California Alliance
OF CHILD AND FAMILY SERVICES

AB 3632 → AB 114
Transition of Educationally Related Mental Health Services
Q & A

Q: What happened to AB 3632 mental health services?

A: AB 114, the 2011-12 education budget trailer bill, eliminated all statute and regulations related to AB 3632 which had been the authority for providing mental health services to students in special education whose handicapping condition is emotional disturbance and who required mental health services in order to benefit from the free and appropriate public education (FAPE) to which they are entitled.

The bill transferred responsibility and funding for educationally related mental health services, including residential services, from county mental health and child welfare departments to education.

Q: How much money did the state allocate to education to provide these services? Does it have to be used for educationally related mental health services?

A: A total of $420.3 million in three pots was allocated to education for educationally related mental health services. Of that, $386.3 million was additional money categorically restricted to be used for educationally related mental health services:

- $218.7 million "shall be available only to provide educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils…"
- Schools shall receive $69 million in federal IDEA funding "only for the purpose of providing educationally related mental health services, including out-of-home residential services…"
- Schools may access $98.6 million in MHSA funding specifically for mental health services for special education students

The first pot is Proposition 98 dollars of which $218.7 million is "re-benched;" that is, it represents a recalculation of the base amount used to determine the level of Proposition 98 funding provided to schools by the state each year. The recalculation results in a Proposition 98 funding increase of nearly $220 million to schools in 2011-12, specifically for mental health services.

An additional $34 million in continuing Proposition 98 funding is also targeted at mental health services, $31 million of which previously was used to pay for Non Public School (NPS) placements of children living in Licensed Children's Institutions (LCI), and $3 million of which constitutes an extraordinary cost pool for small SELPAs and LEAs. This is not "new" money, but it is funding that could be used by schools for this purpose.

The second pot, IDEA, represents $69 million in federal funding to help states comply with the Individuals with Disabilities Education Act (IDEA).

Both the first and second pots are distributed by the California Department of Education to Special Education Local Planning Areas (SELPA) based on the Average Daily Attendance

(ADA) of all children in the SELPA, without regard for their special education status. SELPAs, in turn, allocate the funds to the Local Education Agencies (LEAs) that comprise the SELPAs (i.e., primarily school districts and charter schools with LEA status) based on formula unique to each SELPA. This methodology mirrors the way in which most special education funds are allocated.

Half of the appropriated funds will be distributed on October 1, 2011, 25% in spring 2012, and the final 25% based on updated ADA in summer 2012.

The third pot reflects a one-time-only redirection of $98.6 million in Mental Health Services Act (MHSA) funding to local mental health departments for educationally related mental health services. Redirection of the MHSA funds was authorized by AB 100. The funds have been allocated to counties based upon a formula agreed upon by the California Mental Health Directors Association and the California Department of Mental Health. The funds may only be accessed through an agreement between a SELPA or LEA and its county mental health department. Responsibility for authorizing, contracting for or providing, and paying for educationally related mental health services funded using MHSA dollars, however, rests with LEAs.

According to the Brown Administration, the 2012-13 state budget will reflect a further "re-benching" of Proposition 98 to cover the loss of MHSA funding when the current budget year ends June 30, 2012.

(See "Assembly Bill 114: Available Funding Sources and Spending Parameters;" September 13, 2011)

Q: Do educationally related mental health services include residential care?

A: Yes.

Residential care is one of the "related services" to which children with disabilities receiving special education services may be entitled under IDEA and is specified as such in federal regulations, 34 CFR 300.104:

> If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(See "Assembly Bill 114: Residential Care for Students with Disabilities;" September 13, 2011)

Q: Does the IDEA specify other educationally related mental health services to which special education students are entitled?

A: The IDEA specifies a host of "related services" to which students with disabilities who receive special education may be entitled (34 CFR 330.34). The list, however, is neither exhaustive nor finite, according to the federal Office of Special Education Planning (OSEP). Any service agreed upon by the student's Individualized Educational Program (IEP) team as necessary for the student to receive a FAPE may be considered a related service.

That said, 34 CFR 330.34(a) defines related services as:

> …transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

OSEP, commenting on a number of requests to specify additional related services in regulation, states, "It would be impractical to list every service that could be a related service, and therefore, no additional language will be added to the regulations."

OSEP, however, goes on to identify 2 critical requirements for a service to be considered a related service:

1. The child's IEP team must determine that the related service is required in order for the child to benefit from special education (FAPE);
2. The IEP team's determination of appropriate services must be written into the child's IEP.

With those two criteria met, the IEP's "listed services must be provided in accordance with the IEP at public expense and at no cost to the parents."

In short, if a service is specified on a student's IEP, and the IEP is agreed to by the requisite members of an IEP team as indicated by their signatures on the IEP, it is a related service. The IEP rules; it is the definitive legal document.

(See "Related Services Under the Individuals with Disabilities Education Act;" September 13, 2011.)

Q: Could wraparound be considered a related service?

A: Yes.

Again, any service that a child's IEP team determines is required for the child to benefit from his/her FAPE, and that is written into the IEP and signed by the parents or holder of the child's educational rights is a related service and must be provided to the child at public expense.

Q: Is the prescription, monitoring and administration of psychiatric medication a related service?

A: Maybe.

The California Department of Education (CDE) has advised SELPAs and LEAs that "in general, medical services are required under the IDEA if they are necessary for the purpose of diagnosis or evaluation. However, medical services provided by a licensed physician for other purposes, such as treatment, may not be a related service required by the IDEA."

Since the prescription and monitoring of psychiatric medication is a "medical service" provided by a licensed physician but not necessary for diagnosis or evaluation, and is in fact

a part of treatment, CDE contends it may not be required under IDEA, citing federal regulation and the "medical exclusion" arising out of case law.

CDE clarifies, however, that services that can be provided in the school setting by a nurse or qualified layperson are not subject to the medical exclusion and advises LEAs that to the extent administration of medication is done by a school nurse or qualified lay person, that service activity may fall under the IDEA.

CDE further advises LEAs to consider requests for medication monitoring on a case by case basis to determine if they fall under IDEA.

Advocacy attorneys, however, have taken issue with CDE's interpretation of federal regulation and argue that IDEA does not create a blanket disqualification of the prescription and monitoring of psychiatric medication as related services. Citing case law, the attorneys state, "[C]ourts have held that psychiatric services are required [under IDEA] if they are part of an integrated program of educational, emotional, behavioral, and medical services designed for educational purposes." The attorneys request that CDE include the information in its advisory to LEAs, which, apparently, it has not.

(See "Assembly Bill 114: Medication Monitoring;" September 13, 2011 and "Memorandum" from Public Counsel and Mental Health Advocacy Services; August 29, 2011.)

