

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W18-07

Title	Action Requested
Juvenile Law: Presumptive Transfer of Specialty Mental Health Services	Review and submit comments by February 9, 2018.
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 5.647 and 5.648; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber current form JV-215 as JV-212	September 1, 2018
	Contact
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Proposed by	
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes the adoption of two California Rules of Court and four juvenile law (JV) forms, including an information sheet. These rules and forms implement a procedural framework for a juvenile court review hearing created by recent legislation involving foster children's access to specialty mental health services under federal Early and Periodic Screening, Diagnosis and Treatment services. When a foster child or nonminor is moved to a different county, the responsibility for providing and arranging for specialty mental health services is presumptively transferred to the new county unless certain exceptions apply. Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603), provides certain individuals the right to request a hearing to challenge a placing agency's determination regarding that transfer. The proposed rules and forms are intended to provide procedural clarity for this unique hearing. The committee also recommends renumbering a JV form to keep the JV forms related to this proposal in sequential order with forms related to the administration of a foster child's psychotropic medications.

The Proposal

The proposal is being made in response to Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603), which created specific procedures related to the presumptive transfer of the responsibility for providing specialty mental health services (SMHS) from the child's or nonminor's county of

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

original jurisdiction to the county of residence. SMHS jurisdiction is to be presumptively transferred to the county of residence, unless an exception listed under Welfare and Institutions Code section 14717.1(d)(5)(A)-(D) applies.¹ The placing agency is responsible for determining whether an exception to presumptive transfer applies. Certain individuals may challenge this determination and petition the juvenile court for judicial review of the placing agency's decision. The procedures related to this judicial review are the focus of this proposal, and the new proposed rules of court and new JV forms.

The committee recommends renumbering *Application to Review Decision by Social Worker Not to Commence Proceedings* (form JV-215) from JV-215 to JV-212. Doing so will ensure that the forms related to this proposal will be in sequential order with forms related to the administration of a foster child's psychotropic medications. As both forms relate to mental health treatment, the committee considered it consistent to keep them in sequential order.

Presumptive transfer, exceptions, and review hearing

Assembly Bill 1299 created section 14717.1 to address lengthy delays or denials in accessing mental health services for children placed in an "out-of-county"² placement. To overcome barriers to care when the child or nonminor³ changes placements, SMHS jurisdiction must presumptively transfer from the county of original jurisdiction to the county of residence unless an exception applies.⁴ Section 14717.1(d)(5) provides for four possible exceptions:

- It is determined that the transfer would disrupt continuity of care or delay access to services provided to the foster child.
- It is determined that the transfer would interfere with family reunification efforts documented in the individual case plan.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court.

² A placement in a county other than the one in which the child originally entered foster care (i.e., the "county of original jurisdiction").

³ The committee elected to specify that the rule applies to nonminors as well as children. Section 14717.1 refers to foster children in most places, but (b)(2)(A) and (c)(2) mention foster youth. Federal Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services, the services that are the subject of this proposal, are available to Medicaid beneficiaries under the age of 21 (42 U.S.C. §1396(d)). The committee therefore elected to include nonminors in the rule.

⁴ Under section 14717.1, presumptive transfer refers to the transfer of SMHS jurisdiction from the county of *original jurisdiction*. Therefore, any determination of an exception to presumptive transfer will apply to maintaining SMHS jurisdiction in the county of original jurisdiction. This includes the situation where a child or nonminor moves from one out-of-county placement to another out-of-county placement. Section 14717.1(c) defines presumptive transfer as "absent any exceptions as established pursuant to this section, responsibility for providing or arranging for specialty mental health services shall promptly transfer *from the county of original jurisdiction* to the county in which the foster child resides..." (italics added). Likewise, section 14717.1(d)(1) states that "presumptive transfer may be waived and the responsibility for the provision of specialty mental health services *shall remain in the county of original jurisdiction* if any of the exceptions described in paragraph (5) apply." (italics added). All County Letter 17-77 also defines presumptive transfer as the "prompt transfer of the responsibility for the provision of, or arranging and payment for specialty mental health services *from the county of original jurisdiction* to the county in which the foster child resides." (p. 2).

- The foster child’s placement in a county other than the county of original jurisdiction is expected to last less than six months.
- The foster child’s residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

The placing agency, in consultation with the Child and Family Team (CFT)⁵, is responsible for determining whether an exception under section 14717.1(d)(5)(A)–(D) applies. Once this determination is made, the placing agency is responsible for informing the CFT and parties to the case of the placing agency’s determination.

After being informed of the placing agency’s determination, the foster child or nonminor, the person or agency that is responsible for making mental health care decisions on behalf of the foster child or nonminor, the county probation agency or the child welfare services agency with responsibility for the care and placement of the child or nonminor, or any other interested party who owes a legal duty to the child involving the child’s health or welfare, as defined by the department,⁶ may request a waiver of presumptive transfer.⁷ The placing agency must make a determination on the request to waive presumptive transfer based on an exception under section 14717.1(d)(5)(A–D).

