



## SOUTHERN AREA CONSORTIUM OF HUMAN SERVICES

# Literature Review: Psychotropic Medication and Foster Youth

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## I. Prevalence of Psychotropic Medication Use Among Children in Foster Care

- There has been a steady rise in the use of medication to address children's emotional and behavioral problems over the last decade, even among preschoolers.
  - Psychotropic medications generally include mood stabilizers, antipsychotics, anti-anxiety medications and stimulants.
- Children who come to the attention of the child welfare system have disproportionately high rates of social-emotional, behavioral, and mental health challenges often as a result of maltreatment and trauma.
  - Trauma-related symptoms in foster youth may be the result of several factors, including but not limited to experiences and trauma associated with high-risk and often dysfunctional family settings, acute reactions to the trauma of being placed in foster care, and being separated from the biological parent. Moreover, children in foster care often experience multiple changes in a rapid time; new relationships, schools, family, friends, and surroundings force children into a "series of adaptations" that makes detection, assessment, and treatment of mental health disorders difficult.<sup>1</sup>
    - The National Child Traumatic Stress Network states that consequently, foster children may display overlapping or false positive symptoms that mimic mental illnesses such as Bipolar Disorder, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder, Anxiety Disorders, and Mood Disorders. Their trauma-related behaviors and symptoms can result in a misdiagnosis of a mental health diagnosis by even the most experienced clinicians.<sup>2</sup>
- Despite deficiencies in available data, published studies consistently reveal higher rates of psychotropic medication use for children involved in foster care, particularly those placed in group homes, than in the general population.
  - A multi-state (47 total) 2009-2010 study by Tufts Clinical and Translational Science Institute (CTSI) estimated that youth in foster care use psychotropic medications at a much higher rate (ranging from 13-52%) than youth in the general population (4%).<sup>3</sup>
  - A 2011 Government Accountability Office (GAO) report using Medicaid claims from five states found that 21-39% of children in foster care received a prescription for psychotropic medication in 2008, compared with 5-10% of children not in foster care.<sup>4</sup>
  - Bryan Samuels, Commissioner, Administration on Children, Youth, and Families (2012), cites nationally approximately 37% of children in the foster care system take at least one psychotropic medication.<sup>5</sup> In many states, the percentages cited are even higher.

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<sup>1</sup> Halfon, N., Zepeda, A., & Inkelas, M. (2002). *Mental Health Services for Children in Foster Care*. UCLA Center for Healthier Children, Families & Communities. Available at:

<http://www.healthychild.ucla.edu/libproxy.sdsu.edu/Publications/ChildrenFosterCare/Documents/Mental%20health%20brief%20final%20for%20distribution.pdf>

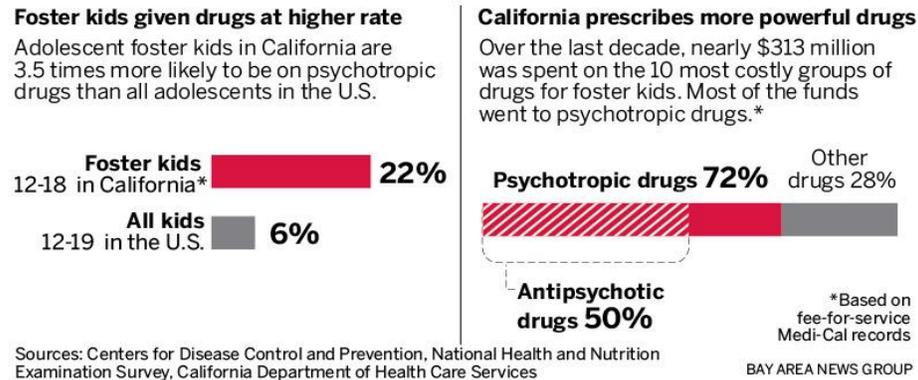
<sup>2</sup> Additional studies conclude that when these criteria for P.T.S.D. in children were used, three to eight times more children were diagnosed with P.T.S.D. compared to the diagnostic outcomes from the criteria set forth in the *D.S.M.-IV-TR* that resulted in other mental health diagnoses (Scheeringa, Myers, Putnam, & Zeanah, 2012; Scheeringa, Zeanah, & Cohen, 2011).

<sup>3</sup> Leslie, L. K., Mackie, T., Dawson, E. H., Bellonci, C., Schoonover, D. R., Rodday, A. M., et al. (2010). *Multi-state study on psychotropic medication oversight in foster care*. Boston, MA: Clinical and Translational Sciences Institute, Tufts University Medical Center.

<sup>4</sup> U.S. Government Accountability Office. (2011). *Foster children: HHS guidance could help states improve oversight of psychotropic medications* (Publication No. GAO-12-270T). Washington, DC: Authoro.

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- As for California rates, in 2014 a 10-month investigation of foster care prescribing patterns<sup>6</sup> by a Bay Area News Group- *San Jose Mercury News* found that over the last decade nearly one of every four adolescents in California's foster care system received prescribed psychotropic drugs, or 3.5 times the rate for all adolescents nationwide. Additionally, California spends more on psychotropic drugs for foster children than on any other type of drug.<sup>7</sup>



- Zito, et al. (2008) found as many as 41% of foster care youth who take any psychotropic medication received three or more psychotropics within the same month, a level that requires screening, assessment, and close monitoring by a physician.<sup>8</sup>
- In a 2014 study, youth in foster-care diagnosed with A.D.H.D. with no other psychiatric co-morbidities were three times more likely to use atypical antipsychotics than youth in other Medicaid categories (CHIP and TANF programs).<sup>9</sup>
- Several factors have been shown to increase the likelihood that a child in foster care will receive a prescription for psychotropic medication:<sup>10</sup>
  - *Age*: Overall, research supports that children in foster care are more likely to be prescribed psychotropic medications as they grow older. The likelihood of receiving multiple psychotropic medications also increases with age.
  - *Gender*: Overall, males in foster care are more likely to be receiving psychotropic medications than their female counterparts.

<sup>5</sup> Samuels, B. (Commissioner, Admin. on Children, Youth, and Families). (January 9, 2011). *Psychotropic Medication Use among Children Known to Child Welfare [Webinar]*.

<sup>6</sup> Methods included: Analysis of de-identified Medi-Cal pharmacy benefit claims data for fiscal years 2004-2005 through 2013-2014 from the state Department of Health Care Services and interviews with more than 175 people throughout the state. The state was able to provide accurate prescription data only for foster children whose health care was through traditional Medi-Cal. But over the last decade, many counties have begun shifting their foster children to managed health care plans. By 2014, about 38 percent of foster children were covered by managed care plans, which are not reflected in these figures so total could be higher.

<sup>7</sup> de Sá, K. (2014, August 24). Drugging our Kids. *San Jose Mercury News*. Available at: <http://webspecial.mercurynews.com/druggedkids/?page=pt1>

<sup>8</sup> Zito, J. M., Safer, D. J., Sai, D., Gardner, J. F., Thomas, D., Coombes, P., et al. (2008). Psychotropic medication patterns among youth in foster care. *Pediatrics*, 121(1), 157-163.

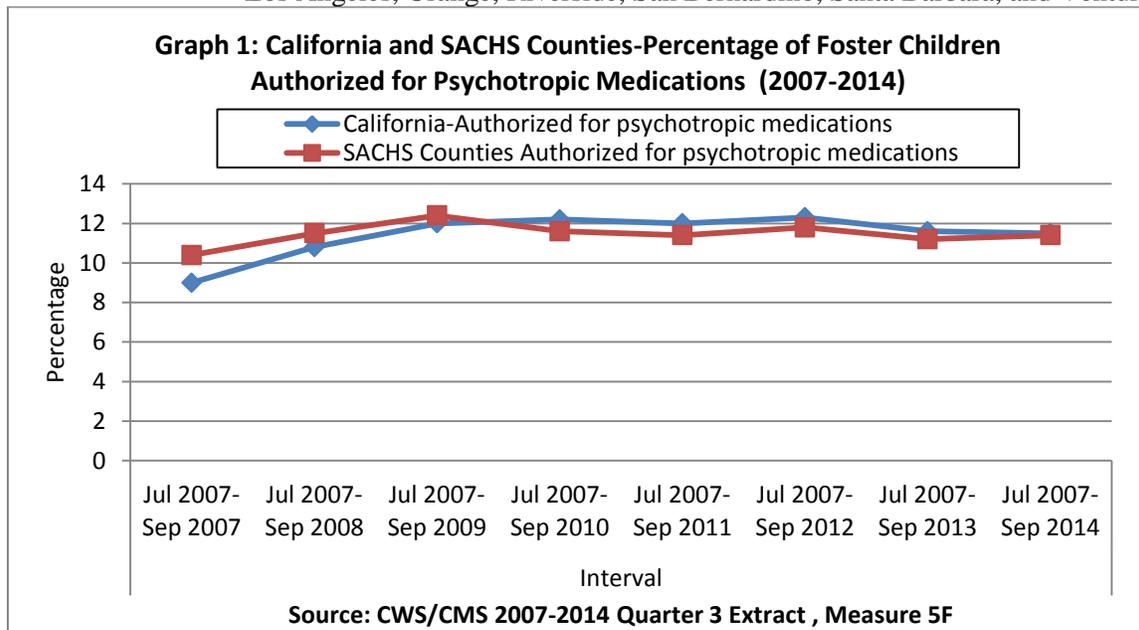
<sup>9</sup> Burcu, M., Zito, J.M., Ibe, A. and Safer, D.J. (2014). Atypical Antipsychotic Use Among Medicaid-Insured Children and Adolescents: Duration, Safety, and Monitoring Implications, *Journal of Child and Adolescent Psychopharmacology*, 24(3):112-9.

<sup>10</sup> Sheldon, G., Berwick, D., & Hyde, P. (2011). *Joint Letter to State Child Welfare, Medicaid, and Mental Health Authorities on the Use of Psychotropic Medication for Children in Foster Care*. Administration for Children and Families, Centers for Medicare and Medicaid Services, & Substance Abuse and Mental Health Services Administration. Washington D.C. Available at: <https://childwelfare-stage.icfwebsites.com/systemwide/mentalhealth/effectiveness/jointlettermeds.pdf>

Raghavan, R., Zima, B., Anderson, R., Leibowitz, A., Schuster, M. & Landsverk, J. (2005). Psychotropic medication use in a national probability sample of children in the child welfare system. *Journal of Child and Adolescent Psychopharmacology*. 15(1): 97.

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- *Behavioral Concerns:* Children with behavioral problems, including internalizing and externalizing issues, are much more likely to be prescribed psychotropic drugs.
- *Placement Type:* The likelihood that a child will be taking any psychotropic medication tends to increase as placements become more restrictive. In group or residential homes, where the behavioral and mental health needs of children are the most severe, nearly half of the young people are taking at least one psychotropic drug. Additionally, children in more restrictive placement types are more likely to be taking multiple medications.
- There are also significant geographic variations within and across States in the prevalence of psychotropic medication use among children in foster care, suggesting that factors other than clinical need may be influencing prescribing practices.
- *SACHS Counties Rates for Authorized Psychotropic Medications for Youth in Foster Care*<sup>11</sup>
  - Measure 5F Graphs below report the percentage of children in foster care for whom a court order or parental consent has been obtained for the child to receive psychotropic medications.<sup>12</sup> Measure 5F was added as a new measure as described in a March 2008 All-County Information Notice.<sup>13</sup> The Welfare and Institutions Code § 16010 requires that each child placed in foster care has a health and education record that includes current medications, including those prescribed to manage a mental health condition.
    - Graph 1: Shows the total percentage of children who have a court or parental consent for one or more psychotropic medications both within the state of California and the cumulative total across the seven SACHS Counties (Imperial, Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, and Ventura).