Q: Does my agency have to be a Non Public Agency or Non Public School in order to provide educationally related mental health services?

A: No, not if your agency is a certified mental health services contractor of a local county mental health plan (MHP).

CDE has advised SELPAs and LEAs that as long as a community-based mental health organization is a certified contractor of a local mental health department and is authorized by that department to provide the specific related services for which it seeks to contract with the LEA, the organization may provide educationally related mental health services under contract with the LEA.

If the community-based organization is not a mental health contractor or is not authorized to provide the specific educationally related mental health service – whatever it may be – the organization must become certified as a Nonpublic School or Agency through CDE in order to become a contractor of the related services.

Although CDE has advised that it is not necessary for a mental health organization to be a NPA or NPS to provide service, some SELPAs or LEAs may require it anyway. It is their prerogative.

CDE also advises that "community-based mental health professionals must be supervised in their school-based activities by an individual possessing a Pupil Personnel Services (PPS) Credential." The advisory clarifies that "supervised" in this context means has oversight of the related services activities to ensure "these services are consistent with the needs of students served and are coordinated with other student services."

(See "Requirements for Securing the Services of Mental Health Professionals to Provide Related Services to Special Education Students;" September 13, 2011.)

Q: Districts and SELPAs have said they want to pay less for mental health services and related services such as residential placement than providers currently are being paid. Under what circumstances may my agency accept lower payments?

A: There are two answers to that question: one for mental health services and one for residential services.

Historically, private provider organizations were paid the same amount for both EPSDT funded mental health services and for those funded through AB 3632, largely because county mental health plans administered both programs, and because many children receiving AB 3632 services were also EPSDT eligible allowing counties to draw down federal matching dollars.

Similarly, residential programs were paid the RCL rate for AB 3632 placements, as the rate payment mechanism was statutorily tied to county child welfare departments that paid providers and to the state and federal foster care programs that govern the rates.

With the abolition of AB 3632 and responsibility for educationally related mental health services shifting solely to schools, the historical and statutory ties between mental health, foster care and educationally related mental health services has been broken.

Mental Health Services Rates

Certified mental health services contractors of county mental health plans (MHP) may not charge an LEA less for a mental health service than it receives in EPSDT reimbursement from an MHP and continue to receive full reimbursement for costs from the MHP.

Agencies that are mental health contractors with a county MHP receive a provisional rate for each service type based on estimated costs to provide those services for a specified number of beneficiaries over the term of the contract, usually a year, up to a contract maximum. The types of services that may be provided are specified in California's Medicaid rehabilitation option.

Contractors bill MHPs for services at the provisional rate over the term of the contract. At the end of the contract period, contractors and MHPs settle to actual cost. If the actual costs are less than the provisional rate, the contractor returns money to the MHP; if costs are higher, the MHP reimburses the contractor up to the contract maximum. Contractor costs per unit are limited by a State Maximum Allowance (SMA) for each service type.

California's Medicaid plan specifies:

> The policy of the State Agency is that reimbursement for Short-Doyle/Medi-Cal services shall be limited to the lowest of published charges, Statewide Maximum Allowances (SMAs), negotiated rates, or actual cost if the provider does not contract on a negotiated rate basis.
>
> "Published charges" are usual and customary charges prevalent in the public mental health sector that are used to bill the general public, insurers, and other non-Title XIX payors.(42 CFR 447.271 and 405.503(a)).

So, if for example a contractor has a "published charge" it uses to bill a school district and the charge is lower than the EPSDT reimbursed cost for the same service, the Department of Health Care Services (DHCS, the State Agency) would expect the county MHP to pay the contractor the published charge, not the actual cost, since the published charge is the lower of the two.

DHCS would also likely recoup from the county MHP the difference between the amount charged the school district and the amount reimbursed by the MHP, which in turn would seek to recoup it from the contractor agency.

Conversely, if the contractor's "published charge" used to bill a district is higher than the EPSDT costs, the MHP would be obliged to reimburse the contractor the amount that covers the actual cost to provide the EPSDT service, since it is the lower of the two.

Residential Placement Rates

Agencies may not charge an LEA an amount for residential placement that is lower than the RCL rate, without risking an audit exception from the California Department of Social Services on the amount paid for the care of children funded with foster care dollars.

In the cases of *California Alliance v. Allenby and Ault* and *California Alliance v. Wagner and Rose,* the federal 9th Circuit Court of Appeals ruled that California could not institute two foster care rates systems for group homes, one for federally eligible children and one for those who are not federally eligible, since both groups of children are placed in the same programs and receive the same services.

Since California's Standard Schedule of Rates is designed to pay the average cost of care for children in any give Rate Classification Level (RCL), for the state's plan to pay less for non-federally eligible children, the court reasoned, would necessarily dilute the amount paid for the federally eligible children and deprive them the full benefit of the rate increase that was the focus of the lawsuit.

Similarly, if a residential program that serves children placed through both the education and foster care systems accepts payments from LEAs lower than those for the program's RCL, it would necessarily be using the funds paid for the care of the foster children to supplement the lower rate paid by the LEA and, therefore, would be depriving foster children of the care and supervision to which they are entitled and for which the RCL rate pays.

Residential programs would be at risk for an RCL audit exception, rate reduction, and forfeiture of the difference between the new reduced rate and old rate.

Conclusion

Both EPSDT payments and RCL rates are essentially cost-based. For a provider organization to charge an LEA less than the EPSDT reimbursement for the same mental health services or less than the RCL rate for residential placement would imply that the provider is either illegally using Medi-Cal or foster care funds to pay for education services or, worse, is engaging in fraud.

Providers may offer different programs, with different staffing, different staff qualifications and different service arrays at any rates they choose, but they would have to assure programmatically, fiscally and administratively that the programs could not be misconstrued as simply rebadged EPSDT or RCL programs offered at a lower rate.

(See "Reimbursement for Short Doyle/Medi-Cal Outpatient, Rehabilitative, Case Management and Other Services.")

CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: AVAILABLE FUNDING SOURCES AND SPENDING PARAMETERS

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011 was signed into law. Under AB 114, several sections of Chapter 26.5 of the California *Government Code* (*GC*) were amended or rendered inoperative, thereby ending the state mandate on county mental health agencies to provide mental health services to students with disabilities. With the passage of AB 114, it is clear that local educational agencies (LEAs) are now solely responsible for ensuring that students with disabilities receive special educational and related services, including some services previously arranged for or provided by county mental health agencies. The Budget Act of 2011–12 established four specific funding sources to support the provision of mental health related services. This guidance provides information on each of these fund sources, as well as the purpose, parameters, reporting requirements, and distribution details concerning each source.

