

Assembly Bill No. 226

Passed the Assembly September 10, 2021

Chief Clerk of the Assembly

Passed the Senate September 10, 2021

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2021, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1502 of, to add Chapter 7 (commencing with Section 1700) to Division 2 of, and to repeal Sections 1562.02 and 1562.03 of, the Health and Safety Code, and to amend Sections 11462.01 and 14021 of, and to repeal Section 11462.011 of, the Welfare and Institutions Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 226, Ramos. Children's crisis psychiatric residential treatment facilities.

Existing law, the California Community Care Facilities Act, provides for the licensing and regulation of community care facilities, including a children's crisis residential program, by the State Department of Social Services, and defines a children's crisis residential program to mean a facility licensed as a short-term residential therapeutic program and approved by the State Department of Health Care Services, or a county mental health plan, to operate a children's crisis residential mental health program to serve children experiencing mental health crises as an alternative to psychiatric hospitalization.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, including specified mental health and substance use disorder services. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions. Existing federal Medicaid regulations provide for inpatient psychiatric services for individuals under 21 years of age in psychiatric facilities, as prescribed.

This bill would reclassify children's crisis residential programs as children's crisis psychiatric residential treatment facilities, and would transfer responsibility for licensing these facilities to the State Department of Health Care Services, contingent upon an appropriation in the annual Budget Act for these purposes. The bill would define "children's crisis psychiatric residential treatment facility" to mean a licensed residential facility operated by a public agency or private organization that provides the psychiatric services, as prescribed under the Medicaid regulations, to

individuals under 21 years of age, in an inpatient setting. The bill would require the department to establish regulations for the licensing of children's crisis psychiatric residential treatment facilities, and would require those facilities to obtain certification from the department. The bill would require the department's regulations and certifications to be consistent with applicable Medicaid regulations governing psychiatric residential treatment facilities, in order to maximize federal financial participation. The bill would include inpatient psychiatric services to individuals under 21 years of age provided in a licensed children's crisis psychiatric residential treatment facility as mental health services provided under the Medi-Cal program.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) There is an urgent need to provide more crisis care alternatives to hospitals for children and youth experiencing mental health crises.

(b) The problems are especially acute for children and youth who may have to wait for days for a hospital bed and who may be transported, without a parent, to the nearest facility hundreds of miles away.

(c) A 2015 study published by a workgroup led by the California Council of Community Behavioral Health Agencies, entitled "Kids in Crisis: California's Failure to Provide Appropriate Services for Youth Experiencing a Mental Health Crisis," found that in the absence of crisis diversion programs, families have no choice but to bring their children to emergency rooms, where they are often held for hours, even days, in emergency room hallways and exam rooms.

(d) Alternatives to inpatient hospitalization are essential to both children experiencing a mental health crisis and the family.

(e) Instead of emergency rooms or unnecessary hospitalization, what a child needs is a calming and therapeutic place where they can receive treatment to work through the crisis.

(f) Community-based programs provide just that, in the form of crisis intervention services.

(g) The primary goal of these services is to stabilize and improve psychological symptoms of distress and to engage individuals in an appropriate treatment service to address the problem that led to the crisis.

(h) This level of care is part of the full continuum of care considered medically necessary for many children with serious emotional disturbances.

(i) In most communities, inpatient crisis treatment is completely unavailable for children and youth, even though it may be medically necessary.

(j) Crisis residential care is an essential level of care for the treatment of children and youth with serious emotional disturbances in a mental health crisis, and it often serves as an alternative to hospitalization.

(k) It is imperative that California identify a licensing category specifically for mental health crisis residential care that can be utilized for children and youth who are beneficiaries of both public and private health care plans.

SEC. 2. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

(a) “Community care facility” means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult daycare, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) “Residential facility” means any family home, group care facility, or similar facility determined by the department, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) “Adult day program” means any community-based facility or program that provides care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals on less than a 24-hour basis.

