its equivalent.²⁶ The child must receive a medical and dental examination, preferably prior to placement, but not later than 30 days after placement.²⁷ The social worker must also arrange for necessary treatment.²⁸

¹⁸ Cal. Health & Safety Code §§ 124025-124110.

¹⁹ <http://aappolicy.aappublications.org/cgi/reprint/pediatrics;105/3/645.pdf>

²⁰ MPP 31-206.31.

²¹ MPP 31-420.14, 420.16, & 420.17.

²² Cal. Welf. & Inst. Code § 11402(c); MPP 31-420.231.

²³ MPP 31-206.315-.316.

²⁴ Cal. Welf. & Inst. Code § 361.2(e)(8).

²⁵ Cal. Welf. & Inst. Code § 361.2(e)(8)(A).

²⁶ MPP 31-206.36.

²⁷ MPP 31-206.361.

²⁸ MPP 31-206.362.

What can the court do if it is concerned about the mental health of a child?

The court may order the social worker to obtain the services of psychiatrists, psychologists, or other clinical experts as needed to determine or provide appropriate treatment.²⁹

If the court believes a dependent child may need specialized mental health treatment while in out of home placement, it must notify the director of the county mental health department in the county where the child resides.³⁰

When notified by the juvenile court, the mental health director must assign responsibility, either directly or through contract with a private provider, to review the information to assess whether the child is seriously emotionally disturbed and determine the level of involvement in the case necessary to assure access to appropriate mental health treatment services. The director must determine whether appropriate treatment is available through the minor's own resources, a private party or third party payer, or through another agency, and the determination must be submitted in writing to the court within 30 days.³¹ In appropriate cases, the court can order the child to be taken to a mental health facility for evaluation.³²

What can the court do if a mental health agency fails to provide mental health services?

The juvenile court may join in the proceedings any agency or private service provider that has failed to meet a legal obligation to provide services to the minor and can order services, provided that the child has been determined to be eligible for those services.³³

What can the child's attorney do if an agency won't provide mental health services to a child?

If the child has been determined to be eligible for the services, the attorney can make a motion for joinder of the agency in the juvenile court proceeding as described above.

If the agency has found the child ineligible for services, refused to provide necessary services, or failed to provide services with reasonable promptness, the attorney can pursue administrative remedies with the appropriate agency. The attorney for the child has an obligation to investigate and report to the court any interests of the child beyond

²⁹ Cal. Welf. & Inst. Code § 370.

³⁰ Cal. Welf. & Inst. Code § 319.1.

³¹ Cal. Welf. & Inst. Code § 5694.7.

³² Cal. Welf. & Inst. Code § 357 (mental illness), 359 (danger to self or others as a result of the use of narcotics or restricted dangerous drug), 6550-6552 (mental disorder or retardation.) Cal. Welf. & Inst. Code § 5150 (Lanterman-Petris-Short Act) permits an initial 72-hour treatment evaluation period only if a person, "as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled."

³³ Cal. Welf. & Inst. Code § 362(a).

the scope of the juvenile proceedings that may need to be protected by the institution of other administrative or judicial proceedings.³⁴ When the court receives this notice, it must take whatever appropriate action is necessary to fully protect the interests of the child.³⁵ This may include, for example, appointing the attorney to represent the child in a fair hearing, special education proceeding, or other forum.

The attorney, the child, or someone on the child's behalf can also contact the Medi-Cal Ombudsman's office for assistance.³⁶

Who can consent to mental health services for a child in foster care?

Generally, the parents or legal guardian of a child have the authority to consent to health care services for the child, although once a child is in foster care only the court can authorize psychotropic medication as described below. The parent or guardian may authorize someone who is caring for the child to consent to medical care, but must provide that authorization in writing.³⁷ When a child has been adjudged a dependent, the court can limit the parents' authority, but must clearly and specifically set forth all limitations.³⁸ If a child is placed in a planned permanent living arrangement with a relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care as the custodial parent of the minor.³⁹

When there is no parent, guardian, or person standing in loco parentis⁴⁰ who is able or willing to authorize the care, the court itself can authorize necessary medical, surgical, dental, or other remedial care, upon the written recommendation of a physician and after giving notice to the parent, guardian, or person standing in loco parentis.⁴¹ The court can also order a social worker to authorize necessary medical, surgical or dental care by licensed medical professionals for a child in foster care, provided (a) the court determines there is no parent, guardian, or person standing in loco parentis capable or willing to authorize and (b) due notice has been given to the child's parent, guardian, or person standing in loco parentis.⁴²

In an emergency situation a social worker may authorize care without a court order for a child who is in immediate need of medical attention. "Emergency situation," means a child requires immediate treatment for the alleviation of severe pain or immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death. The social worker must make reasonable efforts to

³⁴ Cal. Welf. & Inst. Code § 317(e).

³⁵ Cal. Welf. & Inst. Code § 317(e).

³⁶ http://www.dmh.ca.gov/Services_and_Programs/Quality_Oversight/Medi-Cal_Ombudsman.asp

³⁷ Cal. Family Code § 6550, 6910.

