

Date of Hearing: June 15, 2016

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 1113 (Beall) – As Amended: June 8, 2016

[Note: This bill has been double referred to the Assembly Committee on Health, and if passed will be heard by that committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 39-0

SUBJECT: Pupil health: mental health

SUMMARY: Authorizes local educational agencies (LEAs) to enter into partnerships, as specified, with county mental health plans for the provision of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) mental health services, and to expand the allowable uses of specified mental health funds. Specifically, **this bill:**

- 1) Authorizes an LEA to enter into a partnership with a county, or a qualified provider operating as part of the county mental health plan network, that includes all of the following:
 - a) An agreement between the county mental health plan, or the qualified provider, and the LEA, that establishes a Medi-Cal mental health provider that is county operated or county contracted, for the provision of mental health services to students of the LEA. Authorizes the agreement to include provisions for the delivery of campus-based mental health services through qualified providers or qualified professionals to provide on-campus support to identify a student not in special education who a teacher believes may require those services and, with parental consent, to provide mental health services to those students.
 - b) The county mental health plan, or the qualified provider, and the LEA use designated governmental funds for eligible Medi-Cal EPSDT program services provided to students enrolled in Medi-Cal, for mental health service costs for non-Medi-Cal enrolled students in special education, and for students not part of special education if the services are provided by a provider pursuant to the agreement described above.
 - c) The LEA, with permission of the student's parent, provides the county mental health plan provider with the information of the health insurance carrier for each student.
 - d) The agreement between the county mental health plan, or the qualified provider, and the LEA addresses how to cover the costs of mental health provider services not covered by governmental funds in the event that mental health service costs exceed the agreed-upon funding outlined in the partnership agreement between the county mental health plan, or the qualified provider, and the LEA, following a year-end cost reconciliation process, and in the event that the LEA does not elect to provide the services through other means.
 - e) The agreement between the county mental health plan, or the qualified provider, and the LEA fulfills reporting requirements under state and federal law and Medi-Cal EPSDT provisions, and measures the effect of the mental health intervention and how that

intervention meets the goals in a student's individualized education program (IEP) or relevant plan for students without an IEP.

- f) The county mental health plan, or the qualified provider, and LEA participate in the EPSDT performance outcome system to measure results of services provided under the partnership agreement.
 - g) A plan to establish a partnership in at least one school within the LEA in the first year and to expand the partnership to three additional schools within three years.
- 2) Establishes the County and Local Educational Agency Partnership Fund in the State Treasury. States that moneys in the fund, upon appropriation by the Legislature, would be available to the CDE for the purpose of funding the partnerships established by the bill, through a competitive grant program.
 - 3) Requires the SPI, starting in the 2017-18 fiscal year, to allocate funds appropriated in the Budget Act or another measure for purposes of the partnerships established by this bill to the County and Local Educational Agency Partnership Fund.
 - 4) Authorizes other funds identified and appropriated by the Legislature to be deposited into the County and Local Educational Agency Partnership Fund.
 - 5) Requires funds made available in the annual Budget Act for the purpose of providing educationally related mental health services, including out-of-home residential services for emotionally disturbed students, required by an IEP to be used only for that purpose unless the State Board of Education grants a waiver allowing those funds to be expended for other purposes.
 - 6) Requires, as part of the EPSDT performance outcome system, that the Department of Health Care Services (DHCS) identify children with an IEP who have a primary mental health diagnosis as emotional disturbance, and collect and utilize in the performance outcome system academic performance data and any other data required for the measures included within the performance outcome system for these children.
 - 7) Requires DHCS to enter into an agreement with the CDE for the CDE to provide to DHCS relevant academic performance data, as determined DHCS, in consultation with the CDE, for utilization in the performance outcome system.
 - 8) Requires that, within 18 months of DHCS completing the first report on comprehensive performance outcomes, it begin to include the above data in its reporting.
 - 9) Defines LEA for purposes of the partnership section to mean a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area.

EXISTING LAW:

- 1) Federal law establishes the Individuals with Disabilities Education Act (IDEA) and related regulations, which requires that students with disabilities have access to a free and

appropriate public education based on their individual needs, and establishes procedures for implementing these requirements.

- 2) State law defines “related services” to mean services, including psychological services other than assessment and development of the IEP, and counseling services, designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the IEP of the child, and to benefit from special education.
- 3) State law, by removing the responsibility for providing mental health services for students with disabilities from counties, establishes that LEAs are responsible for providing these services.
- 4) Federal law establishes the Medi-Cal EPSDT program for eligible people under 21 years of age to provide periodic screenings to determine health care needs and, based upon the identified health care need and diagnosis, to provide treatment services. Existing law provides that EPSDT services are to be administered through local county mental health plans under contract with the DHCS.