(3) “Therapeutic day services facility” means any facility that provides nonmedical care, counseling, educational or vocational

support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) “Foster family agency” means any public agency or private organization, organized and operated on a nonprofit basis, engaged in any of the following:

(A) Recruiting, certifying, approving, and training of, and providing professional support to, foster parents and resource families.

(B) Coordinating with county placing agencies to find homes for foster children in need of care.

(C) Providing services and supports to licensed or certified foster parents, county-approved resource families, and children to the extent authorized by state and federal law.

(5) “Foster family home” means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) “Small family home” means any residential facility, in the licensee’s family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) “Social rehabilitation facility” means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to

Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) “Community treatment facility” means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Health Care Services pursuant to Section 4094 of the Welfare and Institutions Code.

This section does not prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) (A) “Full-service adoption agency” means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(i) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(ii) Assesses the birth parents, prospective adoptive parents, or child.

(iii) Places children for adoption.

(iv) Supervises adoptive placements.

(B) Private full-service adoption agencies shall be organized and operated on a nonprofit basis. As a condition of licensure to provide intercountry adoption services, a full-service adoption agency shall be accredited and in good standing according to Part 96 (commencing with Section 96.1) of Title 22 of the Code of Federal Regulations, or supervised by an accredited primary provider, or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

(10) (A) “Noncustodial adoption agency” means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(i) Assesses the prospective adoptive parents.

(ii) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(iii) Cooperatively supervises adoption placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement.

(B) Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. As a condition of licensure to provide intercountry adoption services, a noncustodial adoption agency shall be accredited and in good standing according to Part 96 (commencing with Section 96.1) of Title 22 of the Code of Federal Regulations, or supervised by an accredited primary provider, or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

(11) “Transitional shelter care facility” means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(12) “Transitional housing placement provider” means an organization licensed by the department pursuant to Section 1559.110 to provide transitional housing to foster children who are at least 16 years of age to promote their transition to adulthood. A transitional housing placement provider shall be privately operated and organized on a nonprofit basis.

(13) “Group home” means a residential facility that provides 24-hour care and supervision to children, delivered at least in part by staff employed by the licensee in a structured environment. The care and supervision provided by a group home shall be nonmedical, except as otherwise permitted by law.

(14) “Youth homelessness prevention center” means a group home licensed by the department to operate a program pursuant to Section 1502.35 to provide voluntary, short-term, shelter and personal services to homeless youth, youth who are at risk of homelessness, youth who are exhibiting status offender behavior, or runaway youth, as defined in paragraph (2) of subdivision (a) of Section 1502.35.

(15) “Enhanced behavioral supports home” means a facility certified by the State Department of Developmental Services pursuant to Article 3.6 (commencing with Section 4684.80) of

Chapter 6 of Division 4.5 of the Welfare and Institutions Code, and licensed by the State Department of Social Services as an adult residential facility or a group home that provides 24-hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting. An enhanced behavioral supports home shall have a maximum capacity of four consumers, shall conform to Section 441.530(a)(1) of Title 42 of the Code of Federal Regulations, and shall be eligible for federal Medicaid home- and community-based services funding.

(16) “Community crisis home” means a facility certified by the State Department of Developmental Services pursuant to Article 8 (commencing with Section 4698) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code, and licensed by the State Department of Social Services pursuant to Article 9.7 (commencing with Section 1567.80), as an adult residential facility, providing 24-hour nonmedical care to individuals with developmental disabilities receiving regional center service, in need of crisis intervention services, and who would otherwise be at risk of admission to the acute crisis center at Fairview Developmental Center, Sonoma Developmental Center, an acute general hospital, acute psychiatric hospital, an institution for mental disease, as described in Part 5 (commencing with Section 5900) of Division 5 of the Welfare and Institutions Code, or an out-of-state placement. A community crisis home shall have a maximum capacity of eight consumers, as defined in subdivision (a) of Section 1567.80, shall conform to Section 441.530(a)(1) of Title 42 of the Code of Federal Regulations, and shall be eligible for federal Medicaid home- and community-based services funding.

