

Fact Sheet AB 421 (Beall) Out-of-State Placements

PROBLEM

In 1992, the federal government enacted legislation prohibiting placement of severely emotionally disturbed (SED) children in residential facilities operated on a “for-profit” basis. California law was subsequently changed to conform to federal law.

The 1992 statutory change prohibited any use of public funds for residential placement at “for-profit” facilities, both in California and throughout the country. As a result, in California virtually all placement agencies converted to “non-profit” status or ceased working with publicly funded children.

Thru the Federal Individuals with Disabilities Act (IDEA), a child is legally allowed to be placed by his /her parent in the most appropriate placement (Federal law changed in 1996 to allow “for-profit” placements.) Usually parents work with the school district and county mental health departments for assistance with the best placement for their child. The tax status of the most appropriate facility is not a consideration when providing the most appropriate care for their child.

Some out-of-state residential providers are owned by “for-profit” entities, usually hospital/behavioral health corporations. Some “non-profit” residential providers are operated by the parent company thru a subsidiary contract. In a good faith effort to comply with the state law, counties contract for services for some SED students, with the “non-profit” entities.

Counties placed students in these facilities believing that, so long as the contracted company was “not-for-profit” this was in compliance with the letter and the intent of federal and state law. Counties have historically been reimbursed by the state for the costs of these placements, and therefore had no reason to believe they did not comply with state law.

In 2005, an unpublished administrative law judge decision, in one Special Education due process hearing, found these facilities do not meet the definition of “not-for-profit.” This decision prompted the State Controller’s Office to dispute counties’ eligibility for mandate reimbursement for these out-of-state placements, despite the fact that administrative hearing decisions are not precedent setting, and apply only in that case.

THIS BILL

AB 241 codifies current practice of placing a child in the most appropriate facility.

This bill authorizes reimbursement payments to be made to County Departments of Mental Health for the placement of seriously emotionally disturbed children in out-of-state, privately

owned residential facilities that meet applicable licensing requirements and other specific conditions.

The bill requires:

- A sunset date of 2012,
- Creates safeguard provisions for the placement of children in for-profit out-of-state facilities, and,
- Requires the Department of Mental Health to submit an annual report to Legislature.

The bill does not in any way generate or result in new costs to the state as Federal Law allows for the placements. Counties are required to make the placements, and the placements and caseload are programmed into the State Budget.

It should be noted, “For-profit” facilities tend to be lower in costs than “non-profits”. However it should be reiterated that these placements are programmed in caseload growth already in the State Budget. The Counties are allowed to request reimbursement for the cost thru the SB 90 Claims.

SUMMARY

These facilities are an important safety valve and resource for California. They add badly needed capacity. The supply of in-state facilities are insufficient for current or anticipated demand and are often unable to provide needed specialties and levels of care. California’s facilities continue to be on the decline.

If the “for-profit” prohibition is strictly enforced, there will be high profile widely publicized, serious dislocation that will have serious consequences on affected kids and their families.

Placements will not increase as a result of this bill, in fact the bill ensures a child who must be “placed” will be in the most appropriate setting and not just a setting that is “available”.

STATUS/VOTES

SUPPORT

California Mental Health Directors Association

OPPOSITION

Staff Contact: Kathleen Finnigan (916) 319-2687