1. **Federal Special Education Local Assistance Funding (Provision 9 of Budget Item Number 6110-161-0890)**

   The state is distributing $69 million in federal Individuals with Disabilities Education Act (IDEA) funding only for the purpose of providing mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program (IEP) pursuant to the IDEA and described by *Education Code (EC)* §56363. The California Department of Education (CDE) distributed these funds to special education local plan areas (SELPAs) on July 15, 2011, on a weighted basis using data available from the California Special Education Management Information System (CASEMIS) as of December 1, 2010.

   To initiate this grant funding, SELPAs were required to provide the CDE with a signed grant assurance document. SELPAs are also required to file periodic fiscal expenditure reports. Each SELPA grant award notice provides the grant amount and the specific resource code(s) to use to account for these funds. After CDE

receives a signed grant assurance document from the SELPA, the SELPA receives an initial payment equal to 50 percent of the grant award. Subsequent payments to SELPAs shall be made on the basis of documentation which must provide sufficient detail to enable the grantee to establish a link between the services claimed and the student's IEP. The grant period for funding is July 1, 2011, through September 30, 2013.

2. State Proposition 98 Special Education Local Assistance Funding (Provisions 18 and 26 of Budget Item Number 6110-161-0001)

The state is distributing $249,786,000 in Proposition 98 funding solely for the purpose of providing mental health related services, including out-of-home residential services for emotionally disturbed pupils, required by the federal IDEA and as described in Section 56363 of the *EC*. The CDE is distributing these funds to SELPAs on an equal amount per Average Daily Attendance (ADA) reported for the 2011–12 second principal apportionment (P–2).

These funds are allocated to SELPAs through an apportionment process. CDE anticipates the distribution of these funds to be by October 1, 2011. SELPAs will receive an initial apportionment of 50 percent of the appropriated $5,942,644.82 on the basis of the 2010–11 P–2 statewide SELPA ADA. An adjustment will be made for the Los Angeles Juvenile Court and Community School SELPA. The initial rates will be approximately $0.39 per ADA for the Los Angeles Juvenile Court and Community School SELPA and $41.90 per ADA for all other SELPAs. A second apportionment of 25 percent of the appropriated funds will be made in spring 2012. In summer 2012, adjustments will be made to reflect the ADA reported for the 2011–12 P–2 and the remaining funds will be apportioned.

The CDE will assign a restricted resource code for these funds. Regular reporting requirements will apply concerning the use of these funds.

3. State Proposition 98 Special Education Local Assistance Funding for Necessary Small Special Education Local Plan Area Extraordinary Cost Pool (Provision 27 of Budget Item Number 6110-161-0001)

The state is distributing $3 million in Proposition 98 funding to administer an extraordinary cost pool associated with providing mental health related services, including out-of-home residential services for emotionally disturbed pupils. These funds are being distributed through the CDE to necessarily small SELPAs (as defined in *EC* §56212). The allocation method of these funds is pending a formal agreement with the Department of Finance and Legislative Analyst's Office.

This fund source may work in a similar manner to the nonpublic school (NPS) extraordinary cost pool for single payment; the necessarily small SELPAs will submit an application for additional funds to the CDE, and the funds will be allocated as reimbursement on the basis of an approved application. This funding

is limited to eligible SELPAs and based on actual costs. Specific cost claims will be submitted to the CDE as part of the application for funding. The application submission date is still to be determined.

4. **County Mental Health Service Funding Proposition 63 (Budget Item 4440-295-3085)**

   The state is allocating $98,586,000 in Proposition 63 funding to provide Handicapped and Disabled Students I and II, and Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (AB 3632) to special education students. The budget item language stipulates that these funds shall be used exclusively for the purpose of funding IDEA-related mental health services within a special education pupil's IEP during the 2011–12 fiscal year. These funds have been distributed through the California Department of Mental Health to county mental health agencies based on a funding formula determined by the state in consultation with the California Mental Health Director's Association.

   The specific allocation formula is based on each county's most recent actual expenditures as reported on the fiscal year (FY) 09–10 Medi-Cal Specialty Mental Health Cost Report MH1912 and SB 90 claim for costs incurred in providing mental health services to special education students, minus Medi-Cal reimbursements.

   Pursuant to the budget language, an LEA may develop a Memorandum of Understanding (MOU) or contract with its county mental health agency to access this funding to address the provision of mental health services in pupils' IEPs. In such cases, the LEA shall provide a copy of the MOU or contract to the CDE. The budget language requires that counties use the funds for the purpose stated above or counties "shall return the funding to the state for reallocation to other counties."

If you have any questions regarding this subject, please contact the Policy and Program Services Unit, Special Education Division, by phone at 916-323-2409.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

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CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: RESIDENTIAL CARE FOR STUDENTS WITH DISABILITIES

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011, was signed into law. Under AB 114, several sections of Chapter 26.5 of the California *Government Code* (*GC*) were amended or rendered inoperative, thereby ending the state mandate on county mental health agencies to provide mental health services to students with disabilities. With the passage of AB 114, it is clear that local educational agencies (LEAs) are now solely responsible for ensuring that students with disabilities receive special education and related services, including some services previously arranged for or provided by county mental health agencies. This may include residential care when the individualized education program (IEP) team determines those services are necessary for the student to benefit from his or her education.

The Individuals with Disabilities Education Act (IDEA) authorizes residential care for students with disabilities in Section 300.104 of Title 34 of the *Code of Federal Regulations* (*CFR*):

> If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

For all residential placements of students with disabilities both in and out of state that, pursuant to an IEP, exist as of the date of this letter, the LEA may enter into the necessary contractual agreements to maintain those placements. The LEA may include the costs associated with the residential care facility in the master contract with a California-certified nonpublic, nonsectarian school (NPS) or Individual Services Agreement (ISA), if applicable, or the LEA may also contract directly with the residential care facility. A residential care facility that is currently serving a student placed pursuant to an IEP, who was placed in that facility prior to the date of this letter, is not required to seek additional certification from the California Department of Education (CDE) at this time, as it meets the requirements of Section 3051 of Title 5 of the *California Code of Regulations* (*CCR*). However, as of July 1, 2012, LEAs must ensure that each

residential care facility continues to meet the requirements of Section 3051 of Title 5 of the *CCR* and must maintain documentation supporting the facility's status as a residential care facility that is either: (1) associated or affiliated with a California-certified NPS (via the master contract or ISA); (2) a California-certified nonpublic, nonsectarian agency (NPA); or (3) a vendor or contractor of the State Department of Mental Health, or any designated local mental health agency.