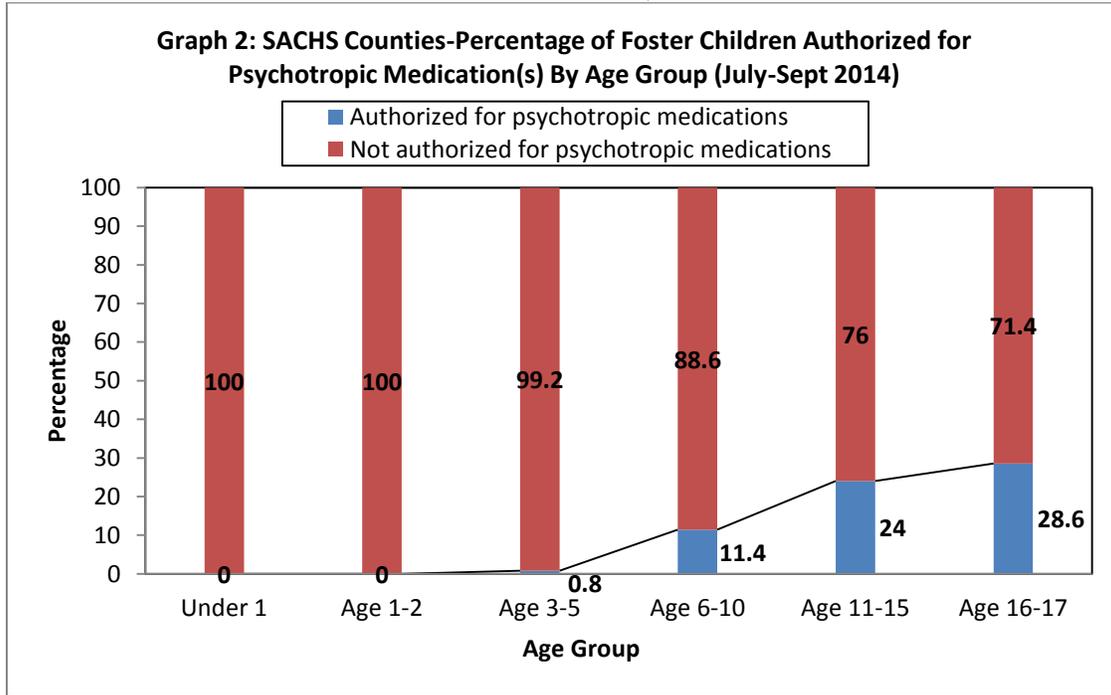


<sup>11</sup> Source for Graphs 1-5: Needell, B., Webster, D., Armijo, M., Lee, S., et al. (2015). CCWIP reports. From University of California at Berkeley California Child Welfare Indicators Project website. Available at: [http://cssr.berkeley.edu/ucb\\_childwelfare/CDSS\\_5F.aspx](http://cssr.berkeley.edu/ucb_childwelfare/CDSS_5F.aspx). Note: Graphs do not reflect children in juvenile delinquency programs.

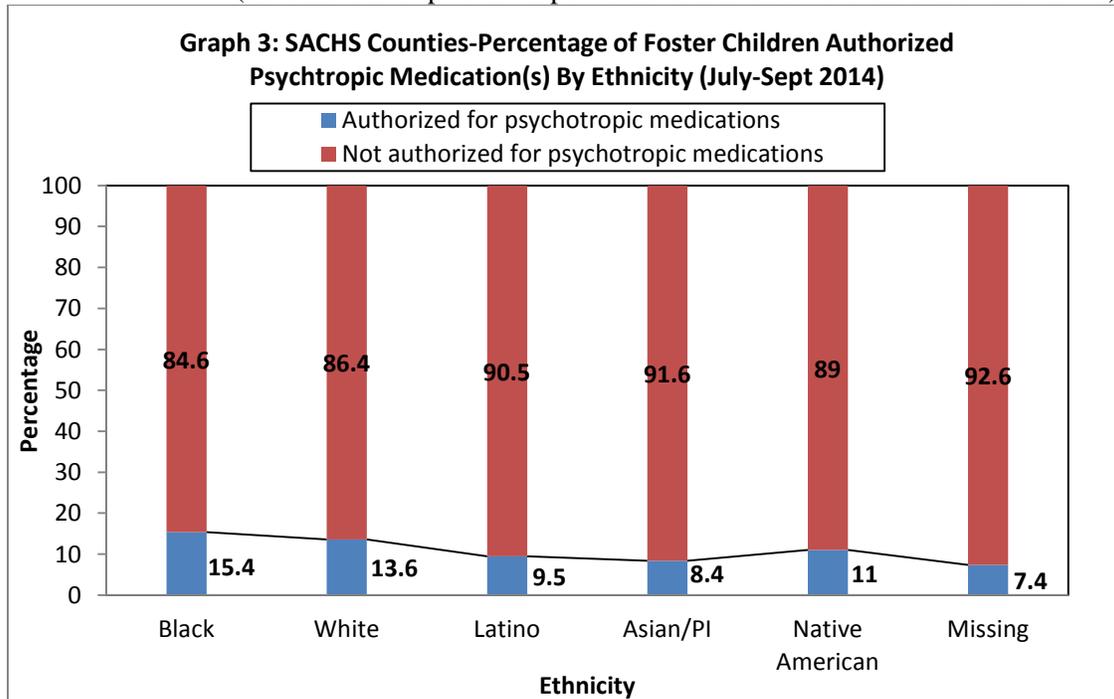
<sup>12</sup> Defined in W&IC § 369.5(d) as follows: Psychotropic medication or psychotropic drugs are those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorders or illnesses. These medications include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

<sup>13</sup> CDSS. (March 26, 2008). ACIN-Introduction of New Measure: 5F-Authorized Psychotropic Medication. Available at: [http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acin08/I-20\\_08.pdf](http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acin08/I-20_08.pdf)

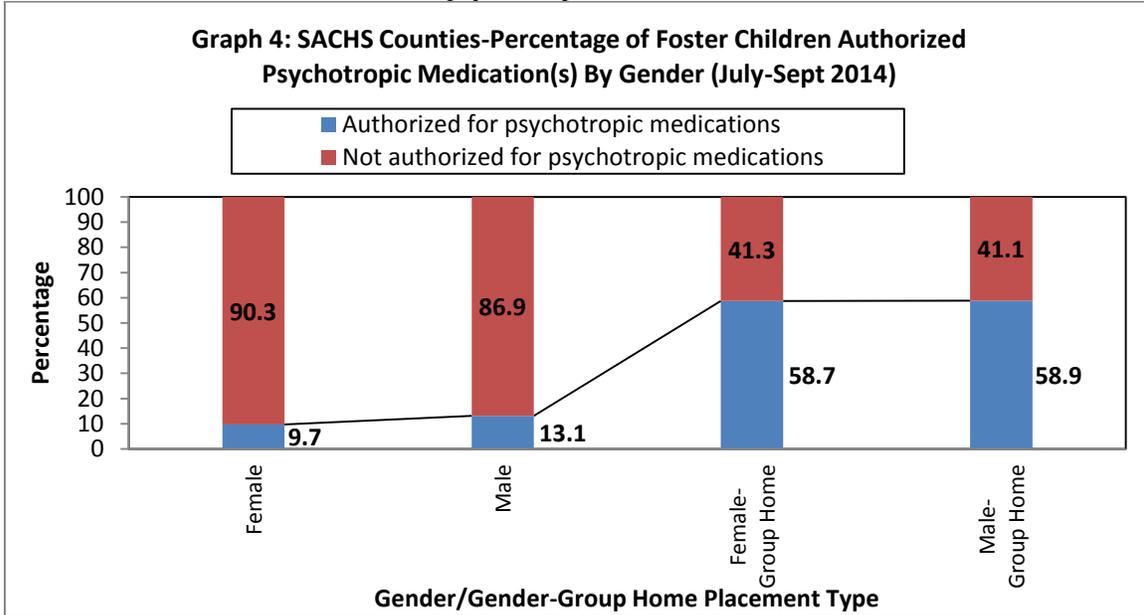
- Graph 2: Shows 16-17 year olds have the most authorizations for psychotropic medications among SACHS Counties (consistent with prior time periods and with data for the State of California).



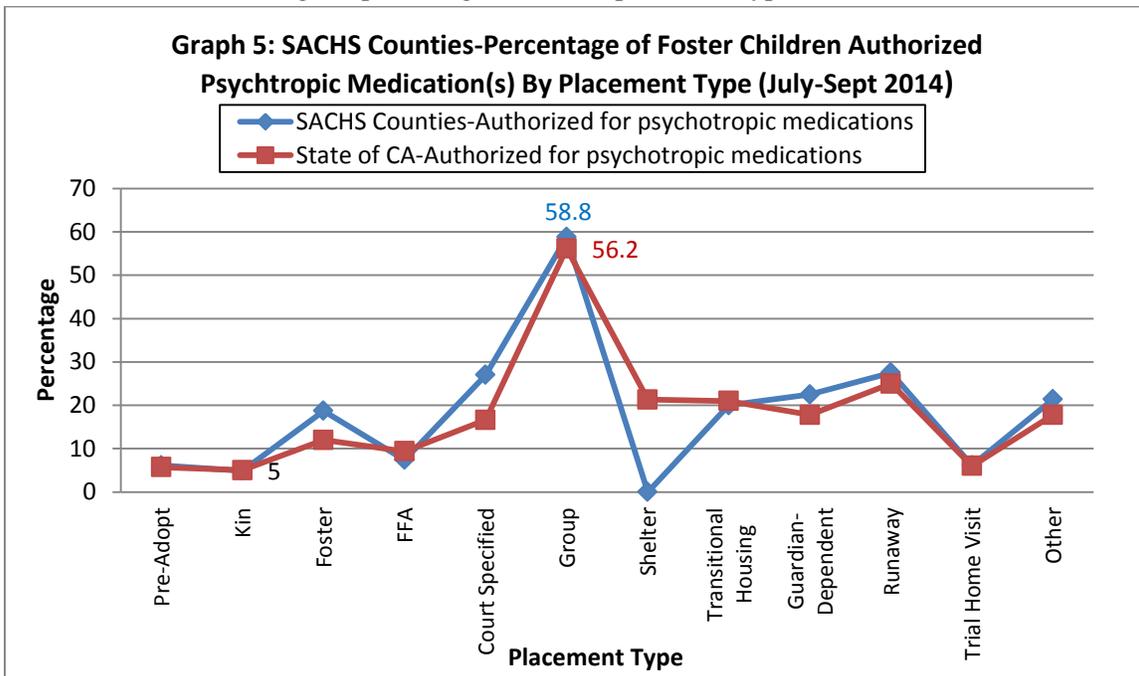
- Graph 3: Shows foster youth who are identified as Black or White were authorized psychotropic medications at higher rates among SACHS Counties (consistent with prior time periods and with data for the State of California).



- Graph 4: Shows overall males were more likely to be authorized for psychotropic medications than females in SACHS Counties (consistent with prior time periods and with data for the State of California), although this rate does change for females in group home settings. More than 1 in 2 foster children in group homes are authorized for psychotropic medications.



- Graph 5: Shows among SACHS Counties 1 in 20 foster children placed in kin care are authorized for psychotropic medications compared to 1 in 2 foster children placed in group homes (for these two placement types similar data for prior time periods and for the State of California-although there are variances among the percentages for other placement types).