(17) “Crisis nursery” means a facility licensed by the department to operate a program pursuant to Section 1516 to provide short-term care and supervision for children under six years of age who are voluntarily placed for temporary care by a parent or legal guardian due to a family crisis or stressful situation.

(18) “Short-term residential therapeutic program” means a residential facility operated by a public agency or private organization and licensed by the department pursuant to Section 1562.01 that provides an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term, 24-hour care and supervision to children that is

trauma-informed, as defined in standards and regulations adopted by the department. The care and supervision provided by a short-term residential therapeutic program shall be nonmedical, except as otherwise permitted by law. Private short-term residential therapeutic programs shall be organized and operated on a nonprofit basis.

(19) “Private alternative boarding school” means a group home licensed by the department to operate a program pursuant to Section 1502.2 to provide youth with 24-hour residential care and supervision, which, in addition to providing educational services to youth, provides, or holds itself out as providing, behavioral-based services to youth with social, emotional, or behavioral issues. The care and supervision provided by a private alternative boarding school shall be nonmedical, except as otherwise permitted by law.

(20) “Private alternative outdoor program” means a group home licensed by the department to operate a program pursuant to Section 1502.21 to provide youth with 24-hour residential care and supervision, which provides, or holds itself out as providing, behavioral-based services in an outdoor living setting to youth with social, emotional, or behavioral issues. The care and supervision provided by a private alternative outdoor program shall be nonmedical, except as otherwise permitted by law.

(21) “Children’s crisis psychiatric residential treatment facility” means a residential facility operated by a public agency or private nonprofit organization as provided in Chapter 7 (commencing with Section 1700).

(b) “Department” or “state department” means the State Department of Social Services.

(c) “Director” means the Director of Social Services.

SEC. 3. Section 1562.02 of the Health and Safety Code is repealed.

SEC. 4. Section 1562.03 of the Health and Safety Code is repealed.

SEC. 5. Chapter 7 (commencing with Section 1700) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 7. CHILDREN'S CRISIS PSYCHIATRIC RESIDENTIAL
TREATMENT FACILITIES

1700. For purposes of this chapter, the following definitions shall apply:

(a) "Children's crisis psychiatric residential treatment facility" means a residential facility operated by a public agency or private nonprofit organization that provides psychiatric services, as described in Subpart D of Part 441 of Subchapter C of Chapter IV of Title 42 of the Code of Federal Regulations, to individuals under 21 years of age, in an inpatient setting, and is licensed by the department pursuant to this chapter. A nonprofit organization that operates a children's crisis psychiatric residential treatment facility shall be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation, or any other accrediting organization with comparable standards that is recognized by the state.

(b) "Department" means the State Department of Health Care Services.

1701. (a) The department may license a children's crisis psychiatric residential treatment facility pursuant to this chapter. A children's crisis psychiatric residential treatment facility shall obtain, and have in good standing, a children's crisis psychiatric residential treatment facility certification, as described in Section 1702, which is issued by the department or by a county mental health plan to which the department has delegated approval authority. The children's crisis psychiatric residential treatment facility shall obtain a children's crisis psychiatric residential treatment facility certification before operating as a children's crisis psychiatric residential treatment facility. The department may revoke a facility's license for a failure to maintain the certification.

(b) Contingent upon an appropriation in the annual Budget Act for these purposes, the department shall commence the licensing process for children's crisis psychiatric residential treatment facilities no later than January 1, 2022.

1702. (a) The department shall establish regulations for children's crisis psychiatric residential treatment facilities. At a minimum, the regulations shall include all of the following:

(1) Therapeutic programming shall be provided seven days a week, including weekends and holidays, with sufficient mental health professional and paraprofessional staff, as required by the facility's children's crisis residential mental health program approval in accordance with the standards and procedures established pursuant to Section 1703, to maintain an appropriate treatment setting and services, based on individual children's needs.

(2) The facility shall be staffed with sufficient personnel to accept children 24 hours per day, 7 days a week, and to admit children, at a minimum, from 7 a.m. to 11 p.m., 7 days a week, 365 days per year. The program shall be sufficiently staffed to discharge children, as appropriate, 7 days a week, 365 days per year.