FISCAL EFFECT:

According to the Senate Appropriations Committee (based on the April 14, 2016 amended version):

- Unknown costs to implement the grant program as it would depend upon the amount of funding that is transferred into the County and Local Educational Agency Partnership Fund (Partnership Fund). The author’s office intends for this bill to fund about 10 LEAs at \$600,000 each year for three schools per LEA. Under this scenario, costs would be \$18 million per year. Actual costs could be higher or lower depending upon available funding. (Proposition 98)
- To the extent Partnership funds are used for mental health services *not* required by an IEP, there would be a cost pressure to increase state funds by a similar amount that is transferred, to backfill the special education program to meet the federal maintenance of effort requirement. (Proposition 98)
- CDE estimates the costs to prepare and report required data and to administer the competitive grant process, to be up to \$150,000 General Fund across several positions. Unknown, potentially significant costs to the Department of Health Care Services and CDE to enter into a data sharing agreement. Associated cost pressures and potential significant mandate for LEAs to report the required data to CDE (Proposition 98)
- To the extent the use of moneys from the Partnership Fund leads to increased access to federal Medi-Cal funds, LEAs would presumably be able to provide additional services to eligible students in their jurisdiction. (Federal funds)

COMMENTS:

Need for the bill. According to the author, “A key finding of the audit (*Student Mental Health Services: Some Students’ Services Were Affected by a New State Law, and the State Needs to*

Analyze Student Outcomes and Track Service Costs; January 2016) was that LEAs and counties could benefit financially and improve student access to mental health services by collaborating to provide services to Medi-Cal eligible students. Although successful models have demonstrated partnerships like SB 1113 benefit both the counties and LEAs by increasing access to necessary mental health services for all Medi-Cal eligible school-age children, they are rarely implemented by LEAs. LEAs cannot access funding for those EPSDT services unless they contract with their respective counties. Some LEAs and counties disagree over who should pay for the state match as required under the EPSDT program.”

Recent state audit on student mental health services. AB 114 (Chapter 43, Statutes of 2011) transferred the responsibility for providing mental health services for students with IEPs from county mental health departments to LEAs.

In January, 2016, the Bureau of State Audits released a report, requested by the author and other members of the Legislature, on the effect of AB 114 on mental health services for students. The report, titled *Student Mental Health Services: Some Students' Services Were Affected by a New State Law, and the State Needs to Analyze Student Outcomes and Track Service Costs*, found that:

- The most commonly offered types of mental health services and the providers of those services generally did not change.
- The number of students who received these mental health services remained steady or grew.
- The provider of the most common mental health services generally had already been, and continues to be, the LEA.
- The majority of changes to services were unrelated to AB 114, though IEP teams did not always record in the IEP document their rationale for why a service was removed.

The audit recommended that the Legislature ***require*** counties to enter into agreements with SELPAs to allow SELPAs and LEAs to access EPSDT funding through the county mental health programs by providing EPSDT mental health services.

Audit recommendation regarding EPSDT program. This bill relates to the section of the audit that is specific to the EPSDT program. The audit recommended that the Legislature require counties to enter into agreements with SELPAs to allow SELPAs and LEAs to access EPSDT funding. This bill does not require that counties to enter into these agreements, but authorizes a specific kind of such an agreement, and suggests that there will be additional state funding to incentivize such agreements.

EPSDT is a Medi-Cal benefit for people under the age of 21 who have “full-scope” Medi-Cal eligibility. The EPSDT program provides eligible children access to a range of mental health services that include, among other things, mental health assessment, mental health services, therapy, rehabilitation, therapeutic behavioral services, crisis intervention/stabilization, day rehabilitation/day treatment, medication support and case management. EPSDT services are administered through county mental health plans under contract with the DHCS. LEAs may

provide and bill for EPSDT mental health services only pursuant to a contract with the county mental health plan. EPSDT federal funds must be matched by county funds.