## II. Concerns Regarding Psychotropic Medications Use Among Children in Foster Care

- Much attention has been focused on monitoring the prescribing of psychotropic medications to children in foster care since the passage of the Child and Family Services Improvement and Innovation Act of 2011 (P.L.112-34). This involves ensuring medications, including prescribed psychotropic medications, and the use of medication are appropriate to the child's need and diagnosis. Some of the most dangerous prescribing practices include: lack of regular and consistent monitoring of the child, continuation of medications used during emergency situations for non-emergencies, and transitioning the youth from one place to another with loss of access to medical and mental health care.<sup>14</sup>
  - Psychiatric disorders in children can have harmful short-term and permanent consequences without suitable evaluation and treatment. Although psychotropic drugs are a significant element of treatment, the increased use of these drugs has "led to concerns that some children and adolescents are being over-diagnosed with psychiatric disorders and are being treated with medication(s) that are not appropriate for them."<sup>15</sup>
  - Major concerns surrounding the administration of psychotropic medications for children and youth in foster care include the use of multiple psychotropic medications simultaneously, the use of multiple psychotropic medications before the use of a single medication, and the use of such medications in young children between 3-6 years of age.
  - Studies reported by the U.S. Government Accountability Office (GAO) (2011) revealed a practice of concern. Results from a five-state research study found that 3,841 children age 0-1 were being prescribed anti-anxiety, anti-depressant, or anti-psychotic medications. This is an obvious red flag because infants are incapable of displaying mental health indicators. Pediatricians contended that these medications are to treat rashes, itching, eczema, and seizures. However, the risk of experiencing negative adverse effects is still the same. In fact, it increases the younger the recipient is, resulting in possible sedation, cardiac failure, metabolic issues, and sudden death.<sup>16</sup>
  - Research conducted on the long-term effects of misdiagnosing mental illness, followed by the inapt use of psychotropic medications found that it increased the risk of adult mental illness, incarceration, illicit substance use, high risk sexual behavior, and generational recidivism in the foster care system.<sup>17</sup>
- Many children in foster care do have mental health challenges requiring intervention, which may include the appropriate use of psychopharmacological treatments as part of a comprehensive treatment approach.
  - Unfortunately, research on the safe and appropriate pediatric use of psychotropic medications lags behind prescribing trends.
  - There is even less evidence of the effectiveness of pharmacologic interventions for the treatment of trauma-related symptoms in children.

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<sup>14</sup> Johnson, A. (2014). *Final Report Psychotropic Medication Use with Children and Youth in Foster and Juvenile Care*. Zellerbach Family Foundation-Alameda County Behavioral Health Care Services. Available at: <http://fosteryouthalliance.org/wp-content/uploads/2014/09/Final-Report-Alameda-County-Zellerbach-Grant.pdf>

<sup>15</sup> AACAP, Practice Parameter on the Use of Psychotropic Medication in Children and Adolescents, 48 Am. Acad. Child & Adolescent Psychiatry 961, 962 (2009).

<sup>16</sup> U.S. Government Accountability Office. (2011). *Foster children* Rev ed., (G.A.O.-12-201). Washington, DC: Author.

<sup>17</sup> Bailey, Moran, & Pedersen, 2007; Hudson & Nandy, 2012; Solchany, 2012; Vorhies et al., 2009.

- Although atypical antipsychotic medications can be beneficial, important questions about how prescribing practices and long-term use of psychiatric medications should be monitored to minimize medication side-effects and promote overall health, particularly in the youth population need to be carefully addressed.<sup>18</sup>
- Creating, coordinating and implementing monitoring protocols across various agencies (state child welfare, Medicaid and mental health systems) to ensure appropriate prescribing and monitoring of medication therapy requires careful planning.
- Research also suggests comprehensive, collaborative, and interdisciplinary mental health treatment approaches are more effective in treating many mental health problems commonly seen in youth versus brief medication visits.<sup>19</sup>
- While there can be benefits to prescribing these pharmaceutical drugs to manage specific symptoms, there is an increased concern about the reported side effects, especially among previously traumatized foster children.
  - The psychotropic medication prescribed may in fact create more problems than it was designed to treat.<sup>20</sup> For example, the Food and Drug Administration (FDA) reported side effects such as: appetite disturbances, weight loss, obesity, diabetes, agitation, sleep disruptions, insomnia, rage, disorganization, compulsions, obsessive thoughts, forgetfulness, nervous movements, tremors, irritability, sexual dysfunction, suicidal ideations, high blood pressure, and heart-related problems that have resulted in death.<sup>21</sup>
  - Additionally, when a drug has a black box warning, also known as a black box label, it has earned the highest scrutiny given to a prescription drug by the FDA while still being allowed to stay on the market. A black box warning is issued when the side effects have been proven to have severe adverse reactions that may result in a permanent disability or life threatening reaction. The majority of psychotropic medications that are being approved, prescribed, and administered to foster children, have one or more black box warnings.<sup>22</sup> In fact following a California investigation, nearly 60% of foster children over the past decade who were prescribed psychiatric drugs were given an antipsychotic medication with one or more black box warnings.<sup>23</sup>
    - Black box warnings divulge serious side effects such as increased risk of suicidal thinking and behavior, psychosis, liver failure resulting in death or transplantation, seizures, severe or fatal skin reactions also known as Steven Johnson Syndrome, agranulocytosis (failure to make white blood cells), anemia, myocarditis or inflammation of the heart muscle, adverse cardiac events, orthostatic hypotension or a sudden fall in blood pressure, heart conditions such as proarrhythmia or prolonged QT, high abuse risk, and sudden death.<sup>24</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> Leslie, L. K., Mackie, T., Dawson, E. H., Bellonci, C., Schoonover, D. R., Rodday, A. M., et al. (2010). *Multi-state study on psychotropic medication oversight in foster care*. Boston, MA: Clinical and Translational Sciences Institute, Tufts University Medical Center.

<sup>20</sup> Crismon, M.L., & Argo, T. (2009). The use of psychotropic medication for children in foster care. *Child Welfare*, 88, 71-100.

<sup>21</sup> U.S. Department of Health and Human Services. (2013a). *Drugs*. Retrieved from U.S.

Food and Drug Administration website: <http://www.FDA.gov/Drugs/default.htm>

<sup>22</sup> UIC Department of Psychiatry. (2013). D.C.F.S. medication list. Retrieved from <http://free.ebooks6.com/D.C.F.S.-Medication-list—Welcome-to-the-UICDepartment-of-Psychiatry-download-w64968.html>

<sup>23</sup> de Sá, K. (2014, August 24). Drugging our Kids. *San Jose Mercury News*. Available at: <http://webspecial.mercurynews.com/druggedkids/?page=pt1>

<sup>24</sup> Ibid.

- While specialized foster care rates have been sought to encourage and stabilize the relative and foster care placements of children with mental and psychological needs, they also come at a social cost. The increase in payments may encourage dishonest reporting by some caregivers regarding the severity of the child’s behaviors and/or symptoms. To ensure these increased payments, foster parents may be tempted to report normal developmental behaviors such as age appropriate rebellion, lying, and temper tantrums, and present them to the pediatrician or child psychiatrist, as indicators of having a mental illness.<sup>25</sup>
  - Dishonest reporting by caregivers is an issue that goes far beyond financial gain or losses. It sets the stage for long-term effects and stigmatization that is associated with having been diagnosed with a childhood mental illness. This practice places the child at risk for not only serious side effects but also more restrictive placements and extended time in the foster care system, initiating a vicious cycle of ineffective drug treatments, and eventually institutionalized care.<sup>26</sup>
- Lastly, there are also red flags regarding the checks and balances for the physicians/psychiatrists who are prescribing psychotropic drugs to foster youth. Kimberly Kirchmeyer, executive director of the California Medical Board, noted there is no law prohibiting doctors from accepting drug industry promotional funds.<sup>27</sup>
  - The *San Jose Mercury News* series “Drugging Our Kids” found pharmaceutical companies spent more than \$14 million to woo foster care prescribers from 2010 to 2013. This is more than twice as much as the typical California doctor in payments from big drug companies for meals, gifts, travel, speaking and industry-sponsored research. The Bay Area News Group also found that last year doctors who prescribed the most to California foster youth, on average, accepted almost four times as much as those who fell in a lower-prescribing group.<sup>28</sup>
    - Thus these drug manufacturer payments to doctors appear to significantly influence their prescribing practices to foster youth, posing as a conflict of interest and may constitute “unprofessional conduct.” This warrants the need for additional scrutiny and the investigation of doctors who may be overprescribing to foster youth. Following the *San Jose Mercury News* investigation, in 2014 the Medical Board of California has initiated and expanded such reviews of physicians.<sup>29</sup>

### III. Social Worker Roles/Functions

- First, all individuals who are responsible for authorizing (judges), consenting to (caregivers, parents, child, or youth) objecting or agreeing to (attorneys, CASAs, caregivers, parents, child or youth) and entering information (child welfare social workers, public health nurses, clerks,

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<sup>25</sup> Cole, L. (2014). California welfare and institutions code [section] 369.5 authorization of psychotropic medication to California's dependent children a policy analysis. *Masters Abstracts International*, 52(6).

<sup>26</sup> Ibid.

<sup>27</sup> de Sá, K. (2014, November 25). Regulation needed to curb overprescribing of drugs for children, say advocates. *San Jose Mercury News*. Available at:

<http://www.dailynews.com/health/20141125/regulation-needed-to-curb-overprescribing-of-drugs-for-children-say-advocates>

<sup>28</sup> de Sá, K. (2014, August 24). Drugging our Kids. *San Jose Mercury News*.

<sup>29</sup> de Sá, K. (2014, November 24). Watchdog calls for tighter regulation on foster care prescriber relationships with drug companies. *San Jose Mercury News*. Available at:

[http://www.mercurynews.com/breaking-news/ci\\_27005492/watchdog-calls-tighter-regulation-foster-care-prescriber-relationships](http://www.mercurynews.com/breaking-news/ci_27005492/watchdog-calls-tighter-regulation-foster-care-prescriber-relationships)

probation officers) for psychotropic medications need specific training and resources to be able to fulfill their roles in the process of the safe prescription and monitoring of medication.

- Hughes & Cohen (2010)<sup>30</sup> conducted a literature review to assess social work's involvement in evaluating drug safety issues by searching Social Work Abstracts, Social Services Abstracts, and Sociological Abstracts (for the previous 15 years). They retrieved 38, 175, and 120 citations, respectively.
  - Textbooks and review articles on psychopharmacology and social work are largely aimed at educating social workers on types of medication, indications, known side effects, concerns for special populations, and ethical issues with regard to professional values. It appears that social workers are continually encouraged to understand and monitor drugs' side effects.
  - The authors recommended that related to this, social work practitioners should move beyond medication management roles that emphasize medication compliance to more substantive roles in minimizing drug harms, ensuring client safety, and sharing their observations with other professionals. Increased sensitivity and vigilance by social workers to such effects can contribute to the formation of a more accurate portrait of the benefits and harms of psychotropic drugs prescribed as medicines and can prevent unnecessary suffering.
  - The identification, description, and prevention of harm to clients from psychotropic drugs surely ranks as a top priority of mental health work in immediate years to come. With more social workers involved in the delivery of mental health services than any other professional group, they are in a position to play key roles in supplementing the currently limited understanding of drugs' effects by systematically eliciting and publishing comprehensive accounts of clients' treatment experiences and finding creative ways to include these accounts in "what is known" about desirable and undesirable drug effects. Hughes & Cohen (2010) also recommended that social workers support policy initiatives aimed at displacing pharmaceutical companies as the primary sponsors of research for the drugs they market.
- Longhofer, et al. (2011)<sup>31</sup> emphasized how foster care settings complicate the monitoring of and adherence to medication management, creating potential gaps among the prescribers, primary care physician, foster caregivers, other providers, and youth. Thus a role of the case managing social worker typically includes tracking and discussing a foster child's medication regimen.
  - Medication treatment for foster youth cannot assume an invested parent who consistently uses or shares a treatment plan with others and thus monitors and reports in ways that produce positive outcomes. It cannot assume a trusting patient who believes and feels that parental and prescriber models and hoped for medication expectations are in his/her best interests. Medication stakeholders (e.g., patient, family, school, child welfare, and prescriber) can have different attitudes, beliefs, and hoped for treatment expectations. Indeed, it is argued that medication stakeholders have different types of psychotropic

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<sup>30</sup> Hughes, S. , & Cohen, D. (2010). Understanding the assessment of psychotropic drug harms in clinical trials to improve social workers' role in medication monitoring. *Social Work*,55(2), 105-115.