³⁸ Cal. Welf. & Inst. Code § 361(a).

³⁹ Cal. Welf. & Inst. Code § 366.27.

⁴⁰ A person standing in loco parentis is someone who has assumed parental responsibilities for a child.

⁴¹ Cal. Welf. & Inst. Code § 369(b)

⁴² Cal. Welf. & Inst. Code § 369(c).



obtain consent from or notify the parent, guardian, or person standing in loco parentis before authorizing the care.⁴³

In some circumstances, the foster child may consent to mental health care. Minors who are twelve years old and older may consent to outpatient mental health services or counseling or residential shelter services if in the opinion of the attending professional the minor is mature enough to participate intelligently in the outpatient treatment or residential shelter services and either the minor would present a danger of serious physical or mental harm to self or others without the mental health treatment or counseling, or residential shelter services or is the alleged victim of incest or child abuse.⁴⁴

A minor may not consent to convulsive therapy, psychosurgery, or psychotropic medication without the consent of the minor's parent or guardian or authorization of the court.⁴⁵

In addition, the court may authorize a minor, with the advice of counsel, to make a voluntary application for inpatient or outpatient mental health services. To authorize such voluntary application, the juvenile court must find: (1) that the minor suffers from a mental disorder which may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility or program; and (2) there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interests.⁴⁶

Who can authorize psychotropic medication for a child in foster care?

Only the court can make orders concerning the administration of psychotropic medication for a child in foster care. The court may delegate the authority to the child's parent if it finds that the parent poses no danger to the child and has the capacity to authorize psychotropic medications.⁴⁷ In emergency situations psychotropic medication may be administered without a court order.⁴⁸

Court rules spell out detailed procedures for authorization of the administration of psychotropic medication to a dependent youth,⁴⁹ and a specific court form must be used to apply for authorization.⁵⁰ The application must include the following information:

⁴³ Cal. Welf. & Inst. Code §369(d).

⁴⁴ Cal. Family Code § 6924(b).

⁴⁵ Cal. Family Code § 6924(f).

⁴⁶ Cal. Welf. & Inst. Code § 6552.

⁴⁷ Cal. Welf. & Inst. Code § 369.5; Cal. Rules of Court Rule 5.640(e).

⁴⁸ Cal. Welf & Inst. Code § 369(d); Cal. Rules of Court Rule 5.640(g). See footnote 43 and accompanying text, *supra*.

⁴⁹ *Id.*

⁵⁰ Form JV-220, *Application and Order to Administer Psychotropic Medication-Juvenile*, available at <http://www.courtinfo.ca.gov/forms/documents/jv220.pdf>

- The diagnosis of the child's condition that the physician asserts can be treated through the administration of the medication;
- The specific medication recommended, with the recommended dosage and anticipated length of time the course of medication will continue;
- The anticipated benefits to the child of the medication;
- A list of any other medications that the child is taking and how these medications may interact with the proposed psychotropic medications;
- A description of any other relevant treatment plans (i.e. therapy);
- A statement that the child has been informed of the recommended course of treatment, the basis for it, and its possible results, and the child's response must be included; and
- A statement that the child's parents or guardians have also been informed or details about efforts to inform the child's parents. Any response from a parent must be included in the application.⁵¹

The child's attorney and the parties to the proceeding must be notified of the application to administer psychotropic medication, and they have time to file an opposition with the court.⁵² A court order authorizing the administration of psychotropic medication to a dependent youth is effective until it is terminated or modified by the court or for 180 days, whichever is earliest. The court can schedule a progress review requiring a written report or court hearing.⁵³

Can a child in foster care refuse mental health treatment?

California law generally permits involuntary mental health treatment only when necessary to protect an individual from harm. For example, a child who is a danger to self or others or gravely disabled may be committed to a mental health facility.⁵⁴

If a child in foster care is concerned about proposed mental health treatment, he or she should discuss the situation with his or her attorney and identify the available options.

⁵¹ Cal. Rules of Court, Rule 5.640(c)(6).

⁵² Cal. Rules of Court, Rule 5.640(c)(8).

⁵³ Cal. Rules of Court, Rule 5.640(f).

⁵⁴ *In re Roger S.*, 19 Cal. 3d 921 (1977), Cal. Welf. & Inst. Code §§ 5150, *et seq.*; Cal. Rules of Court Rule 5.645.

Can children in foster care exercise the psychotherapist–patient privilege?

The psychotherapist-patient privilege permits a person to keep communications with mental health professionals confidential.⁵⁵ Youth who are found by the court to be of sufficient age and maturity may invoke the privilege or may consent to having their attorney invoke the privilege. If the court finds that the child is not of sufficient age and maturity, the lawyer holds the privilege. Children over twelve years of age are presumed to be of sufficient age and maturity to consent, subject to rebuttal by clear and convincing evidence.⁵⁶

Notwithstanding the psychotherapist-patient privilege, some information may be shared. When the court authorizes care for a child under its jurisdiction, it may authorize release of information about that care to a social worker or other individual or agency caring for or acting in the interest and welfare of the child.⁵⁷ In addition, information about a child's mental health treatment may be shared with the court but only to the extent necessary to evaluate the minor's progress and make appropriate orders.⁵⁸

What information is shared with the child's attorney?

