

Assembly Bill No. 2726

CHAPTER 654

An act to amend Sections 7576 and 7587 of, and to add Section 7586.6 to, the Government Code, relating to public social services.

[Approved by Governor September 19, 1996. Filed
with Secretary of State September 19, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2726, Woods. Pupils: mental health services.

Existing law makes the State Department of Mental Health or any community mental health service designated by the department for the provision of mental health services when required in a child's individualized education program.

This bill would establish procedures governing referrals of pupils to community mental health services and the responsibilities of those entities.

This bill would specify that, commencing July 1, 1997, the fiscal and program responsibilities of community mental health services shall be the same regardless of the location of the placement.

The bill would also require that the Superintendent of Public Instruction and the Secretary of Health and Welfare ensure that the State Department of Education and the State Department of Mental Health, by January 1, 1998, enter into a specified interagency agreement, and would express legislative intent that the designated local agencies of these departments enter into interagency agreements.

By imposing requirements upon community mental health services, the bill would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



The people of the State of California do enact as follows:

SECTION 1. (a) The fiscal and program responsibilities of community mental health services shall be the same regardless of the location of placement. Local education agencies and community mental health services shall make out-of-state placements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code only if other options have been considered and are determined to be inappropriate. In making these placements, local education agencies and community mental health services shall comply with relevant sections of the Education Code, including Section 56365.

(b) This section shall become operative on July 1, 1997.

SEC. 2. Section 7576 of the Government Code is amended to read:

7576. (a) The State Department of Mental Health, or any community mental health service, as defined in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, shall be responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the pupil's individualized education program. A local education agency shall not be required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in the pupil's individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that the local education agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health treatment needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, "parent" is as defined in Section 56028 of the Education Code.

(b) A local education agency, individualized education program team, or parent may initiate a referral for assessment of a pupil's social and emotional status, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service when a pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c),



and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code. Local education agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) The local education agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local education agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(3) The pupil has emotional or behavioral characteristics that:

(A) Are observed by qualified educational staff in educational and other settings, as appropriate.

(B) Impede the pupil from benefiting from educational services.

(C) Are significant as indicated by their rate of occurrence and intensity.

(D) Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short-term counseling.

(4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

(5) The local education agency has provided counseling, psychological, or guidance services to the pupil pursuant to Section 56363 of the Education Code, and the individualized education program team has determined that the services do not meet the pupil's educational needs, or, in cases where these services are clearly inappropriate, the individualized education program team has documented which of these services were considered and why they were determined to be inappropriate.

(c) When referring a pupil to a community mental health service in accordance with subdivision (b), the local education agency or the individualized education program team shall provide the following documentation:

(1) Copies of the current individualized education program, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code, and other relevant information, including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).



(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria set forth in paragraphs (3) and (4) of subdivision (b).

(4) A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, including the initiation, duration, and frequency of these services, or an explanation of why a service was considered for the pupil and determined to be inappropriate.

(d) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a local education agency may refer a pupil who has been determined to be, or is suspected of being, an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service when a pupil meets the criteria in paragraphs (1) and (2). Referral packages shall include all documentation required in subdivision (e) and shall be provided immediately to the community mental health service.

(1) The pupil meets the criteria in paragraphs (2) to (4), inclusive, of subdivision (b).

(2) Counseling, psychological, and guidance services are clearly inappropriate in meeting the pupil's needs.

(e) When referring a pupil to a community mental health service in accordance with subdivision (d), the local education agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) An explanation as to why counseling, psychological, and guidance services are clearly inappropriate in meeting the pupil's needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision shall not change the identification and referral responsibilities imposed on local education agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral



immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

SEC. 3. Section 7586.6 is added to the Government Code, to read:

7586.6. (a) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that the State Department of Education and the State Department of Mental Health enter into an interagency agreement by January 1, 1998. It is the intent of the Legislature that the agreement include, but not be limited to, procedures for ongoing joint training, technical assistance for state and local personnel responsible for implementing this chapter, protocols for monitoring service delivery, and a system for compiling data on program operations.

(b) It is the intent of the Legislature that the designated local agencies of the State Department of Education and the State Department of Mental Health update their interagency agreements for services specified in this chapter at the earliest possible time. It is the intent of the Legislature that the state and local interagency agreements be updated at least every three years or earlier as necessary.

SEC. 4. Section 7587 of the Government Code is amended to read:

7587. By January 1, 1986, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of disabled children. The directors of each department shall adopt all regulations pursuant to this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. For the purpose of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law and shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, and the final regulations shall become effective immediately upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act



contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