<sup>31</sup> Longhofer, J., Floersch, J. , & Okpych, N. (2011). Foster youth and psychotropic treatment: Where next? *Children and Youth Services Review*,33(2), 395-404.

treatment knowledge that may or may not become synchronous in the open system of foster care settings.<sup>32</sup>

- Factors common to the foster care setting include multiple individuals involved in psychotropic treatment, shifting placements, transitions in caregivers and state workers, and breaches in continuity of care which can increase the risk of over-medication and a lack of attunement with the realities of each individual youth's situation and needs. This problem worsens when placements span multiple states because each state's system can vary in organization, responsibility, records, funding, and assessment practices.
  - Thus one role of social workers entails providing information to new caregivers about the youth's medication and treatment history including the importance of medication management for the foster youth to help to reduce dangerous prescribing, adverse effects, withdrawals or gaps in medication services.
  - Social workers may also be more likely than other providers to have the knowledge and skills to distinguish trauma-induced behavior from a mental illness among foster youth.
- Below is a sample of how one California County Department of Social Services (Madera County) defines the specific tasks/functions of their Social Workers and Supervisors related to the treatment planning and monitoring of foster youth on psychotropic medications.<sup>33</sup>
  - In Madera County, upon receiving a new case the *Social Worker Case Manager* reviews and discusses medication and monitoring for the individual foster youth, including:
    - Verification of Court order JV-220
    - Collaborative contacts and information-gathering
    - Discussion with both minors and care providers during monthly home visits
    - Obtain Substitute Care Provider's (SCP) observations of minor's behaviors and reactions to medications if already prescribed
    - How does minor feel on the different medications? Does he/she know what medications he/she is taking and what they are for?
    - Check group home medication logs each month
    - Provide updated Health Education Passport each month for SCP to bring to all medical professions treating the minor
    - Consultations with school staff regarding observations of minor's behaviors and needs
    - Communication with the Public Health Nurse (PHN) regarding recommended medication regimen
    - Contact parents to discuss recommendation and obtain consent
    - Complete the JV-220 request form with the correct address for minor, date consent was given by parent or judge, and name and address of prescribing physician to provide to the court clerk
    - Participate in Individual Plan of Care (IPC) meetings with Behavioral Health and Social Service Executive Team

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<sup>32</sup> Ibid.

<sup>33</sup> Bullard, S., Davis, A., Moore, S., and Morris, D. (2013, April 17). *Collaborative Approach to Deciding If and When to Issue and Monitor Psychotropic Medication [Webinar]*. UC Davis Extension-Center for Human Services. Archived Webinar available at: <http://humanservices.ucdavis.edu/Resource/FamilyFocused/InThisSection/AchivedWebinars.aspx>

- Communication with prescribing physician regarding any questions or concerns about minor's behavior, medications, etc.
- In the Madera County Department of Social Service, the *Social Worker Supervisor* functions typically include:
  - Reviewing the case with the Social Worker to discuss issues pertaining to medications and monitoring of services
  - Coordinating with Court Clerk regarding processing and filing of JV-220A and maintaining a log for timeliness to file
  - Communicating with the PHN regarding recommended medication regimens and cross referencing the Health Education Passport
  - Training to the JV-220 process with CWS staff, Judicial Council and Behavioral Health providers
  - In the absence of PHN process the JV-220A reviews the JV-220 for completeness and red flags. Then reviews the Health Education Passport, consults with the Social Worker Case Manager, and replies to the request in writing with concerns, recommendations, and thoughts. Sometimes more information is needed, a phone call to the doctor is warranted, or a staffing is indicated. A second opinion is also an option.
  - Consult with Behavioral Health and participate in IPC meetings
  - Continual monthly caseload consultation with the Social Worker Case Manager.

#### **IV. Federal Legislation: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351)<sup>34</sup>**

- The Fostering Connections to Success and Increasing Adoptions Act of 2008, amended Title IV-B of the Social Security Act to require each State and Tribal IV-B agencies to develop a plan for ongoing oversight and coordination with health care services for children in foster care.
  - Section 205 of The Fostering Connections to Success and Increasing Adoption Act of 2008 requires state child welfare agencies to work with state Medicaid agencies to develop a health care plan - including mental health provisions - for children in foster care by outlining:
    - (1) a schedule for initial and follow-up health screens;
    - (2) how needs identified in such screens will be monitored and treated;
    - (3) how medical information will be updated and shared;
    - (4) how to ensure continuity of care;
    - (5) oversight of prescription medicines; and
    - (6) how the state will consult with providers to ensure appropriate care.
    - Though the legislation does not mention psychotropic medication specifically the child welfare agencies plan must describe how it will ensure a coordinated

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<sup>34</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, sec. 205, § 622(b)(15), 122 Stat. 3949, 3961. See also Kamala Allen, Ctr. for Health Care Strategies, Inc., Health Screening and Assessment for Children and Youth Entering Foster Care: State Requirements and Opportunities 1 (2010), available at: [http://www.chcs.org/usr\\_doc/CHCS\\_CW\\_Foster\\_Care\\_Screening\\_and\\_Assessment\\_Issue\\_Brief\\_111910.pdf](http://www.chcs.org/usr_doc/CHCS_CW_Foster_Care_Screening_and_Assessment_Issue_Brief_111910.pdf); ACF Information Memorandum. (2012). Available at: <http://www.acf.hhs.gov/sites/default/files/cb/im1203.pdf>; National Conference of State Legislatures (NCSL). (2013). *Child Welfare Legislation Update: Oversight and Management of Psychotropic Medications For Children And Youth In Foster Care*. Available at: <http://www.ncsl.org/research/human-services/oversight-and-management-of-psychotropic-meds.aspx>.

strategy for the oversight and coordination of the medical and mental health care needs of children in foster care, including prescription medications.

- The Fostering Connections to Success and Increasing Adoption Act of 2008 now requires each state to consult with pediatricians and other experts as well as strong collaborations among child welfare agencies, professionals, organizations providing foster care and mental health services, children who are recipients of child welfare services and their families to develop this plan.
- Plans for oversight and coordination should:
  - Promote collaborative efforts to monitor and track medical and mental health.
  - Include medical and mental health evaluations, both on entry into foster care and periodically while in foster care.
  - Provide continuity of care and oversight of medication use.
- The purpose of these requirements is to ensure that children in foster care receive high quality, coordinated health care services, including appropriate oversight of any needed prescription medicine.

#### **V. Federal Legislation: Child and Family Services Improvement and Innovation Act of 2011 (Public Law 112-34)<sup>35</sup>**

- The Child and Family Services Improvement and Innovation Act (passed in September 2011) amended the 2008 law by adding a provision to the requirements for the health care oversight and coordination plan regarding the consent, oversight, and coordination of services to screen, monitor, and treat the social-emotional and mental health trauma/issues as a result of child maltreatment. Further, this provision explicitly requires state child welfare agencies to establish protocols for the appropriate use and monitoring of psychotropic medication by foster children.
  - Specifically, whereas the law had previously required that the plan address “oversight of prescription medicines,” the new provision builds on this requirement by specifying that the health care oversight and coordination plan must include “an outline of how the Title IV-B agency will monitor and treat emotional trauma associated with a child’s maltreatment and removal from home, in addition to other health needs identified through screenings; and protocols for the appropriate use and monitoring of psychotropic medications, as part of its current oversight of prescription medicines” (Sections 422(b)(15)(A)(ii) and (v) of the Act).
    - Thus with the amendments made by P.L. 112-34, State Child and Family Services Plans are now to include details about how emotional trauma associated with maltreatment and removal is addressed, as well as a description of how the use of psychotropic medications is monitored. Beginning with the Annual Progress and Services Report (APSR) of June 30, 2012 States and Tribes need to address how they are responding to these new requirements in their APSRs.

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<sup>35</sup> Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 101(b)(2), 125 Stat. 369, (2011); ACF Information Memorandum. (2011). Available at: <http://www.acf.hhs.gov/sites/default/files/cb/im1106.pdf>

- After the Child and Family Services Improvement and Innovation Act of 2011 several activities among federal agencies related to the psychotropic medication use by foster children followed:
  - In November 2011, the Administration for Children and Families (ACF), Centers for Medicare and Medicaid (CMS), and Substance Abuse and Mental Health Services Administration (SAMHSA) issued a joint letter promising collaboration among their agencies.
  - In 2012, the Children’s Bureau distributed a comprehensive Information Memorandum (IM) (ACYF-CB-IM-12-03) to state child welfare agencies that summarized issues to be addressed and existing practice guidelines states could consult in developing protocols.<sup>36</sup>
    - In addition to ACYF-CB-IM-12-03, the Children’s Bureau issued a related IM (ACYF-CB-IM-12-04 ) which defined the problem and provided resources for States to consider when determining how to meet the new requirements of the Title IV-B plan. The Children’s Bureau also issued related Program Instructions ACYF-CB-PI-12-05 and ACYF-CB-PI-12-06 that provided further guidance on required APSR content for States and Tribes.
  - In August 2012, HHS convened *Because Minds Matter*, a conference in Washington, D.C., bringing together representatives from state child welfare, health, and mental health agencies to hear from experts and begin a discussion about solutions.
  - In 2012, the Children’s Bureau also developed a youth-friendly resource, *Making Healthy Choices: A Guide on Psychotropic Medications for Youth in Foster Care* (also available in Spanish).<sup>37</sup>
- In May 2014, testimony to the Subcommittee on Human Resources, Committee on Ways and Means, United States House of Representatives provided by William Grimm (Senior Counsel, National Center for Youth Law) emphasized that federal agencies have not sustained the leadership needed for the Child and Family Services Improvement and Innovation Act of 2011 they had promised.<sup>38</sup>
  - William Grimm stated, “ACF’s attempts to monitor states’ progress in fulfilling the psychotropic medication mandates of the Child and Family Services Improvement and Innovation Act through its review of the APSRs is inadequate.<sup>39</sup> ACF has signed off on California’s APSRs for the last two years despite little progress being demonstrated. Currently there are few other federal efforts to curb the misuse of psychotropic drugs in foster care. Meanwhile the promised improvements in the care and treatment of our nation’s foster children envisioned by the Child and Family Services Improvement and Innovation Act remain largely unfulfilled.”<sup>40</sup>

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<sup>36</sup> Administration for Children & Families, U.S. Department of Health and Human Services, *Information Memorandum: Oversight of Psychotropic Medication for Children in Foster Care; Title IV-B Health Care Oversight & Coordination Plan*, ACYF-CB-IM-12-03 (April 11, 2012).

<sup>37</sup> Available for download at: <http://www.nrcyd.ou.edu/publication-db/documents/psychmedyouthguide.pdf>

<sup>38</sup> Johnson, A. (2014). *Caring for our Kids: Are we Overmedicating Children in Foster Care?* Written Testimony for the Subcommittee on Human Resources Committee on Ways and Means United States House of Representatives. Available at: <http://childpsychdrugsafety.org/caring-for-our-kids-are-we-overmedicating-children-in-foster-care/>

<sup>39</sup> See, e.g., Administration for Children & Families, U.S. Department of Health and Human Services, *Program Instruction: Title IV-B Annual Progress & Services Report*, ACYF-CB-PI-13-04 (April 10, 2013).