(3) The established number of beds in the facility shall be consistent with the individual treatment needs of the clients served at the facility.

(4) Facilities shall include ample physical space for accommodating individuals who provide daily emotional and physical supports to each child and for integrating family members into the day-to-day care of the youth.

(5) The facility shall collaborate with each child's existing mental health team, if applicable, child and family team, if applicable, and other formal and natural supports within 24 hours of intake and throughout the course of care and treatment as appropriate.

(6) The facility shall create and assist with the implementation of a plan for transitioning each admitted child from the program to their home and community, including the establishment of a mental health or child and family team if there is not one already.

(b) The facility shall annually provide the department with all of the following data as it pertains to children in foster care and children not in foster care in conjunction with its application for licensure renewal:

- (1) Age and gender of clients served.
- (2) Duration of stay.
- (3) Professional classification of staff and contracted staff.
- (4) Type of placement the client was discharged to.

1703. (a) The department shall, in consultation with the Department of Managed Health Care, the State Department of Social Services, the County Behavioral Health Directors

Association of California, the County Welfare Directors Association of California, the Chief Probation Officers of California, provider representatives, children's rights advocates, disability rights advocates, an exclusive representative of county child social workers, and other relevant stakeholders, establish program standards and procedures for oversight, enforcement, and issuance of children's crisis psychiatric residential treatment facility certifications, including provisional certifications that are effective for a period of less than one year. The department shall ensure that the established program standards provide for psychiatric services, as described in Subpart D of Part 441 of Subchapter C of Chapter IV of Title 42 of the Code of Federal Regulations, to individuals under 21 years of age in an inpatient setting.

(b) The department shall, in collaboration with the State Department of Social Services, the County Behavioral Health Directors Association of California, provider representatives, children's rights advocates, an exclusive representative of county child social workers, disability rights advocates, and other relevant stakeholders, provide guidance to counties for the provision of children's psychiatric residential treatment facility services, including funding for children who are Medi-Cal beneficiaries and who are admitted to a children's crisis psychiatric residential treatment facility. This subdivision shall only be implemented to the extent that any necessary federal approvals are obtained and federal financial participation is available and is not otherwise jeopardized.

(c) (1) The children's crisis psychiatric residential treatment facility shall be used only as a diversion to admittance to a psychiatric hospital, or as a step-down service from hospitalization.

(2) (A) The length of stay at a children's crisis psychiatric residential treatment facility shall conform to the federal Medicaid requirements for a psychiatric residential treatment facility and shall be consistent with the individual plan of care developed by the interdisciplinary treatment team. The length of the initial authorization for admission to a children's crisis psychiatric residential treatment facility shall be limited to 10 consecutive days.

(B) If a determination is made by a health care professional that a children's crisis psychiatric residential treatment facility is

medically necessary and is the appropriate continued level of care, either of the following shall occur:

(i) In the case of a Medi-Cal beneficiary, the children's crisis psychiatric residential treatment facility shall notify the county mental health plan authorizing those services before extending the length of stay beyond 10 consecutive days.

(ii) In the case of non-Medi-Cal beneficiaries, reauthorizations for admission shall be obtained using the process established by the entity providing coverage.

(C) The provisions of Section 6552 of the Welfare and Institutions Code shall apply to youth declared to be within the jurisdiction of the juvenile court and receiving treatment from a children's crisis psychiatric residential treatment facility.

(3) A children's crisis psychiatric residential treatment facility may accept for admission any child who meets all of the following requirements:

(A) The child is referred by a parent or guardian, physician, or licensed mental health professional, or by the representative of a public or private entity, including, but not limited to, the county probation agency or child welfare services agency with responsibility for the placement of a child in foster care, who has the right to make these decisions on behalf of a child who is in mental health crisis.

(B) The services to be provided in a children's crisis psychiatric residential treatment facility is certified in writing to be necessary, as prescribed by Sections 441.152 and 441.153 of Title 42 of the Code of Federal Regulations.