The individual who requested the waiver, or any party to the case, may request a judicial review of the placing agency’s determination prior to the county’s determination becoming final. This would include the situation where the placing agency’s initial determination was that an exception to presumptive transfer applies and no waiver request was made. Under section 14717.1(d)(4), the court may set the matter for hearing and confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child.

The Department of Health Care Services (Department) and the California Department of Social Services (CDSS) are responsible for implementing and administering the changes made by AB 1299. Under section 14717.1, the department and CDSS are required to provide policy guidance on the implementation of AB 1299.⁸ The department and CDSS may implement and administer the changes made by AB 1299 through all-county letters, information notices, or similar written instructions until regulations are adopted. All County Letter 17-77 (ACL)⁹ was published in July 2017. It provides a framework for the presumptive transfer process and for the responsibilities of the placing agency during the presumptive transfer process. It also includes timelines and notice

⁵ The Child and Family Team means a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve positive outcomes for safety, permanency, and well-being. Section 16501(a)(4).

⁶ Department of Health Care Services.

⁷ Section 14717.1(d)(2).

⁸ Section 14717.1(g) requires that the department and CDSS adopt regulations to implement section 14717.1 by July 1, 2019. Section 14717.1(d)(2) further requires that a request for waiver be in a manner established by the department. Section 14717.1(d)(3) further requires that the department define who may request a waiver for those who owe a legal duty to the child.

⁹ <http://www.cdss.ca.gov/Portals/9/ACL/2017/17-77.pdf?ver=2017-07-17-110909-783>.

requirements that the placing agency is required to follow. The proposed rules incorporate these requirements into the procedure outlined in the rules. It is anticipated that a new all-county letter or information notice will be published in the near future, which will include updates on (1) the timeline of the presumptive transfer process, and (2) who may request a waiver of presumptive transfer (discussed below).

Proposed rules of court and JV forms

This proposal is directed at providing procedural clarity for the court and parties on hearings related to the waiver of presumptive transfer. The proposed rules 5.647 and 5.648 address the timelines, notice requirements, and the request for a hearing to review the presumptive transfer determination and the application of an exception. Rule 5.647 will apply to any placement change to an out-of-county placement after the rule becomes effective September 1, 2018. Rule 5.648 will apply to those children and nonminors who are placed out-of-county as of December 31, 2017 and continue to reside in an out-of-county placement. The rules mirror each other with some exceptions (discussed below). The various elements of the proposed rules are highlighted below.

Timelines

Proposed rule 5.647 provides timelines for a timely hearing on the issue of presumptive transfer. As section 14717.1(d)(4) states, a hearing may be requested “prior to the county’s determination becoming final.” The committee wanted to ensure that the county’s determination on presumptive transfer does not finalize during the period when a request for a hearing is pending and prior to a final decision by the court if a hearing is granted.

The rule therefore reflects that the individual who is requesting a hearing will have three court days from the date of being informed of the placing agency’s determination on the request for a waiver of presumptive transfer to request a hearing. The ACL states that the request for a hearing should be made before the placing agency’s determination “becomes final” (page 9). Without indicating when the determination becomes final, the ACL on page 7 states that the placing agency shall notify the Mental Health Plan where the child resides within three business days of the presumptive transfer decision and ensure that the foster child’s residence address is updated in the Medi-Cal eligibility data system within two business days of making the determination. The presumptive transfer should therefore proceed within three days of the placing agency providing notice of their determination on the waiver of presumptive transfer.

The department and CDSS were contacted on this issue and have indicated that the timeline to request a hearing may be amended in a future All County Letter or All County Information Notice (ACIN). Staff from the department and CDSS indicated that the individual requesting a hearing be given *seven days* after being informed of the placing agency’s determination on the request for waiver of presumptive transfer to request a hearing. It is expected that the new seven-day timeline will be published in a new information notice that is currently under construction, and may be published during the comment period. The committee will monitor this issue and

seek comment on whether the timeline should be adjusted to match any changes to the administrative process.

In order to avoid lengthy delays, the rule further proposes that a hearing be set within five court days of the request for hearing being filed. The committee also elected to indicate in the rule that the hearing should be resolved within five days of the date the initial hearing is held unless there is a finding that good cause requires a continuance. AB 1299 was intended to ensure prompt transfer of the responsibility of arranging and providing for a child or nonminor's specialty mental health services. A limit on how long a court may take to resolve the hearing on presumptive transfer would ensure the hearing process does not create a lengthy delay of a resolution of presumptive transfer determination, while allowing for flexibility where good cause is found.