<sup>40</sup> Johnson, A. (2014). *Caring for our Kids: Are we Overmedicating Children in Foster Care?* Written Testimony for the Subcommittee on Human Resources Committee on Ways and Means United States House of Representatives. Available at: <http://childpsychdrugsafety.org/caring-for-our-kids-are-we-overmedicating-children-in-foster-care/>

## VI. California Welfare and Institutions Code § 369.5<sup>41</sup>

- The California Welfare and Institutions Code (WIC) § 369.5, added after the passing of Senate Bill 543 (Cal. Stat. Ch. 522, 1999), regulates the authorization of the administration of psychotropic medication for dependent children living in out-of-home care.<sup>42</sup> The CWS/CMS record must include the date of consent as required by WIC § 369.5(a). The procedures for obtaining and documenting judicial consent are detailed in California Rules of Court § 5.640 and many counties also have a local court rule addressing the issue.
  - The intent of the WIC § 369.5 is to provide increased mental health protections to a child adjudged a dependent child of the court under Section 300, who has been removed from the physical custody of his or her parents under Section 361. This legislation gives exclusive authority to Juvenile Court judges to approve or deny the administration of psychotropic medication to these children unless this authority has been delegated to a parent. The court may issue a specific order delegating this authority to a parent upon making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications. Court authorization for the administration of psychotropic medication requires prescribing doctors to document the reasons for the request; provide a description of the child's diagnosis and behaviors, explain expected results of the medication, and detail the possible side effects. Legislation also requires juvenile courts to review their decisions every 180 days.
    - The addition of Section 369.5 indicated an understanding by California lawmakers that addressing the psychological and mental health needs of children in foster care would require additional support. That support will need to include communication, collaboration, and cooperation between and among child welfare workers, birth and foster parents, physicians, psychiatrists, the judicial system, and juvenile court judicial officers.
    - Another objective of this policy is to increase the mental health protections for children in foster care by setting specific guidelines requiring that child welfare social workers disclose the mental health needs of children placed in out-of-home care to all relevant parties as part of the case plan, court reports, and in the health and education passport.<sup>43</sup>
- Gaps have been cited (and some amended) since the original California WIC § 369.5 (1999).
  - The original legislation lacked judicial time frames, leading to caregivers reporting substantial delays in the court approval process. Thus Assembly Bill 2502 (Cal. Stat. Ch. 672) of 2004<sup>44</sup> further amended Section 369.5 requiring that when a child welfare agency requests court authorization for a foster care child in California who is prescribed a psychotropic medication, a judicial officer must approve or deny, in writing, authorization to administer psychotropic medication within seven court days. If a

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<sup>41</sup> Cole, L. (2014). California welfare and institutions code [section] 369.5 authorization of psychotropic medication to California's dependent children a policy analysis. *Masters Abstracts International*, 52(6).; Cal. Welf. & Inst. Code § 369.5: <http://codes.lp.findlaw.com/cacode/WIC/1/d2/1/2/10/s369.5>

<sup>42</sup> Cal. Welf. & Inst. Code § 739.5 includes similar regulations for a minor who has been adjudged a ward of the court under Section 601 or 602 is removed from the physical custody of the parent under Section 726 and placed into foster care, as defined in Section 727.4. See: <http://codes.lp.findlaw.com/cacode/WIC/1/d2/1/2/18/s739.5>

<sup>43</sup> Cole, L. (2014). California welfare and institutions code [section] 369.5 authorization of psychotropic medication to California's dependent children a policy analysis. *Masters Abstracts International*, 52(6).

<sup>44</sup> Available at: [http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab\\_2501-2550/ab\\_2502\\_bill\\_20040830\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2501-2550/ab_2502_bill_20040830_chaptered.pdf)

decision cannot be made within the allotted timeframe, the matter must be set for a hearing.

- Furthermore, Assembly Bill 2216 (Cal. Stat. Ch. 384), titled the Child Welfare Leadership and Performance Accountability Act of 2006<sup>45</sup> added a requirement that the State of California develop performance and outcome measures. The Child Welfare Council was established as an advisory body responsible for improving collaboration among multiple agencies and the courts in the child welfare system. The Council was required to develop additional performance outcome indicators for the purpose of the Child Welfare and Family Services Review Program.
- The 2013 *Diagnostic and Statistical Manual of Mental Disorders 5th Edition* (D.S.M.-5), now includes criteria for Post-Traumatic Stress Disorder (P.T.S.D.) in children after research has concluded that children exposed to chronic child abuse and neglect often present with behaviors indicative of trauma.<sup>46</sup> Results from a study conducted by the National Child Traumatic Stress Network (NCTSN), indicated that over 70% of children under the supervision of child welfare agencies report two or more complex traumas.<sup>47</sup>
  - However, the California WIC § 369.5 does not currently mandate psychiatrists and pediatricians to first rule out trauma prior to diagnosing foster children with one or more behavior, mood, or psychotic disorders which puts foster children are at risk of inaccurate diagnosis and ineffective or dangerous treatments.
    - As a result, advocacy groups such as the Child Welfare League of America (2011) are asking questions about why lawmakers and child welfare officials have yet to require mental health providers to first assess for and rule out trauma, prior to diagnosing with a mental illness.
    - Some support amendments to child welfare legislation and policies to reflect the changes in the D.S.M.-5 and shift toward trauma-focused services, thereby reducing the reliance on potentially dangerous pharmaceutical drugs.<sup>48</sup> The benefits of trauma-focused or trauma-informed child welfare practices have been found to improve foster care placement stability and reduce recidivism.<sup>49</sup> Mitigating the effects of adverse childhood experiences may also assist in the reduction of foster children subsequently entering the juvenile justice system<sup>50</sup> and the risk of an adult mental illness.<sup>51</sup>

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<sup>45</sup> Available at: [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0801-0850/ab\\_823\\_cfa\\_20110425\\_092946\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0801-0850/ab_823_cfa_20110425_092946_asm_comm.html)

<sup>46</sup> With the inclusion of P.T.S.D. in children in the D.S.M.-5, clinicians are also now be eligible for reimbursement of their services for children displaying symptoms of childhood trauma such as abuse, neglect, grief, and loss.

<sup>47</sup> National Child Traumatic Stress Network, (n.d.). Types of traumatic stress. Available at: <http://www.nctsn.Org/trauma-types#q2>

<sup>48</sup> Cole, L. (2014). California welfare and institutions code [section] 369.5 authorization of psychotropic medication to california's dependent children a policy analysis. *Masters Abstracts International*, 52(6).

<sup>49</sup> Conradi, L., Agosti, J., Tullberg, E., Richardson, L., Langan, H., Ko, S., & Wilson, C. (2011). Promising practices and strategies for using trauma-informed child welfare practice to improve foster care placement stability: A breakthrough series collaborative. *Child Welfare*, 90(6), 207-225.

<sup>50</sup> Cruise, K., & Ford, J. (2011). Trauma exposure and P.T.S.D. injustice-involved youth. *Springer Science & Business Media B. V.* 40(5), 337-343.

<sup>51</sup> Raikkonen, K., Lahti, M., Heinonen, K., Pesonen, A., Wahlbeck, K., Kajantie, E., Eriksson, J. G. (2011). Risk of severe mental disorders in adults separated temporarily from their parents in childhood: The Helsinki birth cohort study. *Journal of Psychiatric Research*, 45(3), 332-338.

- Additionally, concern still remains that the California WIC § 369.5 has not actually lowered prescriptions rates of psychotropic medications to foster youth since courts frequently lack details about the prescriptions thus do not often question doctors' recommendations.<sup>52</sup>
  - Providing more information to Juvenile Court judges about foster youth's medication and treatment history would give judges who authorize medications more than just a prescriber's recommendation. It could include observations from social workers, caregivers and the children themselves.
- In the midst of California's new and amended laws, the *Katie A. et al. v. Diana Bonta et al.* class action lawsuit filed in 2002 changed the way Department of Children and Family Services, the Department of Social Services, and the Department of Mental Health navigate and implement services to address the mental health needs of children placed in foster care. The Katie A. Settlement Agreement required mental health services be provided for the Medi-Cal eligible children currently in foster care and outlined specific actions to be taken.<sup>53</sup>

**VII. Nationally: Other States Laws Regarding Oversight and Management of Psychotropic Medications for Foster Youth<sup>54</sup>**

YEAR/STATE	PROVISION
<b><u>2013</u></b>	
<b>Texas</b> <a href="#">Tex. Gen. Laws, HB 915, Acts 204</a>	Increases accountability and awareness for those making medical decisions by defining informed consent, requires notification of biological parents when there are changes in the psychotropic medication plan for their youth in foster care, strengthens transition plans for foster youth by including resources to manage medications after exiting foster care, requires the authorized medical consentor for a foster child who has been prescribed a psychotropic medication to ensure the child sees the prescribing physician at least once every 90 days, strengthens training on psychotropic medications for medical consentors of foster children, and provides additional tools to child's guardian ad litem, attorney ad litem, caseworker, and court to protect child's health and safety.
<b><u>2011</u></b>	
<b>Illinois</b> <a href="#">Ill. Laws, HB 286, P.A. 245</a>	Creates the "Administration of Psychotropic Medications to Children Act." The law requires the Department of Children and Family Services to promulgate rules establishing and maintaining standards and procedures to govern the administration of psychotropic medications to children and youth in state care. Such rules shall include administration to youth in correctional facilities, residential facilities, group homes and psychiatric hospitals.

<sup>52</sup> de Sá, K. (2014, August 24). Drugging our Kids. *San Jose Mercury News*. Available at: <http://webspecial.mercurynews.com/druggedkids/?page=pt1><sup>52</sup>

<sup>53</sup> Treadwell, C. (2012). *A13 Katie A. Lawsuit Update*. California Department of Social Services; California DHCS *Katie A. Settlement Agreement Implementation Webpage*: <http://www.dhcs.ca.gov/Pages/KatieAImplementation.aspx>

<sup>54</sup> National Conference of State Legislatures (NCSL). (2013). *Child Welfare Legislation Update: Oversight and Management of Psychotropic Medications for Children and Youth in Foster Care*. Available at: <http://www.ncsl.org/research/human-services/oversight-and-management-of-psychotropic-meds.aspx>

YEAR/STATE	PROVISION
<p><b>Nevada</b>  <a href="#">Nev. Stats., SB 371, Chap. 444</a></p>	<p>Requires the appointment of a person who is legally responsible for the psychiatric care of each child who is in the custody of an agency which provides child welfare services and who requires psychiatric care. This person is to be responsible for making all decisions concerning services, treatment and psychotropic medications provided to such children. Allows the court to appoint the person nominated by the agency or to appoint any other person who the court determines is qualified to carry out such duties and responsibilities. To the extent that a parent or legal guardian of the child is able and willing to serve as the person who is legally responsible for the psychiatric care of the child, the parent or guardian must be nominated and appointed pursuant to this bill. Requires the person who is legally responsible for the psychiatric care of a child to provide written consent or denial of consent for each appointment or for a course of routine treatment for psychiatric care of the child, to maintain current information concerning the medical history and the emotional, behavioral and educational needs of the child, and to approve or deny the administration of each psychotropic medication recommended for the child. Prohibits the administration of a psychotropic medication to a child in the custody of an agency without consent from the person who is legally responsible for the psychiatric care of the child.</p>
<p><b>Texas</b>  <a href="#">Tex. Gen. Laws, HB 3531, Chap. 843</a></p>	<p>Requires the Health and Human Services Commission to implement a system under which the commission is to use Medicaid prescription drug data to monitor the prescribing of psychotropic drugs for children who are under the conservatorship of the Department of Family and Protective Services.</p>
<p><b><u>2009</u></b></p>	
<p><b>Oregon</b>  <a href="#">Or. Laws, HB 3114, Chap. 853</a></p>	<p>Requires the development of procedures for an assessment by a qualified mental health professional or licensed medical professional prior to the issuance of a prescription to a child in foster care for multiple psychotropic medications. Requires an annual review of prescriptions when a child in foster care has more than a specified number of such medications or is under a specified age. Prohibits the prescribing of such medication unless it is used for a medically accepted indication that is age-appropriate.</p>
<p><b><u>2005</u></b></p>	
<p><b>Texas</b>  <a href="#">Gen. Laws, SB 6, Chap. 268</a></p>	<p>Requires the state Department of Family and Protective Services to study the level-of-care system that it uses to ascertain whether the system creates incentives for prescribing psychotropic medication to children in foster care. Requires the results to be reported to the Legislature no later than October 1, 2006.</p>
<p><b><u>2004</u></b></p>	
<p><b>Connecticut</b>  <a href="#">Conn. Acts, HB 5572, Act 04-238</a></p>	<p>Requires the Department of Children and Families to establish guidelines for the use of psychotropic drugs with children and youth in its care and to develop a database to track the use of such drugs.</p>