(C) The child is under 19, 20, or 21 years of age, depending on a program's licensing requirements.

(D) The child has a serious behavioral health disorder.

(E) The child requires a 24-hours-a-day, seven-days-a-week treatment setting.

(d) The department, or a county mental health plan to which the department has delegated approval authority, may enforce the children's crisis psychiatric residential treatment facility certification standards by taking any of the following actions against a noncompliant children's crisis psychiatric residential treatment facility:

(1) Suspend or revoke a children's crisis psychiatric residential treatment facility certification.

- (2) Impose monetary penalties.
- (3) Place a children's crisis psychiatric residential treatment facility on probation.
- (4) Require a children's crisis psychiatric residential treatment facility to prepare and comply with a corrective action plan.
- (e) The department, or a county mental health plan to which the department has delegated approval authority, shall provide a children's crisis psychiatric residential treatment facility with due process protections when taking any of the actions described in subdivision (d).
- (f) Contingent upon an appropriation in the annual Budget Act for these purposes, the department shall commence the operation of the approval process for a children's crisis psychiatric residential treatment facility no later than January 1, 2022.

1704. (a) In order to maximize federal financial participation, the regulations and certification established by the department pursuant to this chapter shall be consistent with applicable Medicaid regulations governing psychiatric residential treatment facilities (PRTFs) in Subpart D of Part 441 of Subchapter C of Chapter IV of Title 42 of the Code of Federal Regulations. This requirement shall include establishing staffing requirements that conform with the regulations relating to care provided under the direction of a physician and interdisciplinary team, as described in Section 441.156 of Title 42 of the Code of Federal Regulations.

(b) It is the intent of the Legislature that, although PRTFs are intended to serve children and youth under 21 years of age, future regulations established by the department may consider, and provide flexibility regarding, the appropriateness of age groups served within a facility.

SEC. 6. Section 11462.01 of the Welfare and Institutions Code is amended to read:

11462.01. (a) (1) If a program will admit Medi-Cal beneficiaries, no later than 12 months following the date of initial licensure, a short-term residential therapeutic program, as defined in subdivision (ad) of Section 11400 of this code and paragraph (18) of subdivision (a) of Section 1502 of the Health and Safety Code, shall obtain a contract, subject to an agreement on rates and terms and conditions, with a county mental health plan to provide specialty mental health services and demonstrate the ability to

meet the therapeutic needs of each child, as identified in any of the following:

- (A) A mental health assessment.
- (B) The child's case plan.
- (C) The child's needs and services plan.
- (D) The assessment of a qualified individual, as defined in subdivision (l) of Section 16501.
- (E) Other documentation demonstrating the child has a mental health need.

(2) A short-term residential therapeutic program shall comply with any other mental health program approvals required by the State Department of Health Care Services or by a county mental health plan to which mental health program approval authority has been delegated.

(b) A short-term residential therapeutic program may accept for placement a child who meets both of the criteria in paragraphs (1) and (2) and at least one of the conditions in paragraph (3).

(1) The child does not require inpatient care in a licensed health facility.

(2) The child has been assessed as requiring the level of services provided in a short-term residential therapeutic program in order to maintain the safety and well-being of the child or others due to behaviors, including those resulting from traumas, that render the child or those around the child unsafe or at risk of harm, or that prevent the effective delivery of needed services and supports provided in the child's own home or in other family settings, such as with a relative, guardian, foster family, resource family, or adoptive family. The assessment shall ensure the child has needs in common with other children or youth in the care of the facility, consistent with subdivision (c) of Section 16514.

(3) The child meets at least one of the following conditions:

(A) The child has been assessed, pursuant to Section 4096, as meeting the medical necessity criteria for Medi-Cal specialty mental health services, as provided for in Section 1830.205 or 1830.210 of Title 9 of the California Code of Regulations.

(B) The child has been assessed, pursuant to Section 4096, as seriously emotionally disturbed, as defined in subdivision (a) of Section 5600.3.

(C) The child requires emergency placement pursuant to paragraph (3) of subdivision (g).

