


MEMORANDUM

DATE	April 30, 2018
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #21(b)(2)(I) – AB 2119 (Gloria) Foster Care: Gender Affirming Health Care and Behavioral Health Services

Background:

Current law states that all minors and nonminors in foster care have the right to a variety of health services, along with mental health services and the right to be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records. This bill would include the right to have access to gender affirming health care and gender affirming behavioral health care to this list of services. This bill would also require the county child welfare agency to ensure that the child or nonminor dependent has access to gender affirming health care and gender affirming behavioral health services. These services are defined to mean health care that respects the gender identity of the patient, as experienced and defined by the patient.

The April 4th amendments to this bill would also add a prohibition against any licensed professional, or any other individual, from subjecting a foster child or nonminor dependent to “any treatment, intervention, or conduct that seeks to change the foster child’s or nonminor dependent’s gender identity.”

Location: 4/11/2018 Assembly Committee on Appropriations

Status: 4/11/18 From committee: Do pass and re-refer to Assembly Committee on Appropriations.

Status: 4/10/2018 Assembly Committee on Human Services (5-1-1)

Action Requested:

The Policy and Advocacy Committee recommends the Board watch AB 2119 (Gloria) for its potential impact on access to mental health services for foster youth.

Attachment A: AB 2119 (Gloria) Bill Text

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(a) *It is the intent of the Legislature to ensure the health and well-being of all foster children and nonminor dependents, including those who are transgender or gender nonconforming (TGNC).*

(b) *When their families, schools and communities support and nurture their developing identities, TGNC children, like all children, thrive and succeed.*

(c) *TGNC children and adolescents who experience rejection and mistreatment based on their gender identity or expression are at significantly elevated risk for negative health outcomes, school dropout or exclusion, homelessness, and involvement in foster care and juvenile justice systems.*

(d) *Based, in part, on family rejection and societal bias, TGNC children and adolescents experience worse outcomes than their nontransgender peers and are significantly overrepresented in California's child welfare system.*

(e) *TGNC foster children and nonminor dependents need accurate and timely information related to gender identity and expression, and access to gender affirming medical and behavioral health care.*

(f) *TGNC foster children and nonminor dependents are at additional risk of harm because unclear policies and a shortage of knowledgeable gender-affirming providers create barriers to accessing medically necessary care.*

(g) *Foster youth who are 12 years of age or older have established rights to privately seek and consent to outpatient mental health counseling and treatment, including pursuant to Section 6924 of the Family Code and Section 124260 of the Health and Safety Code.*

(h) *Depending on a foster youth's custody situation, a foster youth's parent, social worker, licensed caregiver, judge, or the youth may give consent for the foster youth's medical, surgical, dental, or other remedial care.*

(i) *Nonminor dependents give consent for their own medical, surgical, dental and other health care.*

(j) *The Insurance Gender Nondiscrimination Act, pursuant to Section 1365.5 of the Health and Safety Code and Section 10140 of the Insurance Code, prohibits health plans from discriminating against individuals because of a person's sex, gender, gender identity, or gender expression.*

(k) *It is the role of the child welfare agency, within the parameters set forth in Section 369 of the Welfare and Institutions Code, to support dependent children's ability to access medically necessary care, including gender affirming health care and gender affirming behavioral health services.*

All children in foster care, as well as former foster youth up to 26 years of age, are entitled to Medi-Cal coverage without cost share or income or resource limits. The Medi-Cal program provides transition-related health care services when those services are determined to be medically necessary.

SECTION 1. SEC. 2. Section 16001.9 of the Welfare and Institutions Code is amended to read:

16001.9. (a) It is the policy of the state that all minors and nonminors in foster care ~~shall~~ have the following rights:

- (1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.
- (2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.
- (3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

- (4) To receive medical, dental, vision, and mental health services.
- (5) To be free of the administration of medication or chemical substances, unless authorized by a physician.
- (6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and probation officers.
- (7) To visit and contact brothers and sisters, unless prohibited by court order.
- (8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.
- (9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.
- (10) To attend religious services and activities of his or her choice.
- (11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.
- (12) To not be locked in a room, building, or facility premises, unless placed in a community treatment facility.
- (13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level, with minimal disruptions to school attendance and educational stability.
- (14) To work and develop job skills at an age-appropriate level, consistent with state law.
- (15) To have social contacts with people outside of the foster care system, including teachers, church members, mentors, and friends.
- (16) To attend Independent Living Program classes and activities if he or she meets *the* age requirements.
- (17) To attend court hearings and speak to the judge.
- (18) To have storage space for private use.
- (19) To be involved in the development of his or her own case plan and plan for permanent placement.
- (20) To review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.
- (21) To be free from unreasonable searches of personal belongings.
- (22) To the confidentiality of all juvenile court records consistent with existing law.
- (23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- (24) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records.
- (25) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.
- (26) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.
- (27) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older.

(28) To have access to gender affirming health care and gender affirming behavioral health services, as defined in Section 16501.31.

(b) ~~Nothing in this section shall be interpreted to~~ This section does not require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (26) of subdivision (a).

SEC. 3. Section 16501.31 is added to the Welfare and Institutions Code, to read:

16501.31. (a) Upon the request of a child or nonminor dependent, or their caregiver, attorney, Court Appointed Special Advocate, or social worker, the county child welfare agency shall ensure that the child or nonminor dependent has access to gender affirming health care and gender affirming behavioral health services.

(b) (1) "Gender affirming health care" means health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, all of the following:

(A) Interventions to suppress the development of endogenous secondary sex characteristics.

(B) Interventions to align the patient's appearance or physical body with the patient's gender identity.

(C) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

(2) "Gender affirming behavioral health services" means behavioral health services that respect the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance.

(c) A licensed professional, or any other individual, shall not subject a foster child or nonminor dependent to any treatment, intervention, or conduct that seeks to change the foster child's or nonminor dependent's gender identity.

(d) Gender affirming health care and gender affirming behavioral health services provided pursuant to this section are subject to existing laws governing consent to health care. This section does not limit, add, or otherwise affect, applicable law on consent to health care.

(e) The department shall adopt regulations to implement this section on or before January 1, 2020.

SEC. 4. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.