### VIII. Data-Sharing: A Prerequisite to Developing Protocols for Psychotropic Medications<sup>55</sup>

- Although child welfare agencies are required to include information about a child's medications as part of the child's case plan,<sup>56</sup> current law does not require states to aggregate the data or to make it available for analyses.
  - In California, each foster child theoretically has a Health and Education Passport but for many children these Passports are incomplete and inaccurate and, even if they are reliable, there is no system for gathering the Passport data. Consequently, child welfare agencies are dependent upon another agency for information about psychotropic medication prescriptions filled for children in foster care.<sup>57</sup>
    - While child welfare agencies have responsibility for the psychotropic medication protocols, in many if not most states, the data concerning prescription drugs, including psychotropic medications, is maintained by the state Medicaid agency.
    - An amendment of Title XIX of the Social Security Act, similar to the 2013 amendment to Family Educational Rights and Privacy Act (FERPA) by the Uninterrupted Scholars Act (USA Act) (Public Law 112-278), one that explicitly allows or requires the state's Medicaid agency to share pharmacy benefits claims data for children in foster care with the child welfare agency, would promote data sharing and contribute to the health and safety of foster children.
- Based on a U.S. Government Accountability Office (2011) study,<sup>58</sup> analyses conducted by states, and the standards recommended in 2013 by the National Committee for Quality Assurance, it has been suggested that at minimum the following data about psychotropic medications be gathered:<sup>59</sup>
  - Children and adolescents administered antipsychotic medications
  - Children five years old and younger administered antipsychotic(s)
  - Children and adolescents prescribed high dose of antipsychotics
  - Children and adolescents prescribed two or more antipsychotics
  - Children and adolescents prescribed three or more psychotropic drugs
  - Children and adolescents with more than 20-day gap in prescription supply
  - Children and adolescents for whom baseline metabolic tests are completed before administration of psychotropic medications
  - Children and adolescents for whom metabolic tests are completed periodically while being administered psychotropic medications
  - Length of time children are administered continuous psychotropic medications
  - Mental health diagnosis of children receiving psychotropic medication
  - Service utilization – i.e. average number of days between first prescription fill date and receipt of community-based services

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<sup>55</sup> Johnson, A. (2014). *Caring for our Kids: Are we Overmedicating Children in Foster Care?* Written Testimony for the Subcommittee on Human Resources Committee on Ways and Means United States House of Representatives. Available at: <http://childpsychdrugsafety.org/caring-for-our-kids-are-we-overmedicating-children-in-foster-care/>

<sup>56</sup> 42 U.S.C. §675 (1). The term "case plan" means a written document which includes at least the following: ... (c) The health and education records of the child, including the most recent information available regarding ... (vi) the child's medications...

<sup>57</sup> California's child welfare database does collect information on authorizations for psychotropic medications, but this data is limited to the date of the authorization, race, age, gender of the child and the county and type of placement in which the child is residing.

<sup>58</sup> U.S. Government Accountability Office. (2011). *Foster children: HHS guidance could help states improve oversight of psychotropic medications* (Publication No. GAO-12-270T). Washington, DC: Author

<sup>59</sup> Johnson, A. (2014). *Caring for our Kids: Are we Overmedicating Children in Foster Care?* Written Testimony for the Subcommittee on Human Resources Committee on Ways and Means United States House of Representatives. Available at: <http://childpsychdrugsafety.org/caring-for-our-kids-are-we-overmedicating-children-in-foster-care/>.

## IX. Recent Initiatives and State Practice Guidelines to Improve Medication Prescribing Practices for Foster Youth

- In March 2014 President Obama included in his 2015 budget proposal a new five-year initiative, a collaborative demonstration involving Administration for Children and Families (ACF) and The Centers for Medicare & Medicaid Services (CMS) that could allocate up to \$750 million in federal dollars to “address over-prescription of psychotropic medications for children in foster care.”
  - The two-pronged plan focuses mostly on building the ability of state’s to treat foster youths without psychotropic drugs – or at least with less drugs – and then rewarding states for lowering reliance on the drugs.
    - The first part is a \$50 million a year, five-year investment by the ACF. That mandatory spending would support state efforts to provide evidence-based screening, assessment and treatment of trauma and mental health disorders among foster youth.
    - The second part is a Medicaid demonstration program proposed at \$100 million a year (over five-years) that would provide performance-based Medicaid incentive payments to “improve care coordination and delivery for children and youth in foster care through increased access to evidence-based psychosocial interventions.”
  - The new ACF investment and Medicaid demonstration proposed in the President’s budget would provide critical support for states as they continue efforts in implementing policies and procedures to curb inappropriate prescribing practices and improve behavioral health services for youth in care.<sup>60</sup>
- In May 2014, the GAO released a report, *Foster Children: Additional Federal Guidance Could Help States Better Plan for Oversight of Psychotropic Medications Administered by Managed-Care Organizations*.<sup>61</sup> Following expert review of foster and medical records for 24 cases in five selected states they found varying quality in the documentation supporting the use of psychotropic medications for children in foster care (i.e. Screening, Assessment, and Treatment Planning and Medication Monitoring). As a result GAO recommended that HHS issue guidance to states regarding oversight of psychotropic medications prescribed to children in foster care through Managed-Care Organizations. The U.S. Department of Health and Human Services (HHS) agreed with GAO's recommendation.
- There is no single way to create a perfect system among state child welfare, Medicaid and mental health systems to ensure appropriate prescribing and monitoring of medication therapy. Also many of the principles regarding improving prescribing practices for foster youth can and should be utilized for the prescribing of these medications to children in Medicaid in general.
  - Medicaid Drug Utilization Review (DUR) programs are employing a variety of techniques to intensify the oversight of prescribing of these potent medications to

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<sup>60</sup> Houshyar, S. (2014). *The President’s 2015 Budget: A New Initiative to Improve Behavioral Health Outcomes for Foster Youth*. State Policy Advocacy & Reform Center. Available at: <http://childwelfaresparc.org/the-presidents-2015-budget-a-new-initiative-to-improve-behavioral-health-outcomes-for-foster-youth/>; [http://www.resourcelibrary.gcyf.org/sites/gcyf.org/files/resources/2014/part\\_one.pdf](http://www.resourcelibrary.gcyf.org/sites/gcyf.org/files/resources/2014/part_one.pdf)

<sup>61</sup> U.S. Government Accountability Office. (2014). *Foster children: Additional Federal Guidance Could Help States Better Plan for Oversight of Psychotropic Medications Administered by Managed-Care Organizations* (Publication No. GAO-14-362). Washington, DC: Authoro.

children. In general, every state has pre-programmed edits in their pharmacy point-of sale system to screen for appropriate dose, duration of therapy, duplicate therapy and drug-drug interactions. Below are examples of ways state Medicaid DUR programs have targeted strategies for promoting quality care for children who are prescribed psychotropic medications.<sup>62</sup>

- Many states have implemented specific edits for children under certain ages (e.g. under age five, under age six, under age seven, etc.) which require the prescriber to complete a form providing prescriber information, patient diagnosis, target symptoms being treated, other drugs prescribed and laboratory tests.
  - Other states have a system by which a prescription for a psychotropic medication in a child triggers an edit for a preauthorization which requires a manual review of the prescription request by a panel of experts within a multi-disciplinary team, a psychiatrist or by the Medicaid agency's pharmacy staff.
  - Still other states, recognizing that the primary care doctor is often the first to see the patient, have developed hotlines or psychiatric consultation lines that the primary care doctors can access to guide them in their choice of therapy.
  - A few states have data registries which analyze the prescribing of these drugs and provide the primary care doctor feedback and training.
- California DHCS Treatment Authorization Request: For the state of California, a recent California Department of Health Care Services (DHCS) ruling which began October 1, 2014 now requires a Treatment Authorization Request (TAR) be provided before pharmacies can prescribe antipsychotic medication to children under the age of 18 years enrolled in Medi-Cal.<sup>63</sup>
- Under the rule, a California pharmacist now must verify the “medical necessity” of each prescription for antipsychotics before the medications can be given to children who are age 17 and younger and covered by Medi-Cal (impacts both fee-for-service Medi-Cal and the Medi-Cal managed care plans).
  - These new restrictions apply only to antipsychotics, not to other psychotropic medications, including mood stabilizers such as antidepressants and anti-anxiety drugs.
  - The need for special authorization has been required since 2006 on prescriptions for children five and younger, but will now be expanded to all individuals under the age of 18.
  - DHCS has provided supporting documents as additional clarity on the new TAR process.

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<sup>62</sup> *Summary of State Programs to Address Psychotropic Medication Use in Children in Foster Care.* Available at: <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/prescription-drugs/downloads/cib-posting.pdf>; For additional examples of other State policies, guidelines, and information regarding the use of psychotropic medications for foster care youth, see Child Welfare Information Gateway's *Use of Psychotropic Medications: State and Local Examples* webpage here: <https://www.childwelfare.gov/topics/systemwide/mentalhealth/effectiveness/psychotropic/pmslexamples/>; Also on Pages 9-19 of a report published by Tufts Clinical and Translational Science Institute (2010) includes descriptions of challenges and innovative solutions implemented by individual states and links to specific tools developed by states. Report is available here: <http://www.tuftscsi.org/~media/Files/CTSI/Library%20Files/Psychotropic%20Medications%20Study%20Report.ashx>

<sup>63</sup> Kruckenberg, S.(2014, October 22). DHCS Clarifies new TAR Process for Antipsychotic Medications. *California Hospital Association.* Available at: <http://www.calhospital.org/cha-news-article/dhcs-clarifies-new-tar-process-antipsychotic-medications>

- While the intent for this extra authorization is a safeguard to decrease the likelihood that children are incorrectly prescribed antipsychotics, opposition has already surfaced over the new rule as the new process extends the time it takes to obtain permission. In a November 2014, a letter to DHCS Director Toby Douglas from the California Alliance of Child and Family Services representing group homes, the California Pharmacists Association and the California Academy of Child and Adolescent Psychiatry, among others, called the new policy "alarming" and stated it has resulted in "medically necessary medications" being delayed or denied.<sup>64</sup>
- Mello (2012)<sup>65</sup> outlines that states should develop a framework for prescribing, administering, and monitoring psychotropic medication use for children in foster care that is guided by Medicaid's reimbursement structure and safety concerns raised by off-label prescribing and inconsistent mental health assessments. By creating this framework states can create a system that prevents potential Medicaid abuses while encouraging appropriate mental health services for children in foster care.
  - First, states should mandate timely mental health assessments to evaluate the appropriateness of treatment for children in their care.
  - Second, states should evaluate standards for Medicaid reimbursement of off-label prescriptions to develop guidelines for how such medications are best prescribed.
  - Finally, states should consider taking advantage of Medicaid rules to develop a series of "red flag" indicators that will prompt additional oversight for prescriptions indicating both salient safety concerns and potential Medicaid fraud.
- In the past decade, a variety of publicly available practice guidelines have been developed related to the use of psychotropic medication for foster children, including those developed to guide and inform physician prescription practices.
  - In particular, the following published guidelines describe components of comprehensive oversight and management plans for children in child welfare:
    - *American Academy of Child and Adolescent Psychiatry (AACAP) Position Statement on Oversight of Psychotropic Medication Use for Children in State Custody-A Best Principles Guideline:*  
[https://www.aacap.org/App\\_Themes/AACAP/docs/clinical\\_practice\\_center/systems\\_of\\_care/FosterCare\\_BestPrinciples\\_FINAL.pdf](https://www.aacap.org/App_Themes/AACAP/docs/clinical_practice_center/systems_of_care/FosterCare_BestPrinciples_FINAL.pdf)
      - Guidelines propose a number of quality of care recommendations, such as adequate screening and assessment prior to beginning psychotropic medications, concurrent evidence-based psychosocial and pharmacological treatment where indicated, the use of one medication before the addition of a second, and caution in the use of these medications in children younger than six years. The AACAP also has

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<sup>64</sup> de Sá, K. (2015, January 25). California lawmakers set to tackle excessive prescribing of psych meds to foster children. *San Jose Mercury News*. Available at: [http://www.mercurynews.com/ci\\_27432987/california-lawmakers-set-tackle-excessive-prescribing-psych-meds](http://www.mercurynews.com/ci_27432987/california-lawmakers-set-tackle-excessive-prescribing-psych-meds)

<sup>65</sup> Mello, M. (2012). Psychotropic medication and foster care children: A prescription for state oversight. *Southern California Law Review*, 85(2), 395-427.

developed guidelines for oversight of the use of psychotropic medication among children in foster care that echo more general guidelines describe above within the context of maltreatment and placement in foster care.