Notice

The proposed rule 5.647 would require the clerk to provide notice of the hearing if a hearing is granted by the court. Certain individuals who can request a hearing may not be in a position to provide effective notice. While an attorney or social worker may be well-versed on how to provide notice, others—such as a parent, foster child, or youth, or the person responsible for making mental health decisions on behalf of the child—may not be.

To provide clarity and consistency, the committee elected to include a specific age for when notice is required to a child of a description of the presumptive transfer process and how to request a waiver of presumptive transfer. A minor can consent to mental health treatment at the age of 12.¹⁰ At the age of 10, a child is to be provided notice of their right to attend court.¹¹ A child of any age who is the subject of a juvenile court hearing is entitled to be present at a hearing.¹² The committee is seeking input on whether age 10 or age 12, or some other age, is most appropriate.

The committee also elected to allow the person to request a waiver within two days of being provided notice of the placing agency's initial determination on presumptive transfer as required in subdivision (d)(1) of the proposed rule. This is to protect against those situations where the placing agency does not give timely notice of the presumptive transfer determination. Likewise, the request for a hearing is to be made within three days of being informed of the placing agency's determination of the request for the application of a waiver of presumptive transfer. These timelines would provide a layer of protection for the right to request a judicial review against not being timely informed of the placing agency's notice requirements under the rule.

Finally, to ensure that the administrative process of presumptive transfer does not take place prior to the court ruling on the request for a hearing or the application of a waiver to presumptive

¹⁰ Fam. Code, § 6924.

¹¹ Section 349.

¹² *Id.*

transfer, subdivision (b)(4) requires that the person requesting the hearing also inform the placing agency within three days of being informed of the placing agency's determination on the application of a waiver to presumptive transfer by providing the placing agency with a copy of the JV-214 form requesting a hearing. This will ensure that the placing agency will be aware of the request for a hearing and should not proceed with presumptive transfer until the court rules on the request or makes a ruling on the request following a hearing.

Report from the social worker or probation officer

Proposed rule 5.647 requires that the social worker or probation officer prepare a report for the hearing if one is granted. Subdivision (d) of the proposed rule provides a list of items that must be discussed or documented in the report. These items include a discussion of the placing agency's rationale for their determination on the request for waiver and the agency's responsibilities during the presumptive transfer process as found in the ACL.¹³ These responsibilities include:

- Notice of a description of presumptive waiver and exceptions and how to request a waiver of presumptive transfer;
- Informing certain individuals and the CFT of the placing agency's initial determination on presumptive transfer;
- Consulting the CFT and other professionals as appropriate on the presumptive transfer determination; and
- Notice to the individual who requested waiver and any party to the case of the placing agency's determination of the application of a waiver.

The committee elected to include these requirements to help ensure that the court was actively engaged in ensuring that the placing agency meets the procedural requirements related to presumptive transfer. This will help ensure that a well-informed, team-based decision is made on presumptive transfer and that those who are entitled to challenge the placing agency's determination are given notice—and the requisite time—to make their objections and request a hearing.

Who may request a judicial review hearing

The committee elected to include in proposed rule 5.647 the list of both those who may request a waiver and those individuals who are entitled to request a hearing. Section 14717.1(d)(4) states that the individual who requested the exception or any other party to the case who disagrees with the determination made by the county agency, may request judicial review prior to the county's

¹³ In addition, section 14717.1(d)(7) requires that a request for waiver, the exceptions claimed as the basis for the request, a determination whether a waiver is determined to be appropriate under section 14717.1, and any other objections to the determination shall be documented in the foster child's case plan pursuant to section 16501.1. The case plan must also document that a waiver processed based on an exception shall be contingent upon the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services (§ 14717.1(d)(6)). Since these reporting requirements apply when a hearing is not granted under this rule, they were not incorporated into the proposed rules.

determination becoming final. Section 14717.1(d)(2) lists those who may request a waiver in a manner established by the department as:

- The foster child;
- The person or agency that is responsible for making mental health care decisions on behalf of the foster child;
- The county probation agency or the child welfare services agency with responsibility for the care and placement of the child; or
- Any other interested party who owes a legal duty to the child involving the child's health or welfare, as defined by the department.

As to this last category, the department currently limits this group to the child's attorney.¹⁴ The committee requested that the department consider also adding the child's legal guardian, CASA volunteer, and the child's tribe to the list of those who can request a waiver and thus a hearing. Staff to the department agreed to include these additional individuals, and it is expected that these individuals will be included as those that may request a waiver of presumptive transfer in a new information notice that is currently under construction.

Ruling on presumptive transfer

Section 14717.1(d)(4) requires that if the court sets the matter for hearing, it may confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child. This is set forth in subdivision (e)(2) of proposed rule 5.647 and proposed form JV-215 as item 10. Unless otherwise specified, the evidentiary standard would be the preponderance of the evidence.