(D) The child has been assessed, pursuant to Section 4096, as requiring the level of services provided by the short-term residential therapeutic program in order to meet the child's behavioral or therapeutic needs.

(4) Subject to the requirements of this subdivision, a short-term residential therapeutic program may have a specialized program to serve a child, including, but not limited to, the following:

(A) A commercially sexually exploited child.

(B) A private voluntary placement, if the youth exhibits status offender behavior, the parents or other relatives feel they cannot control the child's behavior, and short-term intervention is needed to transition the child back into the home.

(C) A juvenile sex offender.

(D) A child who is affiliated with, or impacted by, a gang.

(c) A foster family agency that is certified as a Medi-Cal specialty mental health provider pursuant to Section 1810.435 of Title 9 of the California Code of Regulations by the State Department of Health Care Services, or by a county mental health plan to which the department has delegated certification authority, and which has entered into a contract with a county mental health plan pursuant to Section 1810.436 of Title 9 of the California Code of Regulations, shall provide, or provide access to, specialty mental health services to children under its care who do not require inpatient care in a licensed health facility and who meet the medical necessity criteria for Medi-Cal specialty mental health services provided for in Section 1830.205 or 1830.210 of Title 9 of the California Code of Regulations.

(d) A foster family agency that is not certified as a Medi-Cal specialty mental health provider shall provide access to specialty mental health services and other services in that program for children who do not require inpatient care in a licensed health facility and who meet any of the conditions in paragraph (3) of subdivision (b). In this situation, the foster family agency shall do the following:

(1) In the case of a child who is a Medi-Cal beneficiary, arrange for specialty mental health services from the county mental health plan.

(2) In all other cases, arrange for the child to receive mental health services.

(e) All short-term residential therapeutic programs shall maintain the level of care and services necessary to meet the needs, including the assessed needs and child-specific goals identified by a qualified individual pursuant to subdivision (g) of Section 4096, as applicable, of the children and youth in their care and shall maintain and have in good standing the appropriate mental health program approval. If a program will admit Medi-Cal beneficiaries, the short-term residential therapeutic program shall obtain a certification to provide Medi-Cal specialty mental health services issued by the State Department of Health Care Services or a county mental health plan to which the department has delegated mental health program approval authority, pursuant to Section 4096.5 of this code or Section 1810.435 or 1810.436 of Title 9 of the California Code of Regulations. All foster family agencies that are certified as a Medi-Cal specialty mental health provider pursuant to Section 1810.435 of Title 9 of the California Code of Regulations shall maintain the level of care and services necessary to meet the needs of children and youth in their care and shall maintain and have in good standing the Medi-Cal specialty mental health provider certification issued by the State Department of Health Care Services or a county mental health plan to which the department has delegated certification authority.

(f) The assessments described in subparagraphs (A), (B), (C), and (D) of paragraph (3) of subdivision (b) shall ensure the child's individual behavioral or treatment needs are consistent with, and can be met by, the facility and shall be made by one of the following, as applicable:

(1) An interagency placement committee, as described in Section 4096, considering the recommendations from the child and family team. If the short-term residential therapeutic program serves children who are placed by county child welfare agencies and children who are placed by probation departments, the interagency placement committee shall also ensure the requirements of subdivision (c) of Section 16514 have been met with respect to commonality of need.

(2) A licensed mental health professional as defined in subdivision (j) of Section 4096.

(3) An individualized education program team. For the purposes of this section, an AFDC-FC funded child with an individualized education program developed pursuant to Article 2 (commencing

with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code that assesses the child as seriously emotionally disturbed, as defined in, and subject to, this section and recommends out-of-home placement at the level of care provided by the provider, shall be deemed to have met the assessment requirement.

(4) A qualified individual, as defined in subdivision (l) of Section 16501.

(g) (1) The short-term residential therapeutic program shall maintain documentation of the assessments required pursuant to Section 4096 for AFDC-FC funded children, except as provided for in paragraph (3) of subdivision (f). The short-term residential therapeutic program shall inform the department if the county placing agency does not provide the documentation.