- A helpful aspect of the AACAP guidelines is the categorization of standards in these areas as Minimal, Recommended, and Ideal, features that Title IV-B agencies may find helpful as they seek to make decisions about improving their current oversight procedures. Yet each Title IV-B agency and its service delivery array is unique, making it impractical and inappropriate on a national level for every oversight and monitoring plan to be the same.
- As referenced earlier, ACF has also published two Information Memoranda (IM) detailing research, legislation, programs and practices in support of the social and emotional well-being of the children and youth served by child welfare systems.
  - *Promoting the Safe, Appropriate, and Effective Use of Psychotropic Medication for Children in Foster Care:*  
<http://www.acf.hhs.gov/sites/default/files/cb/im1203.pdf>
  - *Promoting Social and Emotional Well-Being for Children and Youth Receiving Child Welfare Services:*  
<http://www.acf.hhs.gov/sites/default/files/cb/im1204.pdf>

#### **X. California DSS/DHCS Quality Improvement Project: Improving the Use of Psychotropic Medication Among Children and Youth in Foster Care<sup>66</sup>**

- In 2012, in response to a growing awareness about the disproportionate prescribing of psychotropic medications to children in foster care and also consistent with new federal requirements<sup>67</sup> California Departments of Health Care Services (DHCS) and Social Services (CDSS) convened a statewide quality improvement project to design, pilot, and evaluate effective practices to improve psychotropic medication use among children and youth in foster care. This project is called *The Quality Improvement Project (QIP): Improving the Use of Psychotropic Medication among Children and Youth in Foster Care*.
  - The mission of the project is to improve the health of youth through oversight and monitoring of psychotropic medication.
  - The primary goals of the project include: enhancing psychotropic medication safety by establishing mechanisms to provide appropriate assessment, evaluation, and follow-up for children being considered for psychotropic medication treatment; increasing the use of psychosocial treatment in lieu of medications; providing educational materials to children and families involved in the foster care system; and, using data collection to track quality improvement and to conduct data analysis regarding psychotropic medication use.
  - This QIP is estimated for completion by May 2015 (was originally March 2015), with ongoing monitoring to follow.

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<sup>66</sup> QIP: Improving the Use of Psychotropic Medication among Children and Youth in Foster Care Webpage available at: <http://www.dhcs.ca.gov/services/Pages/qip.aspx>

<sup>67</sup> Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 101(b)(2), 125 Stat. 369, 369 (2011)

## SACHS Literature Review: Psychotropic Medication & Foster Youth

- Participants in the project include staff from DHCS, CDSS and the California Mental Health Directors Association (CMHDA).
- In order to meet the goals of the *QIP: Improving the Use of Psychotropic Medication among Children and Youth in Foster Care* three state workgroups were created. These include the Clinical Workgroup, the Data and Technology Workgroup, and the Youth, Family, and Education Workgroup. These three workgroups and a panel of subject matter experts from around California will set state guidelines, communicate data, and craft educational materials for use and consideration at the county level. More details on each of the workgroups can be found below.
  - *Clinical Workgroup*
    - **Focus:** To develop tools to assist prescribers, pharmacists, and the juvenile courts to improve their roles in the provision of psychotropic medications. These tools will include prescribing protocols and practices for improved oversight and monitoring for children and youth in foster care.
    - **Current Progress:** The following Documents created by the Clinical Workgroup have been approved by Expert Panel and reviewed by DHCS and CDSS (2014):
      - 1) Clinical Guidelines for Prescribers
      - 2) Prescribing Standards
      - 3) Monitoring Parameters
      - 4) Medication Support Services
      - 5) Prescriber Algorithm Tool (Decision Tree)
      - 6) JV-220 Form Revisions and Process Efficiencies accreditation
  - *Data and Technology Workgroup*
    - **Focus:** To conduct analysis of child welfare, managed care, and fee-for-service pharmacy claims data. This data regarding court authorizations and pharmacy claims will be reconciled and compiled into reports to assist county child welfare departments monitor court approval of psychotropic medication usage. The workgroup is also responsible for developing outcome measures as an additional monitoring mechanism.
    - **Current Progress:** The following accomplishments have been made by the Data and Technology Workgroup:
      - 1) Data linkages- Completed an initial data match between psychotropic medication claims and children in foster care. Produced a summary report which includes matched results and demographic data. Presented and approved by Expert Panel.<sup>68</sup>
      - 2) County Reports-Developed JV-220 Reconciliation Reports to identify children with a psychotropic medication claim and no JV-220 authorization. Presented and approved by Expert Panel. Collaborating with San Francisco and Los Angeles Counties for testing purposes. Drafted All County Information Notice in preparation for distribution.
      - 3) Outcome Measures-Developed draft outcome measures and will be collaborating with Clinical Workgroup to finalize.

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<sup>68</sup> QIP: Psychotropic Medication Data Match Summary Report available at: [http://www.dhcs.ca.gov/provgovpart/Documents/PharmacyBenefits/QIPFosterCare/DataTech/QIP-Summary\\_Report\\_12\\_17\\_14.pdf](http://www.dhcs.ca.gov/provgovpart/Documents/PharmacyBenefits/QIPFosterCare/DataTech/QIP-Summary_Report_12_17_14.pdf)

- *Youth, Family & Education Workgroup*
  - Goals: To develop and disseminate training materials and information about psychotropic medications for youths, parents, caregivers, social workers, juvenile court staff, and other key figures supporting the foster care population.
  - Current Progress: The following accomplishments have been made by the Youth, Family & Education Workgroup:
    - 1) Collaborated on the development of two documents/resources:
      - a. Foster Youth Mental Health Bill of Rights and Best Practices
      - b. Questions to Ask About Medications
- Next Steps (January-May 2015) for the QIP<sup>69</sup>:
  - Wrap up of work products currently under development (vetted by Expert Panel in August & November 2014)
  - Finalize current work products
  - Develop dissemination methods for products
  - Finalize outcome/ performance measures: produce county test data, distribute test data to counties, publicly post outcome measures
  - CDSS All County Notice for Client- Level Data Report Process
  - Data reports to counties
  - Youth, Family & Education and Clinical Workgroups to develop hierarchy of interventions/decision tree
  - Connections to other youth services (i.e. Independent Living Services)
  - Training for Foster Parents/Professionals
  - Develop cross-system oversight and monitoring processes
- The most current deliverables, timelines and work progress of the project can be found at the following website: <http://www.dhcs.ca.gov/services/Pages/qip.aspx>
- For questions or comments contact: [QIPsychotropic@dss.ca.gov](mailto:QIPsychotropic@dss.ca.gov)

## **XI. Examples of California County Responses/Policies**

- *Alameda County*<sup>70</sup>
  - In FY 2012-2013 Alameda County Behavioral Health Care Services received a grant from the Zellerbach Family Foundation to support a project to better understand practices for prescribing psychotropic medications to Alameda County foster and probation youth, and to develop systems for monitoring these practices.
    - As a result the following activities were funded in Alameda County:
      - 1) Identification of providers, resources and data collection processes regarding foster youth and cross-over youth that are currently prescribed psychotropic medication (Completed).

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<sup>69</sup> QIP: Improving the Use of Psychotropic Medication among Children and Youth in Foster Care Project Workgroup Timeline available at: <http://www.dhcs.ca.gov/services/Pages/qip-timeline.aspx>

<sup>70</sup> Johnson, A. (2014). *Final Report Psychotropic Medication Use with Children and Youth in Foster and Juvenile Care*. Zellerbach Family Foundation-Alameda County Behavioral Health Care Services. Available at: <http://fosteryouthalliance.org/wp-content/uploads/2014/09/Final-Report-Alameda-County-Zellerbach-Grant.pdf>

- 2) Identification of cohesive strategies to address gaps in and between key information systems to enable aggregation and analysis of relevant data (Completed).
  - 3) Creating an inventory of information sharing barriers and developing recommendations to overcome identified barriers (Completed).
  - 4) Aggregating and analyzing existing data to help identify possible trends in overuse, underuse and misuse of psychotropic medication among foster youth and cross-over youth at the individual and population level (Completed to date; Ongoing)
  - 5) Developing an integrated data collection plan to address gaps in resources, systems, and platforms across provider networks (In Progress).
  - 6) Working closely with the California CDSS/DHCS *QIP: Improving Psychotropic Medication Use in Children and Youth in Foster Care* to ensure coordination as appropriate between statewide and local assessment and planning efforts (Ongoing)
- Upon completion of the *QIP: Improving the Use of Psychotropic Medication among Children and Youth in Foster Care State Plan* Alameda County plans to take the following actions:
- 1) Alameda County leadership will review and disseminate with county specific modifications with a letter of intent to all prescribers in the county.
    - Leadership will determine if local rules may be needed to best serve the population of children, youth, and care providers in our county.
    - Leadership will work to establish contracts with provider agencies that name internal protocols for quality assurance for prescribing using the State Plan and Review Guidelines for prescribers of psychotropic medications.
  - 2) Make a dissemination plan for the *Foster Youth Mental Health Bill of Rights* and *Best Practices* and *Questions to Ask about Medications* documents that could include the following and other actions:
    - Incorporate educational materials on county and provider agency websites.
    - Incorporate educational materials in upcoming trainings and video modules
    - Make hard copies available and ensure all foster children receive this information
  - 3) Participate in a test of the state data match for court authorizations and prescription fill data. Alameda County will receive a list of names of children who have had a psychotropic medication filled without entry of a JV-220 authorization in the system.
  - 4) Develop outcome measures using the county's data agreement similar to those recommended at the state level.

5) Collaborate with state agencies on the creation of regular reporting system and outcome measures to share tables and improve reporting capacity across counties. Support the Court's and add additional safety checks to the psychotropic medications approval process.

- Alameda County has also provided recommendations for establishing:
  - 1) an improved system for review and processing of JV-220s;
  - 2) an improved system for the communication of information between medical providers, social workers, caregivers, and the courts;
  - 3) a regular system of data reporting on psychotropic medication for quality assurance and the use the information with a quality assurance team.

Detailed recommendations can be found here:

<http://fosteryouthalliance.org/wp-content/uploads/2014/09/Final-Report-Alameda-County-Zellerbach-Grant.pdf>

- *Los Angeles County Department of Children and Family Services (LA DCFS)*<sup>71</sup>
  - In 2009, LA DCFS established Policy # 0600-514.10—"Psychotropic Medication: Authorization, Review and Monitoring for DCFS supervised youth." This procedural guide supports the department's efforts "to achieve timely permanency" for children through the appropriate administration of psychotropic medications prescribed by the child's physician or psychiatrist.
    - This policy stemmed from the growing concern that children placed under the supervision of LA DCFS were at risk of not being afforded adequate and accurate investigations, screenings, assessments, and treatments to address possible trauma-related behaviors.
    - Its purpose, procedures, and processes are directly based on the mandates set forth by Welfare and Institutions Code § 369.5 and is intended to adhere to the department's values and efforts to ensure safety and optimum mental health for DCFS-supervised children.
  - The LA DCFS Policy # 0600-514.0 clearly states that in non-emergency situations, where the child(ren) who reside in in-home or out-of-home care and the court has made a disposition order, court authorization is required prior to administering psychotropic medication. This policy requires the coordination of numerous service providers including case carrying social workers, foster parents, pediatricians, children's psychiatrists, Juvenile Court judges, specialized oversight units, public health nurses, and the Office of the Medical Director.
  - The Policy requires the primary and secondary child welfare social workers as well as Public Health Nurses to conduct additional face-to-face visits to the child's foster home as well as the child's school as part of the initial assessment. Referrals are initiated to mental health specialists to establish supportive teams to address any issues, problems, and future treatment plans.