The audit noted that although LEAs cannot access funding for EPSDT services unless they contract with their respective counties, such collaborations could financially benefit both counties and LEAs and increase the provision of services to children. The audit cited the case of Desert Mountain SELPA, which contracts with San Bernardino County to provide mental health services to Medi-Cal eligible students using EPSDT funds. Under this arrangement, Desert Mountain SELPA contributes to the county's required match of federal funds. According to the Auditor, this arrangement is mutually beneficial: San Bernardino County does not need to provide the full match, and Desert Mountain is able to access EPSDT funding to provide mental health services to Medi-Cal eligible students with and without IEPs. The audit noted that "if California's other SELPAs established agreements with their county mental health plans, these entities in total could potentially receive millions of dollars in federal reimbursements for mental health services provided to Medi-Cal eligible children."

According to the Special Opportunities for Access and Reform Coalition (SOAR), a coalition which includes seven SELPAs, there are several barriers to developing these partnerships. They note, "In those regions that have not been able to develop a partnership, some of the hurdles center on county mental health not being willing to contract/vendorize the LEA/SELPA to provide EPSDT services, or the county mental health agency charging the LEA/SELPA a high indirect cost for developing this partnership." They note that there is no state policy on how an LEA can seek direct access to the Medi-Cal funding for the EPSDT program through county managed care, and that instead it is up to each individual LEA or SELPA to negotiate directly with their county mental health program. They also note that under current law there is no appeal or mediation process for circumstances when the two agencies do not agree.

Use of special education mental health funds for non-IEP services? This bill establishes a County and Local Educational Agency Partnership Fund, for the purpose of providing state funds for competitive grants to partnerships established by the bill. The bill requires the SPI to allocate any funds appropriated in the Budget Act for purpose of these partnerships to this fund. The bill also prohibits funds for educationally-related mental health services (AB 114 funds) from being used for other purposes unless a waiver is granted by the State Board of Education.

The annual Budget Act appropriates funding for mental health services for special education students on the basis of average daily attendance. This bill suggests that these funds could be deposited into the County and Local Education Agency Partnership Fund, be allocated on a competitive basis, and be used for students who are not in special education.

The author indicates that this is not his intent. Accordingly, ***staff recommends that this bill be amended*** as shown below, and to add intent language encouraging partnerships to seek other sources of funding for students who are in need of mental health services but do not have IEPs:

5921 (c) Funds made available in the annual Budget Act for the purpose of providing educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program, shall be used only for that purpose ~~unless the State Board of Education grants a waiver allowing those funds to be expended for other purposes.~~ These funds shall not be deposited into the County and Local Educational Agency Partnership Fund.

In addition, *the Committee may wish to consider* a technical amendment to clarify that, for the purpose of the partnership section of this bill, the definition of a local educational agency includes all charter schools, not just those participating as members of a SELPA.

Arguments in support. The California Council of Community Behavioral Health Agencies writes that SB 1113 will 1) ensure access to EPSDT funds for students who may need mental health care, 2) provide support to teachers to identify those students as early as possible and before they become severe enough to require special education, 3) address the needs of all students through incentive start-up funds that are likely to be offset by savings in special education, and 4) develop outcome measures to measure program effectiveness. The Council notes, “There are now examples of excellent partnerships between schools and counties or county funded mental health providers. This bill is intended to broaden those types of partnerships throughout the state.”

The Community Health Partnership writes that such partnerships are mutually beneficial but seldom implemented. They note, “Only six out of 122 SELPAs are known to have agreements in place with a county mental health plan or qualified provider that operated in the county mental health plan. The bottom line is that California is leaving tens of millions of dollars on the table.”

Arguments in opposition. The California Teachers Association writes that SB 1113 suggests that resources could be diverted from special education in order to serve other students. Similarly, the SELPA Administrators Association of California writes that this bill “suggests that money budgeted for schools to provide mental health services to students as a related service to special education should be used to help pay the state match for EPSDT reimbursement regardless of whether these students have special education needs.”

The SOAR Coalition recommends that the bill be amended to instead require the DHCS to develop a mediation or appeals process when an LEA or SELPA and county mental health agency cannot agree on delivery of service for an eligible recipient or when EPSDT funding is not accessible.

Related legislation. AB 884 (Beall) of this Session is also related to the audit of student mental health services. It requires LEAs and SELPAs to collect and report specific information relative to mental health services, requires the CDE to monitor and compare specific information relative to mental health services, and requires LEAs to provide specified informational materials to parents. AB 884 is pending in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Mental Health America of California (Sponsor)
California Youth Empowerment Network
California Association of Marriage and Family Therapists
California Council of Community Behavioral Health Agencies
Community Health Partnership
Steinberg Institute

Opposition

California Teachers Association

Los Angeles Unified School District (unless amended)

Special Education Local Plan Area Administrators (unless amended)

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