(2) The approval shall be in writing and shall indicate that the interagency placement committee has determined one of the following:

(A) The child meets the medical necessity criteria for Medi-Cal specialty mental health services, as provided for in Section 1830.205 or 1830.210 of Title 9 of the California Code of Regulations.

(B) The child is seriously emotionally disturbed, as described in subdivision (a) of Section 5600.3.

(3) (A) This subdivision and subdivisions (a) to (f), inclusive, do not prevent an emergency placement of a child or youth into a certified short-term residential therapeutic program prior to the determination by the interagency placement committee, but only if a licensed mental health professional, as defined in subdivision (j) of Section 4096, has made a written determination within 72 hours of the child's or youth's placement, that the child or youth requires the level of services and supervision provided by the short-term residential therapeutic program in order to meet their behavioral or therapeutic needs. If the short-term residential therapeutic program serves children placed by county child welfare agencies and children placed by probation departments, the interagency placement committee shall also ensure the requirements of subdivision (c) of Section 16514 have been met with respect to commonality of need.

(i) The interagency placement committee, as appropriate, shall, within 30 days of placement, make the determinations, with

recommendations from the child and family team, required by this subdivision.

(ii) If it determines the placement is appropriate, the interagency placement committee, with recommendations from the child and family team, shall transmit the approval, in writing, to the county placing agency and the short-term residential therapeutic program.

(iii) If it determines the placement is not appropriate, the interagency placement committee shall respond pursuant to subparagraph (B).

(B) (i) If the interagency placement committee determines at any time that the placement is not appropriate, it shall, with recommendations from the child and family team, transmit the disapproval, in writing, to the county placing agency and the short-term residential therapeutic program and shall include a recommendation as to the child's appropriate level of care and placement to meet the child's service needs. The necessary interagency placement committee representative or representatives shall participate in any child and family team meetings to refer the child or youth to an appropriate placement, as specified in this section.

(ii) The child may remain in the placement for the amount of time necessary to identify and transition the child to an alternative, suitable placement. On and after October 1, 2021, AFDC-FC shall not be used to fund the placement for more than 30 days from the date that the qualified individual or interagency placement committee determined that the placement is no longer recommended or the court disapproved the placement.

(iii) Notwithstanding clause (ii), if the interagency placement committee determined the placement was not appropriate due to a health and safety concern, immediate arrangements for the child to transition to an appropriate placement shall occur.

(h) Commencing January 1, 2017, for AFDC-FC funded children or youth, only those children or youth who are approved for placement, as set forth in this section, may be accepted by a short-term residential therapeutic program.

(i) The department shall, through regulation, establish consequences for the failure of a short-term residential therapeutic program to obtain written approval for placement of an AFDC-FC funded child or youth pursuant to this section.

(j) The department shall not establish a rate for a short-term residential therapeutic program unless the provider submits a recommendation from the host county or the primary placing county that the program is needed and that the provider is willing and capable of operating the program at the level sought. For purposes of this subdivision, “host county,” and “primary placing county,” mean the same as defined in the department’s AFDC-FC ratesetting regulations.

(k) Any short-term residential therapeutic program shall be reclassified and paid at the appropriate program rate for which it is qualified if either of the following occurs:

(1) (A) It fails to maintain the level of care and services necessary to meet the needs of the children and youth in care, as required by subdivision (a). The determination shall be made consistent with the department’s AFDC-FC ratesetting regulations developed pursuant to Section 11462 and shall take into consideration the highest level of care and associated rates for which the program may be eligible if granted an extension pursuant to Section 11462.04 or any reduction in rate associated with a provisional or probationary rate granted or imposed under Section 11466.01.

(B) In the event of a determination under this paragraph, the short-term residential therapeutic program may appeal the finding or submit a corrective action plan. The appeal process specified in Section 11466.6 shall be available to a short-term residential therapeutic program. During any appeal, the short-term residential therapeutic program shall maintain the appropriate level of care.

