

**Department of Health Care Services
Proposed Trailer Bill Language**

**642—California Children’s Services Medical Therapy Program: Delivery of
Medically Necessary Occupational and Physical Therapy Services**

Section 7570 of the Government Code is amended to read:

7570. (a) Ensuring maximum utilization of all state and federal resources available to provide a child with a disability, as defined in Section 1401(3) of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in Section 1401(26) of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to a child with a disability, shall be the ~~joint~~ responsibility of the Superintendent of Public Instruction ~~and the Secretary of the Health and Human Services Agency~~. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

(b)The Secretary of the Health and Human Services Agency shall coordinate with the Superintendent of Public Instruction to provide medically necessary physical therapy and occupational therapy to a child with a disability, as defined in Section 1401(3) of Title 20 of the United States Code, who is eligible for the California Children’s Services Medical Therapy Program physical and occupational therapy services in accordance with the provisions of Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

Section 7571 of the Government Code is amended to read:

7571. The Secretary of the Health and Human Services Agency ~~may designate~~ a the State dDepartment of Health Care Services state government to assume the responsibilities described in Section 7570. The State Department of Health Care Services secretary, or his or her designee, also shall designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

Section 7572 of the Government Code is amended to read:

7572. (a) A child shall be assessed in all areas related to the suspected disability by those qualified to make a determination of the child’s need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of occupational therapy and physical therapy. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code except for services as specified in subdivision (b).

(b) Occupational therapy and physical therapy assessments provided by California Children’s Services to children eligible for the Medical Therapy Program shall be

conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Care Services in consultation with the State Department of Education. **California Children's Services assessments shall be limited to a determination of an eligible child's need for medically necessary occupational therapy and physical therapy in accordance with Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code. Medically necessary occupational therapy and physical therapy services provided pursuant to California Children's Services assessments are supplemental to the provision of a free appropriate public education and are not related services or designated instruction and services as those terms are defined in Section 1401(26), Subchapter I, Chapter 33 of Title 20 of the United States Code and Section 56363, Article 4, Chapter 4, Part 30, Division 4 of Title 2 of the Education Code, respectively.**

(c) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. **California Children's Services shall only provide medically necessary occupational therapy and physical therapy as specified in subdivision (b) without consideration of educational benefit. Such services may be included in a child's individualized education program only as nonacademic services, as defined in Section 300.107, Subpart B, Part 300, Chapter III, Subtitle B of Title 34 of the Code of Federal Regulations.**

In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) If an assessment has been conducted pursuant to subdivision (b), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and **shared** with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the **related medically necessary** service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for **medically necessary related services or designated instruction and** services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in

subdivision (b). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and **shared** with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(3) Any disputes between the parent and team members representing **California Children's Services regarding a physician's determination of medical necessity for occupational therapy and physical therapy shall be resolved pursuant to Section 42140 of Article 2 of Chapter 13 of Subdivision 7 of Division 2 of Title 22 of the California Code of Regulations. Any disputes between the parent and team members representing the other** public agencies regarding a recommendation made in accordance with ~~paragraphs (1) and (2) this section~~ shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of Title 2 of the Education Code.

(d) Whenever a ~~related service or designated instruction and medically necessary~~ service specified in subdivision (b) is to be considered for inclusion in the child's individualized educational program, the local educational agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (c). Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program team meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

Section 7575 of the Government Code is amended to read:

7575. (a) (1) Notwithstanding any other provision of law, the State Department of Health Care Services (**the department**), or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis ~~and when contained in the child's individualized education program.~~

(2) Related services or designated instruction and services ~~not deemed to be medically necessary by the State Department of Health Care Services~~, that the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy and shall provide medically necessary occupational therapy or physical therapy in accordance with the provisions of Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The written report shall include the following:

(1) The diagnosed neuromuscular, musculoskeletal, or physical disabling condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

~~(4) The relationship of the medical disability to the pupil's need for special education and related services.~~

~~(5)~~(4) Relevant medical records.

(c) ~~The department~~ California Children's Services shall provide ~~the service medically necessary occupational therapy and physical therapy~~ directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life-supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

Section 7585 of the Government Code is amended to read:

7585. (a) Except as specified in paragraph (3) of subdivision (c) of Section 7572, ~~Whenever~~ a department or local agency designated by that department fails to provide a ~~related service or designated instruction and~~ service required pursuant to Section 7575, and specified in the pupil's individualized education program, the parent, adult pupil, if applicable, or a local educational agency referred to in this chapter, shall

submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of California Health and Human Services.

(b) When either the Superintendent or the secretary receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The Superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local educational agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the Superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the Superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the director, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local educational agency, either party may appeal to the director, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate ~~related service or designated instruction and~~ service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent and the secretary shall ensure that funds are available for the provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) This section does not prevent a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

Section 7586 of the Government Code is amended to read:

7586. (a) All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code, except as otherwise specified in paragraph (3) of subdivision (c) of Section 7572. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

- (b) Upon receipt of a request for a due process hearing involving an agency other than an educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies.
- (c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.
- (d) No public agency, state or local, may request a due process hearing pursuant to Section 56501 of the Education Code against another public agency.

Section 123870 of the Health and Safety Code is amended to read:

123870. (a) The department shall establish standards of financial eligibility¹²³⁸⁷⁰ for treatment services under the California Children's Services Program (CCS program).

(1) Financial eligibility for treatment services under this program shall be limited to persons in families with an adjusted gross income of forty thousand dollars (\$40,000) or less in the most recent tax year, as calculated for California state income tax purposes. If a person is enrolled in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code), the financial documentation required for that program in Section 2699.6600 of Title 10 of the California Code of Regulations may be used instead of the person's California state income tax return. If a person is enrolled in the Medi-Cal program pursuant to Section 14005.26 of the Welfare and Institutions Code, the financial documentation required to establish eligibility for the Medi-Cal program may be used instead of the person's California state income tax return. However, the director may authorize treatment services for persons in families with higher incomes if the estimated cost of care to the family in one year is expected to exceed 20 percent of the family's adjusted gross income.

(2) Children enrolled in the Healthy Families Program, or enrolled in the Medi-Cal program pursuant to Section 14005.26 of the Welfare and Institutions Code, who have a CCS program eligible medical condition under Section 123830, and whose families do not meet the financial eligibility requirements of paragraph (1), shall be deemed financially eligible for CCS program benefits.

(b) ~~Necessary medical~~ Medically necessary therapy treatment services under the California Children's Services Program rendered in the public schools shall be exempt from financial eligibility standards and enrollment fee requirements for the services when rendered to any handicapped child whose educational or physical development would be impeded without the services.

(c) All counties shall use the uniform standards for financial eligibility and enrollment fees established by the department. All enrollment fees shall be used in support of the California Children's Services Program.

(d) Annually, every family with a child eligible to receive services under this article shall pay a fee of twenty dollars (\$20), that shall be in addition to any other program fees for which the family is liable. This assessment shall not apply to any child who is eligible for full scope Medi-Cal benefits without a share of cost, or for children receiving therapy through the California Children's Services Program as a ~~related~~ service in their individualized education plans; ~~for children from families having incomes of less~~

~~than 100 percent of the federal poverty level, or for children covered under the Healthy Families Program.~~