

AB 153: Phasing Out Out-of-State Residential Facility Placements for Children in Foster Care

[AB 153 \(2021\)](#) phases out the use of out-of-state residential facilities by California child welfare and probation departments, removing foster children¹ from out-of-state facilities by July 1, 2023. The law does not apply to family placements or placement with relatives and does not impact special education placements made pursuant to an Individualized Education Program (IEP) or placement of Native American children covered by the Indian Child Welfare Act (ICWA). As a budget trailer bill, AB 153 takes effect immediately.

Background

Since 1998, when a California youth died in an out-of-state facility, the state has implemented increasingly restrictive administrative and legislative measures to protect foster children placed in out-of-state residential facilities. Nevertheless, deaths, injuries, and other serious concerns have continued, and recent problems demonstrate that past measures have failed to provide sufficient protection. See, for example, the incidents cited in Imprint News' December 2020 article on out-of-state facilities utilized by California, "[Far From Home | Far From Safe](#)."

Last year, the California Department of Social Services (CDSS) reviewed the operations of all certified out-of-state facilities and found significant licensing violations. In December 2020, CDSS decertified all of the out-of-state facilities for failure to meet licensing standards, and all youth placed in those facilities returned to California.

In passing AB 153, the legislature recognized that the pre-existing certification process had failed to ensure the health, safety, and well-being of children, and that children are better served when they can develop and maintain local support closer to their families and communities (Family Code 7911(a)). Therefore, the legislature imposed a permanent moratorium on out-of-state placements, phasing it in to allow counties to develop more in-state alternatives.

Timetable - Family Code 7911 (c) & (d); WIC 361.21(d) & (e), 366(e), 727.1 (f) & (g)

On and after July 1, 2021 - No new out-of-state residential facility placements, unless the case meets child-specific certification requirements (or is exempt).

On and after July 1, 2022 - No new out-of-state residential facility certifications or placements.

By January 1, 2023 - All out-of-state facilities decertified. All children placed in out-of-state residential facilities returned to California.

¹ The law applies to children placed by child welfare, minors placed by probation, and nonminor dependents placed by either agency. For simplicity, this overview will use "child" and "children" to apply to all three.

Child-Specific Certification Requirements - Family Code 7911.1, WIC 16010.9

Before placing a child in an out-of-state residential facility, the placing agency must obtain a child-specific certification from CDSS and approval of the court. The child-specific certification is designed to limit out-of-state placements to situations in which there is no in-state placement that meets the needs of the child and the placing agency has performed an individualized assessment of the needs of the child in relation to the identified out-of-state residential facility.

While AB 153 sets out general requirements, CDSS and the Department of Health Care Services (DHCS) have the authority to implement, interpret, or make specific these requirements through binding all-county letters, written directives, interim licensing standards, or similar written instructions.

County Placing Agency Responsibilities - WIC 16010.9(c)

Before seeking a child-specific certification the county placing agency must:

- 1) Participate in a state-level technical assistance process established by CDSS that includes:
 - a) A review of statewide placement options, and
 - b) Documentation of good-faith efforts to implement recommendations that may avoid the need for out-of-state placement;
- 2) Secure documentation of a county multidisciplinary team recommendation that includes verification by the county that:
 - a) The program provides the specific clinical services and qualifications which the individual child needs, and
 - b) These services are unavailable in-state; and
- 3) On and after October 1, 2021, obtain an assessment of the child's services and placement needs, incorporating the recommendations of a qualified individual, as required for the use of qualified residential treatment program placements under federal and state law.

After a child-specific certification is granted, the placing agency must seek court approval before making the placement (see the "Court Approval and Review" section below).

CDSS and DHCS Responsibilities - Family Code 7911.1

CDSS issues a child-specific certification at the request of a county child welfare or probation department using the licensing standards for California Short-Term Residential Therapeutic Programs (STRTPs), including STRTP mental health program standards, which require licensing by DHCS. The out-of-state facility must also have a current license, or an equivalent approval, in good standing issued by the appropriate authority or authorities of the state in which it is operating. The STRTP mental health standards can be met if DHCS determines that the facility has an equivalent mental health program approval in the state in which it is operating.

Before issuing the certification CDSS must:

- 1) Review the documentation provided by the county placing agency;
- 2) Perform an on-site inspection of the out-of-state facility's physical site;
- 3) At a minimum, review all of the following sections of the facility's program statement:
 - a) Core Services and Supports,
 - b) Trauma Informed Interventions and Treatment Practices,
 - c) Personal Rights,
 - d) House Rules,
 - e) Discipline Policies and Procedures, and
 - f) Emergency Intervention Plan (Including Runaway Plan);
- 4) Review:
 - a) The facility's serious incident reports,
 - b) The facility's current license,
 - c) The facility's licensing history, including any substantiated complaints, and
 - d) The documentation provided by DHCS regarding approval of the facility's mental health program; and
- 5) Obtain approval from the CDSS Director of the child-specific certification. Director approval may be given after all of the above requirements have been satisfied.

CDSS cannot issue a child-specific certification if the out-of-state facility fails to provide the necessary documentation or fails to cooperate with the certification process.

CDSS must also:

- 1) Review certification as often as necessary to ensure the health and safety of children, at least semi-annually, and
- 2) Investigate any threat to the health and safety of children in the facility.
 - a) CDSS has the authority to interview children or staff in private or review their file at the out-of-state residential facility or wherever the child or files may be at the time of the investigation.
 - b) Failure by the facility to make children or staff available for a private interview or make files available for review are grounds to deny or discontinue the certification.

The certification is discontinued as soon as the child moves out of the facility.