For all residential placements of students with disabilities, pursuant to an IEP, that are initiated after the date of this letter, LEAs may consider the following options when contracting for residential care:

1. **Contract with a Residential Care Facility that is Affiliated with a California-certified Nonpublic School Through a Master Contract or Individual Services Agreement**

   To the extent that a California-certified NPS is owned, operated by, or associated with a California Licensed Children's Institution[1] (LCI) or residential care facility outside of California, and placement in the affiliated LCI or residential care facility is determined by the IEP team to be the least restrictive environment and necessary for the student's educational benefit, LEAs may include residential care in the master contract with the California-certified NPS. Any residential care provider attached to or associated with a California-certified NPS must be lawfully authorized to provide residential care services in its respective state. A waiver pursuant to Section 56366.2 of the *Education Code* (*EC*) is not required before adding residential care to the master contract with the NPS. The residential care should be listed in the master contract and/or ISA as a related service provided

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[1] "Licensed Children's Institution" is defined in Section 56155.5 of the California *Education Code*: (a) As used in this article, "Licensed Children's Institution" means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide non-medical care to children, including, but not limited to, individuals with exceptional needs. "Licensed Children's Institution" includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the *California Code of Regulations*. As used in this article and Article 3 (commencing with Section 56836.16) of Chapter 7.2, a "Licensed Children's Institution" does not include any of the following: (1) a juvenile court school, juvenile hall, juvenile home, day center, juvenile ranch, or juvenile camp administered pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27; (2) a county community school program provided pursuant to Section 1981; (3) any special education programs provided pursuant to Section 56150; (4) any other public agency.

(b) As used in this article, "foster family home" means a family residence that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide 24-hour non-medical care and supervision for not more than six foster children, including, but not limited to, individuals with exceptional needs. "Foster family home" includes a small family home as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

pursuant to the IEP, with the respective service activities and rates readily identifiable. In accordance with Section 56366 (a)(5) of the *EC*, if the provider of residential care is a separately named entity that is attached to or affiliated with the NPS, it should be identified as such in the master contract or ISA.

The requirements of Section 56366.1(l) relating to separation of educational and residential costs still apply. A common entity operating both an NPS and an LCI or other residential care facility (outside of California) must maintain separate financial records for each and ensure that costs associated with various aspects of each program are distinguishable. Section 56366.1(l)(D) requires:

> The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

The master contract and/or ISA should reflect this requirement of a clear delegation of costs associated with each part of the program to be funded by the LEA. The LEA is not responsible for costs of residential care associated with the placement of a student with a disability if it, or another LEA, was not part of the placement decision or if it, or another LEA, was not the placing agency. Section 7581 of the *GC* specifies:

> The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local educational agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local educational agency, but shall be the responsibility of the placing agency or parent.

The residential care provider attached to or affiliated with a California-certified NPS is not currently required to seek separate certification from the CDE. The NPS currently provides information about the residential care provider on the application for certification, pursuant to Section 3060(c)(22) of Title 5 of the *CCR*:

(22) For each nonpublic school with a residential component the application shall include: (A) the name of the residential program attached to the nonpublic school; (B) the proprietary status of the residential program; (C) a list of all residential facilities affiliated with the nonpublic school; (D) the total capacity of all the residential facilities affiliated with the nonpublic school; and (E) the rate of care level (California schools only) for each residential facility affiliated with the nonpublic school.

2. Contract with a Residential Care Facility that is a California-certified Nonpublic Agency

In addition to contracting for residential care through an NPS, an LEA may contract directly with a residential care facility, either in or out of state, that is certified as an NPA by the CDE, pursuant to sections 56365–56366 of the *EC*, when placement in the residential care facility is determined by the IEP team to be the least restrictive environment and necessary for the student's educational benefit. Contracts with NPAs are subject to the specific contracting requirements in sections 56365–56366 of the *EC*. Residential care facilities, both in and out of state, wishing to seek certification as an NPA, should visit the CDE NPS/A Certifications Applications Web page at http://www.cde.ca.gov/sp/se/ds/npsacrtapp.asp or contact the Interagency-Nonpublic Schools/Agencies Unit, Special Education Division, by phone at 916-327-0141, or by e-mail at npsa@cde.ca.gov.

3. Contract with a Residential Care Facility that is a Vendor or Contractor of the State Department of Mental Health or any Designated Local Mental Health Agency

LEAs may contract directly with a residential care facility, both in and out of state, that is a vendor or contractor of the State Department of Mental Health, or any designated local mental health agency (5 *CCR* §3051) when placement in the residential care facility is determined by the IEP team to be the least restrictive environment and necessary for the student's educational benefit. Such contracts are not subject to the specific contracting requirements of *EC* sections 56365–56366 (relating to NPSs and NPAs). LEAs may work with their counties to obtain a current list of vendors or contractors who provide residential care. As a source of information, LEAs may also visit the following Web page search engine for residential care facilities licensed by the California Department of Social Services at http://ccld.ca.gov/docs/ccld_search/ccld_search.aspx (Outside Source). Residential care facilities that are vendors or contractors of the State Department of Mental Health, or any designated local mental health agency, are not required

to seek certification as an NPA through CDE at this time. When conducting its monitoring process, the CDE will verify that the LEA has documentation that such contractors or vendors are contractors or vendors of a state or local public mental health agency in the current fiscal year. In addition, LEAs are responsible for ensuring and maintaining documentation that the entities providing related services are qualified pursuant to sections 3060–3065 of Title 5 the *CCR*.

Please note that LEAs are not precluded from seeking a waiver, pursuant to Section 56366.2 of the *EC,* for any scenario that is not addressed by the content of this notice.

If you have any general questions regarding this subject, please contact the Policy and Program Services Unit of the Special Education Division by phone at 916-323-2409, or the Interagency Nonpublic Schools and Agencies Unit of the Special Education Division by phone at 916-327-0141.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

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CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: RELATED SERVICES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

With the changes to state statute outlined in Assembly Bill 114 (Chapter 43, Statutes of 2011), which relieved county mental health agencies of the responsibility to provide mental health services to students with disabilities, local educational agencies (LEAs) must rely on the Individuals with Disabilities Education Act (IDEA) for guidance on the requirements for providing related services, including those that may have previously been provided by county mental health agencies (CMHAs). Related services under IDEA are defined in Section 300.34 of Title 34 of the *Code of Federal Regulations* (*CFR*):

> **34 *CFR* 300.34(a)**
>
> Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

Section 300.34 of Title 34 of the *CFR* further defines individual related services terms. The following list represents some of the services that may be appropriate when addressing the emotional and behavioral needs of students with disabilities (refer to 34 *CFR* Section 300.34 for the complete list of individual related services terms):

Counseling Services (34 *CFR* 300.34(c)(2))

Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

Parent Counseling and Training (34 *CFR* 300.34(c)(8))

(i) Parent counseling and training means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program (IEP) or individualized family service plan (IFSP).