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<sup>71</sup> Cole, L. (2014). California welfare and institutions code [section] 369.5 authorization of psychotropic medication to California's dependent children a policy analysis. *Masters Abstracts International*, 52(6).

- *Madera County*<sup>72</sup>
  - In Madera County, leadership has created alternatives to behavior management with medication by better training foster parents and social workers, ensuring individual therapy is provided, and linking child welfare interventions with efforts in the classroom.
  - Madera County uses a collaborative approach with public health, mental health, education, care provider, youth/family, court and social worker/supervisor to ensure no youth is placed on medication without the use of other behavior modification efforts as well. When a youth is on medication(s) his or her behavior, academics and physical health is consistently monitored, as well as advocacy for the youth by the Public Health Nurse and Social Worker when concerns arise.
    - Danny Morris, Deputy Director at Madera County Department of Social Services said, "Our policies are written that way -- that you push back and ask questions. Our social workers are trained that you ask questions, regardless of what it is, even if it's cold medicine for our youth."
  - According to statewide data on court authorizations of psychotropic prescriptions for foster youth (data source: [http://cssr.berkeley.edu/ucb\\_childwelfare/cdss\\_5f.aspx](http://cssr.berkeley.edu/ucb_childwelfare/cdss_5f.aspx)), following implementation of these new practices Madera County was able to reduce the number of their youth prescribed psychotropic medication by over 10.1% from January-March 2010 to July-September 2012. Madera County youth are now prescribed at about one-third the statewide rate.
  - For more on the roles/functions of social workers and supervisors in Madera County please refer to Section III of this report.
- *San Bernardino County*<sup>73</sup>
  - When prescribing psychotropic drugs to foster children, San Bernardino County has extra safeguards in place to prevent the abuse of (psychotropic) medications. For more than two years, child psychiatrists employed by the county have been reviewing behavior-altering drugs prescribed for children under the county's foster care program. These medications are reviewed by county child psychiatrists every six months and for children under the age of eight, re-evaluations are done every three months.
  - San Bernardino County's program, which highlights the county's collaborative work between the foster care network and Behavioral Health, installs an independent child psychiatrist as a monitor of these medications, involves personnel from Juvenile Court, the county departments of Behavioral Health and Public Health and Children and Family Services.
  - In addition to approving new psychotropic medication prescriptions and regularly reviewing them, county child psychiatrists along with ancillary specialists conduct second opinions on the use of these medications.

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<sup>72</sup> Bullard, S., Davis, A., Moore, S., and Morris, D. (2013, April 17). *Collaborative Approach to Deciding If and When to Issue and Monitor Psychotropic Medication [Webinar]*. UC Davis Extension-Center for Human Services. Archived Webinar available at: <http://humanservices.ucdavis.edu/Resource/FamilyFocused/InThisSection/ArchivedWebinars.aspx>; de Sá, K. (2014, September 19). Drugging Our Kids: California calls for new checks on psych meds for foster kids. *San Jose Mercury News*.

<sup>73</sup> Steinberg, J. (2014, August 23). When prescribing psychotropic drugs for foster children, San Bernardino County has extra safeguard in place. *The Sun*. Available at: <http://www.sbsun.com/health/20140823/when-prescribing-psychotropic-drugs-for-foster-children-san-bernardino-county-has-extra-safeguard-in-place>

- These second opinions are “a very thorough analysis of the patient,” including school records and a review of all medical records, not just those involving mental health.
- Family members, Juvenile Court judges and the foster child’s other doctors may request this exhaustive second opinion.

## **XII. Proposed California Legislation (2015) Related to Psychotropic Medications and Foster Youth**

- *Proposed Legislative Bills (2015)*<sup>74</sup>
  - After years of growing concern but no legislative action, several California lawmakers plan to introduce legislation in 2015 to help curb the overuse of psychiatric drugs among children in the state's foster care system.
    - As of January 2015 there were about a half dozen legislators working on such bills (state Senators Jim Beall, D-San Jose, and Holly Mitchell, D-Los Angeles, and Assemblyman David Chiu, D-San Francisco each submitted early language to the to the Office of Legislative Counsel). For support, some legislators are looking to an advocacy group led by the Oakland-based National Center for Youth Law (NCYL), and the efforts of the statewide DSS/DHCS *QIP: Improving the Use of Psychotropic Medication among Children and Youth in Foster Care*.
  - The final deadline to submit bills is February 27, 2015, but preliminary language that has been drafted could help ensure that kids, caregivers, attorneys and judges are better informed about medications and their side effects. The bills would also:
    - Grant kids the right to alternative treatments that do not involve powerful drugs, as well as the right to a second medical opinion when potentially dangerous combinations of drugs or high dosages are prescribed.
    - Train caregivers to understand medications' risks and benefits-and better handle children who display difficult behaviors.
    - Ensure children on medications receive baseline monitoring so that side effects can be caught early.
    - Identify group homes where children are being overmedicated.
    - Empower public health nurses (PHNs) to ensure psychotropic medications are used appropriately (e.g. help to clarify role of PHNs including monitoring/ oversight of screenings and medications, increase their collaboration with child welfare services social workers).
  - Other potential legislative proposals could be aimed at improving the oversight and monitoring of psychotropic medication use by youth in foster care through requiring regular reports and analyses of county-level prescribing trends (e.g. geographic and demographic information on prescribing patterns), establishing a hotline for lawyers, judges, doctors and other caregivers who need guidance on medication, and improved monitoring of doctors’ interactions with drug companies.<sup>75</sup>

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

- *County Welfare Directors Association of California (CWDA)*<sup>76</sup>

In January 17, 2015 CWDA submitted the following legislative proposal on psychotropic medications for foster youth in their *2015 CWDA Budget and Legislative Priorities: As Approved by the Board of Directors*.

  - Statement of Problem: The recent series in the *San Jose Mercury News*, combined with the GAO's Report and a special Congressional hearing, have raised awareness of the possible overutilization of psychotropic medications for youth and children in foster care. This proposal recommends legislation that would provide child welfare services social workers with the data, information and tools needed to provide appropriate oversight of these treatments for the children in their care.
  - Analysis: Child Welfare Services Social Workers rely on experts in the field of Behavioral Health to diagnose and recommend treatment for children who may be exhibiting behaviors symptomatic of mental illness. Prescribed treatment may include cognitive therapy or other therapeutic approaches, but may also include psychotropic and antidepressant drugs. Sometimes, this regimen of drug treatment includes multiple prescriptions that may interact negatively, and also may include prescriptions at dosage levels that are inappropriate for the age, weight and developmental stage of the child or youth. Because CWS social workers are not experts, however, they are not able to consider the propriety of such treatments. Additionally, data are not readily available to the social workers regarding the actual medications being taken, rather than just those that are prescribed. Finally, it is important to ensure that the observations of youth and caregivers, as well as social workers, are taken into account in managing the medication process.
    - Some states have taken steps to address these issues, although it is not clear which of these states are enjoying verifiable successes. Illinois, New Jersey and Connecticut have instituted medication monitoring protocols. Other states have commenced or completed comprehensive studies on utilization. Illinois also has developed a "consultation" protocol, acting as the "second opinion" for interested parties.
    - The goal of this proposal is to develop and review data, to develop a system of flags, to improve county reporting and to establish further consultation/second opinion options for cases in which psychotropic medications and/or antidepressants are being prescribed for a foster youth.
  - Proposed Solution: Seek legislation that would require, at a minimum, all of the following:
    - 1) The development by the California Department of Social Services and California Department of Health Care Services of monthly data reports, matching prescription and claims data with child welfare services records, that shall be shared with counties, the courts, children's attorneys and court-appointed advocates for children.
    - 2) The development of a system that triggers an alert to the practitioners receiving the data reports when potentially dangerous interactions could occur with other

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<sup>76</sup> County Welfare Directors Association of California (CWDA). (January 17, 2015). *2015 CWDA Budget and Legislative Priorities: As Approved by the Board of Directors-Psychotropic Drug Medication for Foster Youth*, P. 10.

- prescribed medications or psychotropic medications have been prescribed, or prescribed in dosages, that are unusual for a child or a child of that age.
- 3) Updates to the JV-220 court form to provide opportunities for key stakeholders, including the child for whom medication is being prescribed, to provide information and feedback and to provide details on the overall mental health treatment plan for the child.
  - 4) Training for physicians, child welfare social workers, foster children, caregivers, attorneys and court appointed advocates for children regarding psychotropic medications.
- Possible Fiscal Effects:
    - State administrative costs associated with studying and procuring waivers, if needed, and developing training.
    - Costs of programming systems to generate reports.
    - Possible county administrative costs, which could be a mandate pursuant to Proposition 30, to review data reports, alerts and court documents, conduct trainings, prepare court reports and work with caregivers, physicians and youth.
    - Potential offsetting savings to the extent that better oversight of prescriptions results in better overall treatment outcomes for children in foster care.

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<sup>77</sup> Karen de Sá, an investigative reporter for the San Jose Mercury News (CA) authored this “Drugging Our Kids” series which includes four print articles and one 40-minute film produced by photojournalist Dai Sugano that Documents the use of psychiatric medications in California's foster care system from Los Angeles to the Bay Area to Humboldt County over a period of four months.

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### Additional Resources

Administration for Children and Families, Substance Abuse and Mental Health Services, Administration, & Centers for Medicare and Medicaid Services. *Because Minds Matter: Collaborating to Strengthen Management of Psychotropic Medications for Children and Youth in Foster Care* (August 27-28, 2012)<sup>78</sup> Summit Materials (including the program booklet, PowerPoint presentations, and handouts) are available online here: <http://www.pal-tech.com/web/psychotropic/>

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Florida's Center for Child Welfare Psychotropic Medication Resources Webpage: <http://centerforchildwelfare.fmhi.usf.edu/ChildWellBeing/PsychotropicResources.shtml>

Florida Medicaid Drug Therapy Management Program for Behavioral Health Webpage: *Search Medication Guidelines: Childhood*. Available at: <http://medicaidmentalhealth.org/searchGuidelines.cfm?IsAdultGuideline=0>

National Center for Youth Law-Psych Drugs Action Campaign (with CDSS & DHCS). Available at: [http://www.youthlaw.org/policy/psychdrugs\\_action\\_campaign/](http://www.youthlaw.org/policy/psychdrugs_action_campaign/)

The National Resource Center for Permanency and Family Connections at the Hunter College School of Social Work-Psychotropic and Prescription Medications Website: [http://www.nrcpfc.org/fostering\\_connections/psychotropic\\_medications.html](http://www.nrcpfc.org/fostering_connections/psychotropic_medications.html)

Texas Department of Family and Protective Services Webpage-A *Guide to Medical Services at CPS: Psychotropic Medications*: [http://www.dfps.state.tx.us/Child\\_Protection/Medical\\_Services/guide-psychotropic.asp](http://www.dfps.state.tx.us/Child_Protection/Medical_Services/guide-psychotropic.asp)

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<sup>78</sup> Summit offered an opportunity for State leaders with direct responsibility for child welfare, Medicaid, and mental health to work together to develop action steps for enhancing oversight and monitoring of psychotropic medications for children in foster care.

<sup>79</sup> Provides information and worksheets to assist youth in recognizing when they need help, weighing options for medication use, asking questions about their diagnosis and treatment, and taking medication safely. This guide can be used directly by youth or serve as a discussion tool for child welfare workers, health care providers, mentors, and others working with youth in foster care.