The child's attorney has access to all records regarding the child that are maintained by a health care facility, health care providers, a physician, a surgeon or other health practitioner or child care custodian.⁵⁹ Counsel for the child must be provided with access to all records maintained by state or local public agencies. Any information requested by a child's attorney from a child protective agency, or from a child's guardian ad litem must be provided within 30 days of the request.⁶⁰ The information the attorney obtains may be used only to provide legal representation of the child."⁶¹

What information is shared with a CASA?

The authority of a CASA to review a child's records is governed by the order of the court. The judge may grant the child's CASA the authority to review specific relevant documents and interview people who have information about the child.⁶² Agencies and health care providers must permit a CASA to inspect any records relating to the child according to the terms of the court order, but the CASA's right to the information is subject to the California Evidence Code, including the psychotherapist-client privilege.⁶³

⁵⁵ Cal. Evid. Code §§ 1010-27. See also, Cal. Welf. & Inst. Code § 5328.

⁵⁶ Cal. Welf. & Inst. Code § 317(f).

⁵⁷ Cal. Welf. & Inst. Code § 369(e).

⁵⁸ Cal. Evid. Code § 1012; *In re Kristine W.*, 94 Cal. App. 4th 521 (Cal. Ct. App. 2001); *In re Mark L.*, 94 Cal.

App. 4th 573 (Cal. Ct. App. 2001).

⁵⁹ Cal. Welf & Inst. Code § 317(f).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Cal. Welf. & Inst. Code § 103(h).

⁶³ Cal. Welf. & Inst. Code § 107.



All confidential records and information acquired or reviewed by a CASA must remain confidential and may be disclosed only pursuant to a court order.⁶⁴

What is HIPAA? Does it prohibit disclosure of mental health records?

HIPAA refers to the federal Health Insurance Portability and Accountability Act of 1996. HIPAA and the implementing regulations establish for certain health care providers, health plans, and health clearinghouses national data standards for electronic health care transactions as well as security and privacy standards for the protection of health information.⁶⁵ These standards are intended to make it easier for health plans, doctors, hospitals, and other health care providers to process claims and other transactions electronically while protecting the privacy of individual health information.

HIPAA provides patients with certain rights and protections regarding access to and use and disclosure of health information. HIPAA permits disclosure of information in a number of circumstances including pursuant to a proper authorization such as an order of the juvenile court or consent of the parent or other person authorized to consent to the treatment of the child.⁶⁶

Who is responsible for mental health services when a child in foster care is placed out of county?

Social Worker Responsibility

The child's social worker remains responsible for ensuring that the child receives necessary care.⁶⁷ If the child welfare agency in the sending county plans to have the receiving county take responsibility for supervision and visitation of the child, it must enter into a formal agreement that spells out the responsibilities of the receiving county and must provide the receiving county with the child's case plan.⁶⁸

The specific reason for the out-of-county placement must be documented in the child's case plan. If the out-of-county placement is required because of a lack of resources in the sending county to meet the specific needs of the child, those specific resource needs must be documented in the child's case plan.⁶⁹

Mental Health Plan Responsibility

Medi-Cal mental health services are provided through a mental health managed care system. In most counties the county mental health department operates the mental

⁶⁴ Cal. Welf. & Inst. Code § 105.

⁶⁵ 42 U.S.C. §§1320d *et seq.*; 45 C.F.R. §§160 & 164.

⁶⁶ 45 C.F.R. 164.512(e)(1)(i).

⁶⁷ MPP 31-405.1(l).

⁶⁸ Cal. Welf. & Inst. Code § 361.2(f)(6); MPP 31-505 (available at: <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws4.pdf>)

⁶⁹ Cal. Welf. & Inst. Code § 361.2(f)(4)



health plan. Mental health plans are required to provide out-of-plan services when there are no providers who contract with the plan who are reasonably available. The plan must respond to a request for authorization of these services within three working days.⁷⁰ Each mental health plan must establish a procedure to ensure access to care for children in foster care who are placed outside of their county of adjudication.⁷¹

The Department of Mental Health (DMH) has posted directory pages on its website to provide counties and providers with the contact information needed to assist in facilitating communication between MHPs regarding mental health services for children and youth who are placed out-of-county. For each MHP, the directory's contact information includes the mental health director, the children's coordinator, the out-of-county placement coordinator, the TBS coordinator, the county contact for TBS authorization and the county contact for county interagency agreements. DMH updates the list annually in August.⁷²

⁷⁰ 9 C.C.R. § 1830.220(b)(4). If the plan documents a need for additional information to evaluate the need for services, the time can be extended to three working days after the documentation is received or fourteen calendar days after the treatment authorization request, whichever is less.

⁷¹ Cal. Welf. & Inst. Code 5777.6.

⁷² http://www.dmh.ca.gov/Services_and_Programs/Medi_Cal/Contact_List.asp