Psychological Services (34 *CFR* 300.34(c)(10))

Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

Social Work Services in Schools (34 *CFR* 300.34(c)(14))

Social work services in schools includes:

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

Residential Placement is not listed as a related service in Section 300.34 of Title 34 of the *CFR*. However, residential placement is addressed elsewhere in the IDEA:

Residential Placement (34 *CFR* 300.104)

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

In addition, the list of related services in the IDEA is not exhaustive or finite. The IEP team must decide what related services are necessary to provide a free appropriate public education (FAPE) to each student with a disability. The federal Office of Special Education Programs (OSEP) provides further guidance in the "Analysis of Comments and Changes" section of the final IDEA regulations, pertaining to Section 300.34 (excerpt below):

Comment

We received numerous requests to revise § 300.34 to add specific services in the definition of related services. A few commenters recommended including marriage and family therapy. One commenter recommended adding nutrition therapy and another commenter recommended adding recreation therapy. A significant number of commenters recommended adding art, music, and dance therapy. One commenter recommended adding services to ensure that medical devices,

such as those used for breathing, nutrition, and other bodily functions, are working properly. One commenter requested adding programming and training for parents and staff as a related service. A few commenters requested clarification on whether auditory training and aural habilitation are related services. One commenter asked whether hippotherapy should be included as a related service. Other commenters recommended adding language in the regulations stating that the list of related services is not exhaustive. A few commenters asked whether a service is prohibited if it is not listed in the definition of **related services**.

Discussion (Response from OSEP)

Section 300.34(a) and Section 602(26) of the Act state that related services include other supportive services that are required to assist a child with a disability to benefit from special education. We believe this clearly conveys that the list of services in § 300.34 is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. It would be impractical to list every service that could be a related service, and therefore, no additional language will be added to the regulations.

Consistent with §§ 300.320 through 300.328, each child's IEP team, which includes the child's parent along with school officials, determines the instruction and services that are needed for an individual child to receive FAPE. In all cases concerning related services, the IEP team's determination about appropriate services must be reflected in the child's IEP, and those listed services must be provided in accordance with the IEP at public expense and at no cost to the parents. Nothing in the Act or in the definition of related services requires the provision of a related service to a child unless the child's IEP team has determined that the related service is required in order for the child to benefit from special education and has included that service in the child's IEP.

A child is eligible for special education and related services if they are evaluated in accordance with state and federal law and it is determined the child meets the definition of a "child with a disability," pursuant to Section 300.8 of Title 34 of the *CFR* and/or the definition of an "individual with exceptional needs," pursuant to Section 56026 of the California *Education Code*. To the extent that the IEP team determines that a child with a disability needs a related service to address a mental health need in order to benefit from special education, the service should be provided in accordance with the IEP. There has been some confusion regarding whether or not a student with a disability

must meet the criteria for an "emotional disturbance," pursuant to Section 300.8(c)(4) of Title 34 of the *CFR*, before he/she is eligible for mental health services as part of his/her IEP.[1] Though mental health needs may be a significant consideration when developing an IEP for a child who meets the criteria for an "emotional disturbance," eligibility for related services is not contingent on a particular disabling condition and should be determined based on an assessment that reveals an individualized need for the service. Similarly, a mental health diagnosis or designation as "seriously emotionally disturbed," pursuant to Section 5600.3(a)(2) of the *Welfare and Institutions Code*, does not automatically indicate eligibility for special education and related services.

If you have any questions regarding this subject, please contact the Policy and Program Services Unit of the Special Education Division by phone at 916-323-2409.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

FB:sw

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[1] 34 *CFR* §300.8(c)(4)(i) **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
(C) Inappropriate types of behavior or feelings under normal circumstances.
(D) A general pervasive mood of unhappiness or depression.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: MEDICATION MONITORING

Assembly Bill 114 made significant changes to Chapter 26.5 of the California *Government Code* (*GC*) regarding the provision of mental health services to students with disabilities. As a result of AB 114, local educational agencies (LEAs) are responsible for ensuring the provision of related services, including some services previously provided by county mental health agencies (CMHAs) under Chapter 26.5 of the *GC*. As LEAs implement this transition, and as a result of changes in state statute stemming from AB 114, the Individuals with Disabilities Education Act (IDEA) serves as the statutory framework for the provision of related services.

This document is intended to assist LEAs in facilitating the transition of certain services formerly provided by (CMHAs) under state law prior to AB 114, to the LEAs providing services authorized by the IDEA and complying with the requirements therein. To the extent that service provision requirements under the IDEA differ from those formerly specified in Chapter 26.5 of the *GC* prior to AB 114, this document is meant to assist in making that distinction. However, it must be emphasized that a blanket restriction on any particular service would be contradictory to the IDEA. The individualized education program (IEP) team should develop the IEP based on the child's unique needs and include supportive services that are necessary to assist the child in benefitting from special education. Therefore, the IEP team decision about a specific child's eligibility for services under the IDEA must remain the most critical factor.

The changes to Chapter 26.5 of the *GC,* as outlined in AB 114, resulted in the removal of statutory authority for many of the implementing regulations found in Division 9 of Title 2 of the *California Code of Regulations* (*CCR*). "Medication Monitoring" was a service previously provided by (CMHAs) and authorized by Section 60020(f) of Division 9 of Title 2 of the CCR, prior to AB 114:

2 *CCR* §60020(f):

> (f) "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.

As LEAs assume responsibility for the provision of related services, many questions have been raised about how and if 'medication monitoring', as previously defined in 2 *CCR* §60020(f), fits into the IDEA statutory requirements for related service provision.

Medical Services Under IDEA

The definition of "related services" found in Section 300.34(a) of Title 34 of the *Code of Federal Regulations* (*CFR*) includes medical services for diagnostic or evaluation purposes. "Medical services" is defined in Section 300.34(c)(5) of Title 34 of the *CFR*: "Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services."

Thus, in general, medical services are required under the IDEA if they are necessary for the purpose of diagnosis or evaluation. However, medical services provided by a licensed physician for other purposes, such as treatment, may not be a related service required by the IDEA. Furthermore, services exclusively provided by a licensed physician may be subject to what is widely known as the medical exclusion of the IDEA. *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984) developed a "bright line" rule that established that services provided by a physician, other than for diagnostic or evaluation purposes, are subject to the medical exclusion of the IDEA. This "bright line" rule was further supported by *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999). However, services that can be provided in the school setting by a nurse or qualified layperson are not subject to the medical exclusion.

The definition of "related services" in the IDEA includes school health services and school nurse services. Section 300.34(c)(13) of Title 34 of the *CFR* defines these services as follows:

> School health services and school nurse services means health services that are designed to enable a child with a disability to receive a free appropriate public education (FAPE) as described in the child's IEP. School nurse services are services provided by a qualified school nurse.

> School health services are services that may be provided by either a qualified school nurse or other qualified person.