(2) It fails to maintain a mental health treatment program as required by subdivision (e).

(l) In addition to any other review required by law, the child and family team as defined in paragraph (4) of subdivision (a) of Section 16501 may periodically review the placement of the child or youth. If the child and family team make a recommendation that the child or youth no longer needs, or is not benefiting from, placement in a short-term residential therapeutic program, the team shall transmit the disapproval, in writing, to the county placing agency to consider a more appropriate placement.

(m) The department shall develop a process to address placements when, subsequent to the child’s or youth’s placement, a determination is made by the interagency placement team and

shall consider the recommendations of the child and family team, either that the child or youth is not in need of the care and services provided by the certified program. The process shall include, but not be limited to:

(1) Notice of the determination in writing to both the county placing agency and the short-term residential therapeutic program or foster family agency that provides intensive and therapeutic treatment.

(2) Notice of the county's plan, and a timeframe, for removal of the child or youth in writing to the short-term residential therapeutic program that provides intensive and therapeutic treatment.

(3) Referral to an appropriate placement.

(4) Actions to be taken if a child or youth is not timely removed from the short-term residential therapeutic program that provides intensive and therapeutic treatment or placed in an appropriate placement.

(n) (1) This section does not prohibit a short-term residential therapeutic program from accepting private admissions of children or youth.

(2) When a referral is not from a public agency and public funding is not involved, there is no requirement for public agency review or determination of need.

(3) Children and youth subject to paragraphs (1) and (2) shall have been determined to be seriously emotionally disturbed, as described in subdivision (a) of Section 5600.3, and subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in subdivision (j) of Section 4096.

SEC. 7. Section 11462.011 of the Welfare and Institutions Code is repealed.

SEC. 8. Section 14021 of the Welfare and Institutions Code is amended to read:

14021. Notwithstanding any other provision of this chapter, health care shall include the following mental health and substance use disorder services:

(a) Mental health services provided by a county or a city.

(b) Mental health services provided in a community mental health service or in a community mental health center organized under the federal Community Mental Health Centers Act of 1963. No amount shall be paid for that portion of the total costs of care

and services in a federally funded community mental health center that may be compensated by the United States government under the federal Community Mental Health Centers Act of 1963. No amount shall be paid to a community mental health service or a federally funded community mental health center unless the community mental health service or the federally funded community mental health center participates in a county or city mental health performance contract pursuant to Section 5650.

(c) Drug Medi-Cal outpatient substance use disorder services under the jurisdiction of the department provided by a county provider certified under this chapter or a private provider certified under this chapter that has an approved contract with the county or with the department to provide covered substance use disorder services.

(d) (1) Inpatient hospital services in an institution for mental diseases to persons of all ages, provided that the institution for mental diseases is certified as a psychiatric hospital under Title XVIII of the federal Social Security Act and regulations issued thereunder.

(2) Notwithstanding Section 14157, no money in the State Health Care Deposit Fund shall be expended for the purposes of this section unless the Legislature specifically appropriates money for the purposes of this section.

(3) The amendment of this subdivision enacted at the 1972 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(e) (1) Other diagnostic, screening, preventive, or remedial rehabilitative services for the maximum restoration of an individual to the best possible functional level.

(2) Paragraph (1) includes any medical or remedial services provided in a facility, home, or other setting, that are recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law.

(f) Inpatient psychiatric services to individuals under 21 years of age provided in a children's crisis psychiatric residential treatment facility licensed under Chapter 7 (commencing with Section 1700) of Division 2 of the Health and Safety Code.

SEC. 9. The Legislature finds and declares both of the following:

(a) California currently covers inpatient psychiatric benefits for individuals under 21 years of age in its Medicaid state plan.

(b) To the extent that psychiatric residential treatment facilities are authorized as an optional setting in which inpatient psychiatric benefits covered under the Medi-Cal program may be provided when deemed appropriate and authorized by the county mental health plan, this act would not constitute a mandate of a new program or higher level of service nor have an overall effect of increasing certain 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.

Approved _____, 2021

Governor