Court Approval and Review - WIC 361.21, 727.1, 16010.9(f)

Before placing a child in an out-of-state residential facility, the county placing agency must seek court approval and must present to the court:

- 1) Evidence that it has completed all certification requirements, and
- 2) Proof that CDSS has certified the facility.

The court cannot order or approve the placement unless:

- 1) The facility is licensed or certified for the placement of children by an agency of the state in which the minor child or nonminor dependent will be placed;
- 2) The facility has been certified by the State Department of Social Services (unless exempt);
- 3) The county placing agency has fulfilled its certification responsibilities; and
- 4) The court has reviewed the documentation of any required assessment, technical assistance efforts, or recommendations and finds that in-state facilities or programs are unavailable or inadequate to meet the needs of the child.

The court must review the placement at least every six months to determine that the conditions for placement continue to be met.

Other Provisions*Interstate Compact on the Placement of Children (ICPC) - Family Code 7900-7912*

All out-of-state foster care placements must comply with the ICPC, and CDSS is designated as the Compact Administrator in California. The ICPC process requires the sending state to communicate with, and obtain approval from, the receiving state before making a placement.

AB 153 prohibits CDSS from seeking approval from another state for an interstate residential facility placement unless it has received:

- 1) Documentation that the county placing agency has complied with the child-specific certification requirements;
- 2) Documentation that the out-of-state residential facility has been certified by CDSS, including documentation that the director of CDSS has approved the certification; and
- 3) A copy of the juvenile court order authorizing placement of the child in the out-of-state residential facility.

As Compact Administrator, CDSS is required to:

- 1) Investigate any threat to the health and safety of foster children in out-of-state placement and may interview children or staff in private or review their file at the out-of-state residential facility or wherever the child or files may be at the time of the investigation;

- 2) Require certified out-of-state residential facilities to comply with the reporting requirements applicable to short-term residential therapeutic programs (STRTPs) licensed in California for each child in care, regardless of whether or not the child is a California placement, by submitting a copy of the required reports to the Compact Administrator within regulatory timeframes; and
- 3) When CDSS receives a serious incident report from a certified facility, it must notify any county child welfare agency or probation with a child placed in that facility by:
 - (a) Verbal notification within one business day of receiving the report, and
 - (b) Forwarding a copy of the written report within five business days of receiving the written report.

Data Collection - Family Code 7912

By January 1, 2022 and every six months afterward, CDSS must report to the relevant policy and fiscal committees of the Legislature:

- 1) On the capacity for serving all child welfare and probation-supervised foster children within California or in home-based settings outside of the state;
- 2) The number of children served by out-of-state residential facilities, disaggregated by child welfare services agency and probation department supervision;
- 3) Data measures related to ongoing transition-planning efforts, including child and family team meetings, child-specific recruitment and family-finding activities, and multiagency care coordination efforts that occurred for each child before and during placement in the out-of-state residential facility;
- 4) The lengths of stay of each child placed in an out-of-state residential facility by a California child welfare agency or probation department;
- 5) The total number of all serious incident reports received regarding out-of-state residential facilities, and descriptions of the types of incidents reported; and
- 6) The total number of serious incident reports received regarding California children placed in out-of-state residential facilities, and descriptions of the types of incidents reported.

Reports may not include any demographic data that would permit identification of any child or nonminor dependent.

Advocacy Questions

- 1) What needs has the child identified? What needs have been identified by the child's family, caregiver, and/or other person whom the child feels is important?
- 2) Can the child's needs be met in a family setting? Has the placing agency explored Home-Based Services, Therapeutic Foster Care, Therapeutic Behavioral Services, or an individualized plan using mental health services available through Early and Periodic

Screening, Diagnostic, and Treatment (EPSDT)? Is the child eligible for Regional Center services?

- 3) What does the proposed facility provide that cannot be provided in California? Why can't the necessary services be provided in California? What are the specific barriers to meeting the child's needs in California?
- 4) What needs have been identified by the Child and Family Team (CFT)? What options has the CFT reviewed? What resources has the CFT reviewed? Why have they determined an identified option or resource is not appropriate or is unavailable?
- 5) Who was at the CFT meeting? Was there disagreement about any recommendations? What did the Qualified Individual recommend? Can you talk with that individual?
- 6) Can you obtain an independent opinion from an expert or knowledgeable person about how to meet the needs of the child and/or resources that are available in California to meet those needs?
- 7) What information has CDSS gathered about the facility? Can you review the documents and/or talk to licensing staff? What other information is available about the facility, for example online or through advocate listservs?
- 8) Do youth who have been to the facility or their advocates have information—positive or negative—to share? How does it relate to this child's needs and circumstances?
- 9) How does the facility describe the population it is designed to serve, how it identifies alternative home-based family care settings, the development of individualized family aftercare plan, the inclusion of the child's family and persons important to the child in the child's life and treatment plan, and how it will help the child maintain connections with family and community?
- 10) Does the facility provide residents with [California foster youth rights](#) (as defined by [WIC 16001.9](#))? Are there any facility policies that conflict with the rights of California foster youth? What specific rights cannot be fully provided? What therapeutic purpose does any infringement or curtailment of rights serve?
- 11) How will the facility support the child's educational progress, maintain relationships with people who are important to the child, and ensure that the child can engage in age-appropriate activities?
- 12) What are the communication and visiting policies? Can the child bring and use a cell phone? Will the child have access to computing technology and the internet? What arrangements will the facility and placing county make for visits from family and others who are important to the child? Who will pay the cost?
- 13) How will the facility ensure that the child has access to the child's attorney? How will the child participate in California court proceedings?
- 14) Can the proposed placement be made successfully before July 1, 2022? Can the treatment plan reasonably be accomplished by January 1, 2023? Does the child's treatment plan provide for an appropriate transition and return to California before January 1, 2023?