Therefore, as LEAs consider “medication monitoring” as defined in 2 *CCR* §60020(f), it is recommended they consider the various components of that service definition to establish whether or not a particular service activity may be required under the IDEA. In addition, LEAs should consider which personnel are qualified to perform that activity, along with the child’s established need for the service, pursuant to his/her IEP. For example, prescribing psychiatric medications is a component of ‘medication monitoring’ under 2 *CCR* §60020(f). To the extent that only a physician or psychiatrist can perform that service activity, it appears that component would fall under the medical exclusion of the IDEA, which would relieve a school district of the responsibility to provide that particular service. However, when considering a supportive service such as the administration of medication (also included in the former definition of “medication monitoring” under 2 *CCR* §60020(f)), that service activity may fall under the IDEA definition of “school health services and school nurse services,” depending on the child’s individualized need for the service and the ability of school personnel to provide the service (meaning within their respective scope of practice). For more information and further guidance on medication administration, please visit the CDE Medication Administration Web page at: http://www.cde.ca.gov/ls/he/hn/medication.asp.

If you have any questions regarding this subject, please contact the Policy and Program Services Unit of the Special Education Division by phone at 916-323-2409.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

FB:sw

Memorandum

TO: Fred Balcom and CDE Transition Workgroup Staff

FROM: Public Counsel and Mental Health Advocacy Services, Inc.

DATE: August 29, 2011

RE: Medication Management Draft Advisory

This memorandum is intended to respond to the draft advisory regarding medication and medication management, which the California Department of Education (CDE) is planning to issue. Thank you very much for the opportunity to provide suggestions, comments and concerns.

First, we hope you will clarify that the current regulatory provision -- 2 CCR § 60020(f) -- remains in effect and that the discussion regarding what is separately required by the IDEA is for information purposes. The juxtaposition of the sentence discussing elimination of the statutory authority for some regulations might be misread to necessarily include the elimination of statutory authority for this provision. Obviously, prior to a change in this regulation, CDE must use the required public regulatory amendment process.

Second, we appreciate that CDE has discussed that school districts must analyze the components of the medication monitoring regulations and address medication monitoring on a case by case basis. We hope CDE will further strengthen this section in the next version.

Third, as discussed in the advisory, under federal law, related services include medical services for diagnostic or evaluation purposes. 20 U.S.C. 1401(17); 34 CFR §300.34(a). In this regard, courts have held that psychiatric services are required if they are part of an integrated program of educational, emotional, behavioral, and medical services designed for educational purposes. *Taylor By and Through Taylor v. Honig*, 910 F.2d 627, 630 (9th Cir. 1990) (upholding preliminary injunction to maintain child in a residential placement

program providing an on-site school program to prevent truancy, psychotherapy including family, individual, and group sessions to treat depression, an on call psychiatrist to prescribe and manage anti-depressant medication, an on site nurse, and a "responsive adult" to administer medication); *see also Twp. of Bloomfield Bd. of Educ. v. S.C. ex rel. T.M.*, 2005 U.S. Dist. LEXIS 21424, *31 (D. N.J. Sep. 22, 2005) (holding that where "psychiatric stabilization is a necessary part of [student's] educational program. This is a continuing, interrelated process in which his psychological difficulties and his education continue in tandem. While medical doctors and psychiatrists may diagnose and evaluate T.M. and aides may provide continuing counseling and monitoring, it is part of an educational process. Without the diagnosis and evaluation and without the counseling and monitoring the educational process could not take place."); *Brown v. Wilson County Sch. Bd.*, 747 F Supp 436 (M.D. Tenn. 1990), *modified by* 1990 U.S. Dist. LEXIS 12490 (M.D. Tenn. May 30, 1990) (school district financially responsible for student's costs at residential program, where student suffering from unpredictable, severe behavioral disorder required 24-hour behavioral modification program to learn, because doctor visits accounting for less than one hour per month did not change nature of program from "education" to "medical" since services and medical evaluations provided by program were all specifically listed as "special education and related services"). As such, psychiatric services that are part and parcel of an integrated program of educational, emotional, and behavioral services designed for educational purposes, such as residential placement, may be included under the IDEA. We request that you include this information in the advisory.

Moreover, the advisory incorrectly suggests that IDEA might prohibit a psychiatric evaluation to assess for the need for medication. Of course, as any other assessment conducted by a qualified medical professional (such as an

Occupational Therapist), a psychiatrist would not only evaluate whether a disability exists but would provide recommendations regarding how to address that disability, including a recommendation for medication. A prescription by the psychiatrist does not end the evaluation and diagnosis process. The psychiatrist might continue to rule out or rule in particular conditions based on the reaction to the medication or evaluate whether a child could function in a particular setting with such medication. This would be covered. In this regard, for example, the court has held hospitalization costs related to diagnosis and evaluation, where the child was diagnosed with family discord, oppositional defiant disorder, and marijuana dependence were deemed for diagnostic and evaluation purposes, and thus recoverable under the IDEA, despite that the care was in response to a medical crisis. *Dep't of Educ. State of Hawaii v. Cari Rae S.***,** 158 F.Supp.2d 1190 (D. Haw. 2001); *see also Manchester Sch. Dist. v. Charles M. F.*, 1994 U.S. Dist. LEXIS 12919, 1994 WL 485754, *7-*8 (D.N.H. Aug. 31, 1994) (allowing reimbursement for inpatient psychiatric and psychological hospitalization costs where costs were "for evaluative purposes to determine the proper educational/treatment program" for the child). We hope you will clarify this in the advisory.

Relatedly, as you know, health related services that "enable a disabled child to stay in school during the day" are considered to provide the child with meaningful access to education, and therefore fall within the covered category of "supportive services." *Cedar Rapids Cmty Sch. Dist. v. Garret,* 526 U.S. 66, 73 (1999). I hope you will provide further examples of such health-related support services, including:

- continuous nursing service throughout the day (*Cedar Rapids*, 526 U.S. at 73);

- services that a nurse or other qualified person may administer when doctor prescribes and supervises (*Irving Indep. Sch. Dist. v. Tatro (Tatro)*, 458 U.S. 883, 890 (1984)); and
- administration of psychotropic medication, emergency injections, and oral medications. (*Tatro*, 458 U.S. at 893; *see also John A. v. Bd. of Educ. for Howard County*, 400 Md. 363, 384 (Ct. of App. MD 2007) (administration of psychotropic medication is a related service)).

As discussed above, to the extent that psychotropic medication can be "managed" by another health care service provider under the supervision of a psychiatrist, those services are not excluded by the IDEA. *cf T.G. v Board of Education*, 576 F.Supp. 420 (D. N.J. 1983), *aff'd without op* 738 F2d 420 (1984, D. N.J.), *aff'd without op* 738 F2d 421 (D. N.J. 1984), *and aff'd without op* 738 F.2d 425 (3rd Cir. 1984), *cert. denied* 469 U.S. 1086 (1984) (psychotherapy administered to disturbed student at hospital under supervision of psychiatrist, but actually provided by staff member with masters degree in social work, may be characterized as counseling or psychological services, both of which fall within scope of "related services"). This needs to be further clarified.

Finally, a related service under the IDEA does not become an excluded medical service solely because a medical doctor can provide that service. *Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings*, 903 F.2d 635, 643 (9th Cir.1990). As such, please make it clear in the advisory that services, such as psychotherapy or other psychiatric services that can be provided by medical doctors are not excluded.

CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Mental Health Agency Administrators, and Other Entities Providing Related Services to Special Education Students:

REQUIREMENTS FOR SECURING THE SERVICES OF MENTAL HEALTH PROFESSIONALS TO PROVIDE RELATED SERVICES TO SPECIAL EDUCATION STUDENTS

On June 30, 2011, Assembly Bill 114, Chapter 43, Statutes of 2011 was signed into law. Under AB 114, several sections of Chapter 26.5 of the California *Government Code* (*GC*) were amended or rendered inoperative, thereby, ending the state mandate on county mental health agencies to provide mental health services to students with disabilities. With the passage of AB 114, it is clear that local educational agencies (LEAs) are now solely responsible for ensuring that students with disabilities receive special education and related services, including some services previously arranged for or provided by county mental health agencies. The following information is provided to guide LEAs in employing or contracting for the provision of related services. This information has been reviewed by both the California Department of Education (CDE) and the California Commission on Teacher Credentialing (CTC) to ensure that it reflects both agencies' interpretation of applicable federal and state law.

1. **For LEAs directly employing mental health professionals to provide related services**

   Many mental health professionals, such as clinical psychologists and marriage and family therapists, are employed to provide services that are not authorized by credentials or other certifications issued by the CTC, and instead are generally licensed by other state agencies such as the Office of Consumer Affairs. In such cases, these individuals would not be included in assignment monitoring conducted by county offices of education (COE) and the CTC. However, LEAs must ensure that such employees possess required licensure or training as established in state law. All individuals employed to provide related services must hold a valid credential issued by CTC with the appropriate authorization for those services, or otherwise be authorized to provide services based on another section of statute or regulation, and must be appropriately supervised.

   For information on obtaining a credential or other authorization from CTC, please contact CTC credential staff at (888) 921-2682, or by e-mail at credentials@ctc.ca.gov. For information on the appropriate certification for

specific assignments, please contact CTC's assignment unit at (916) 322-5038, or by e-mail at cawassignments@ctc.ca.gov.

Supervision

Individuals possessing an Administrative Services Credential are authorized to supervise and evaluate these personnel. Given the specialized nature of the work of mental health professionals, an administrator who has a background in providing related services, such as a person dually-certified in Pupil Personnel Services and Administrative Services, may be particularly well-suited to supervise these personnel, but any holder of an Administrative Services Credential is authorized to supervise mental health professionals employed by an LEA.

In addition, *Education Code* Section 44270.2 allows the holder of a pupil personnel services credential to supervise a pupil personnel service program.

"Any person who administers a pupil personnel program shall hold a services credential with a pupil personnel or administrative specialization."

Employers should note that pupil personnel services credentials do not authorize the holder to evaluate staff. Caution should be used when determining who will supervise and evaluate staff.

2. For LEAs contracting with community-based mental health professionals to provide related services

Community-based mental health professionals are broadly defined as any individuals licensed and assigned to provide mental health services that may be self-employed, employed by a private agency, or employed by a public agency such as a county mental health agency. Individuals and entities that are employees, contractors or vendors of these public agencies have been authorized to provide the specific services to which they have been assigned, and that authorization qualifies them to contract directly with LEAs to provide those same services. When contracting with such individuals and entities, LEAs should ensure that they are currently contractors or vendors of the public agencies for the same related services for which the LEA is contracting. Individuals and entities that are not current contractors or vendors of the public agencies described above must hold Nonpublic School (NPS) or Nonpublic Agency (NPA) certification in order to be eligible to provide related services (see below).

Supervision

In all cases, community-based mental health professionals must be supervised in their school-based activities by an individual possessing a Pupil Personnel Services (PPS) Credential. The term "supervised" in this context means that the PPS credential holder has oversight of the school-based activities undertaken by a community-based mental health provider for the purpose of ensuring that these services are consistent with the needs of students served and are coordinated with other student services to allow for the provision of an efficient and comprehensive Pupil Personnel Services Program. The requirement for community based service providers to be supervised by a PPS credential holder is established in Section 80049.1(c) of Title 5, California Code of Regulations, which states:

> Nothing in this section shall be construed to preclude school districts from utilizing community-based service providers, including volunteers, individuals completing counseling-related internship programs, and state licensed individuals and agencies to assist in providing pupil personnel services, provided that such individuals and agencies are supervised in their school-based activities by an individual holding a pupil personnel services authorization.

Nonpublic School or Agency Certification

Pursuant to Section 3051 of Title 5, *California Code of Regulations*, any community-based mental health agency or individual that is not "an employee, vendor, or contractor of the State Departments of Health Services or Mental Health or designated local public health or mental agency" must be certified by the CDE as a Nonpublic School (NPS) or Nonpublic Agency, (NPA). Information on obtaining NPA or NPS Certification is available at http://www.cde.ca.gov/sp/se/ds/npsacrtapp.asp, or you may contact the Interagency-Nonpublic Schools/Agencies Unit, Special Education Division, CDE, by phone at 916-327-0141, or by e-mail at npsa@cde.ca.gov.

If you have any questions about this subject, please contact Jim Alford, Education Programs Consultant, Special Education Division, by phone at 916-327-8877 or by e-mail at jalford@cde.ca.gov.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

FB:ja

State/Territory California

Citation | Condition or Requirement

REIMBURSEMENT FOR SHORT-DOYLE/MEDI-CAL

OUTPATIENT, REHABILITATIVE, CASE MANAGEMENT AND OTHER SERVICES

The policy of the State Agency is that reimbursement for Short-Doyle/Medi-Cal services shall be limited to the lowest of published charges, Statewide Maximum Allowances (SMAs), negotiated rates, or actual cost if the provider does not contract on a negotiated rate basis. To provide mutually beneficial incentives for efficient fiscal management, providers contracting on a negotiated rate basis shall share equally with the Federal Government that portion of the Federal reimbursement that exceeds actual cost. In no case will payments exceed SMAs.

A. DEFINITIONS

"Published charges" are usual and customary charges prevalent in the public mental health sector that are used to bill the general public, insurers, and other non-Title XIX payors. (42 CFR 447.271 and 405.503(a))

"Statewide maximum allowances" are upper limit rates, established for each type of service, for a unit of service. Units of service are defined as patient days for residential programs, half-days or full-days for day services, blocks of four hours for crisis stabilization services, and minutes for all other program services.

"Negotiated rates" are fixed, prospective rates of reimbursement, subject to the limitations described in the first paragraph above.

"Actual cost" is reasonable and allowable cost, based on year-end cost reports and Medicare principles of reimbursement as described at 42 CFR Part 413 and in HCFA Publication 15-1.

"Provider" means each legal entity providing Short-Doyle/Medi-Cal services.

"Legal entity" means each county mental health department or agency and each of the corporations, partnerships, agencies, or individual practitioners providing public mental health services under contract with the county mental health department or agency.

B. **REIMBURSEMENT METHODOLOGY FOR NON-NEGOTIATED RATE PROVIDERS**

REIMBURSEMENT LIMITS

The reimbursement methodology for non-**NEGOTIATED RATE PROVIDER** Short-Doyle/Medi-Cal services, by legal entity, is based on the lowest of:

1. The provider's published charge to the general public, unless the provider is a **NOMINAL CHARGE PROVIDER** (as defined below).

2. The provider's allowable cost.

3. The SMAs established as defined in Section D. by the Department of Mental Health (DMH) and approved by the Department of Health Services (DHS).

The above reimbursement limits are applied at the time of settlement of the year-end cost report after determination of Nominal Charge status and are applied individually to each legal entity providing services. For hospital providers, reimbursement is determined separately for inpatient and outpatient services. Reimbursement is based on comparisons of total, aggregated allowable costs after application of SMAs to total, aggregated published charges, by legal entity, computed separately for inpatient and outpatient services but without further distinction between different types of outpatient services.

NOMINAL CHARGE PROVIDER

Determination of Nominal Charge status is the first step in the cost report settlement process, before application of reimbursement limits. Pursuant to Medicare rules at 42 CFR 413.13, public providers and non-public providers with a significant portion of low-income patients are reimbursed the lower of actual cost or SMAs if total charges are 60 percent or less of the reasonable cost of services represented by the charges. The determination of nominal charges for outpatient, rehabilitative, case management, and other services is made in accordance with, and by extension from, Medicare inpatient rules at 42 CFR 413.13(f)(2)(iii). For

hospital providers, the determination is made separately for inpatient and outpatient services. The determination is based on comparisons of total, aggregated actual costs to total, aggregated published charges, by legal entity, computed separately for inpatient and outpatient services but without further distinction between different types of outpatient services.

C. REIMBURSEMENT METHODOLOGY FOR NEGOTIATED RATE PROVIDERS

REIMBURSEMENT LIMITS

The reimbursement methodology for **NEGOTIATED RATE PROVIDER** Short-Doyle/Medi-Cal services, by legal entity, is based on the lowest of:

1. The provider's published charge to the general public, unless the provider is a **NOMINAL CHARGE PROVIDER** (as defined below),

2. The provider's negotiated rates, based on historic cost, approved by the State,

3. The SMAs established as defined in Section D. by the DMH and approved by the DHS.

The above reimbursement limits are applied at the time of settlement of the year-end cost report after determination of Nominal Charge status and are applied individually to each legal entity. The methodology is the same as in Section B except that the Negotiated Rates are construed to be actual costs. If reimbursement to a negotiated rate provider exceeds actual costs in the aggregate, 50 percent of the Federal Financial Participation (FFP) that exceeded actual costs will be returned to the Federal government.

NOMINAL CHARGE PROVIDER

Determination of Nominal Charge status is the first step in the cost report settlement process, before application of reimbursement limits. Pursuant to Medicare rules at 42 CFR 413.13, public providers and non-public providers with a significant portion of low-income patients are reimbursed the lower of negotiated rates or SMAs if total charges are 60 percent or less of the reasonable cost of services represented by the charges. The determination of nominal charges for outpatient, rehabilitative, case management, and other services is made in accordance with, and by extension from, Medicare inpatient rules at 42 CFR 413.13(f)(2)(iii).

For hospital providers, the determination is made separately for inpatient and outpatient services. The determination is based on comparisons of total, aggregated actual costs to total, aggregated published charges, by legal entity, computed separately for inpatient and outpatient services but without further distinction between different types of outpatient services.

D. SMA METHODOLOGY

The SMAs are based on the statewide average cost of each type of service as reported in year-end cost reports for the most recent year for which cost reports have been completed. County administrative and utilization review costs are isolated and not included in the direct treatment payment rates. After eliminating rates in excess of one standard deviation from the mean, the top ten percent of providers with the highest rates are eliminated from the base data to afford cost containment and allow for an audit adjustment factor. The total costs of each type of service are then divided by the total units of service to arrive at a statewide average rate. The adjusted average rates are inflated by a percentage equivalent to the Home Health Agency Market Basket Index for the period between the cost report year and the year in which the rates will be in effect.

The State Fiscal Year 1989-90 cost report data was used to develop base rates. The rates from the base year were adjusted for inflation annually by applying the Home Health Agency Market Basket Index. When the SMAs are re-based, the data will be adjusted to reflect the lower of actual costs or the SMA's in effect for the base year.

The SMAs for crisis stabilization, adult crisis residential treatment, and adult residential treatment are provisional because these are new services not included in the current database. The SMA for crisis stabilization is based on a cost survey of fourteen county programs that provide services for up to 24 hours in an emergency room setting. The SMAs for the two residential programs are based on a cost survey for approximately sixty facilities and include reimbursement only for treatment; room and board costs are excluded. No Federal funds will be used for IMD services. All three provisional rates will be reviewed and rebased for State Fiscal Year 1995-96 based on State Fiscal Year 1993-94 cost report data.

The SMA for psychiatric health facilities is also provisional and new for State Fiscal Year 1994-95. The SMA is based on a cost survey of six county programs which provide rehabilitative services in a non-IMD 24-hour environment. Room and board costs are excluded. The provisional SMA will be reviewed and rebased for State Fiscal Year 1996-97 based on State Fiscal Year 1994-95 cost report data.

E. ALLOWABLE SERVICES

Allowable outpatient, rehabilitative, case management, and other services and units of service are as follows:

Service	Unit of Service
Day Treatment Intensive	Half-day or Full-Day
Day Rehabilitative	Half-day or Full-Day
Mental Health Services	Single Minutes
Medication Support	Single Minutes
Crisis Intervention	Single Minutes
Crisis Stabilization	One-Hour Blocks
Case Management/Brokerage	Single Minutes
Adult Crisis Residential Treatment	Day (Excluding room and board)
Adult Residential Treatment	Day (Excluding room and board)
Psychiatric Health Facility	Day (Excluding room and board)