Under section 14717(d)(6), a waiver based on an exception to a presumptive transfer shall be contingent upon the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into a contract, within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child. The court will have to make this determination if it determines that an exception to waiver applies. Information related to the county of original jurisdiction's ability to contract with a specialty mental health care provider is required by the rule to be in the report that is provided for the hearing. This finding is also included in the proposed form JV-215.

Rule 5.648-Children and nonminors who reside out of county as of December 31, 2017

The committee elected to address those children and nonminors who reside in an out-of-county placement as of December 31, 2017, in a separate rule: proposed rule 5.648, which would sunset on January 1, 2020. Rule 5.648 mirrors the elements of rule 5.647 mentioned above with some exceptions as mentioned below.

¹⁴ All County Letter 17-77, p. 5.

Section 14717.1(c)(2) addresses the presumptive transfer of SMHS jurisdiction for all foster children who were placed outside their county of original jurisdiction prior to July 1, 2017, and continue to reside out of county as of December 31, 2017. For these children, the SMHS jurisdiction is to transfer either if the foster child requests the transfer (which begins the transfer process), or if the foster child continues to reside outside the county of original jurisdiction after December 31, 2017 (§ 14717.1(c)(2)). SMHS jurisdiction shall transfer no later than the child's first regularly scheduled status review hearing, conducted pursuant to section 366 in the 2018 calendar year unless an exception to waiver as described under section 14717.1(d)(5) applies.

The committee considered whether to address this category of youth in this proposal since the proposed rule will become effective *after* the presumptive transfer determination should be made.¹⁵ The committee elected however to include these youth in a separate rule that will sunset. The committee reasoned that this was necessary because it is feasible that there will be cases in which the presumptive transfer determination will not be made prior to the first section 366 hearing of 2018.

The requirements for the presumptive transfer process for these children and nonminors mostly mirror the other rule in this proposal, rule 5.647; differences between the two rules are highlighted in gray in the attached rule 5.648. Under section 14717.1 and the ACL, the presumptive transfer process is to begin no later than 10 days prior to the child's or nonminor's first section 366 hearing in 2018.

JV forms

Four JV forms are being proposed in this proposal:

Request for a Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services (form JV-214): This form is the application for a hearing to review the placing agency's determination on the presumptive transfer determination. It includes the requisite information needed by the court to determine whether or not to grant a hearing. This would include the placing agency's presumptive transfer determination and why the person requesting a hearing believes that it would be in the child's or nonminor's best interests to depart from the placing agency's determination. It would also include the applicant's contact information.

Order on the Request and Notice of Hearing to Review Presumptive Transfer of the Responsibility for Specialty Mental Health Services (form JV-214(A)): This form provides for

¹⁵ If approved, the rule would be effective September 1, 2018. If the requirements under section 14717.1 and section 366 review timelines are followed correctly, the child or nonminor will already have had a determination on presumptive transfer prior to the rule becoming effective on September 1, 2018. Section 366 review hearings are required to be held every six months. All children or nonminors in foster care should have had a section 366 review in the 2018 calendar year before the rule is effective. However, the committee believes that it is highly probable that some foster children or youth will not have a timely section 366 hearing or a timely presumptive transfer determination by this time.

the court's order granting or denying a hearing. In addition, it can also be used as the notice form by the clerk when a hearing is granted.

Instruction Sheet for Requesting the Waiver of Transfer of Responsibility for Arranging and Providing of Specialty Mental Health Services (form JV-214-INFO): The committee elected to include an information sheet to accompany the JV form requesting a hearing on presumptive transfer. An information sheet has been created and is attached that gives an explanation of presumptive transfer and the exceptions, and how to request a hearing.

Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services (form JV-215): This form would be used for the court's order on the presumptive transfer determination if a hearing is granted. This form would provide the court with the requisite orders needed to confirm or deny the placing agency's presumptive transfer determination. Under section 14717.1(d)(4), the court may confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child.

The committee recommends renumbering *Application to Review Decision by Social Worker Not to Commence Proceedings* (form JV-215) from JV-215 to JV-212. Doing so will ensure that the forms related to this proposal will be in sequential order with forms related to the administration of a foster child's psychotropic medications. As both relate to mental health treatment, the committee considered it consistent to keep the forms in sequential order.

Alternatives Considered

The committee considered not creating the rules and JV forms related to this proposal but elected to proceed with the proposal for the reasons stated above. In addition, the committee felt the proposal was necessary to clarify the procedural requirements related to the hearing under the proposal. Although the hearings are anticipated to be rare, in the event that the hearings do occur, the committee believed that procedural clarity was necessary through the creation of the proposed rules and forms.

The committee also elected to include in the rule some of the requirements listed in section 14717.1. This includes the requirement that the placing agency consult with the individuals listed in section 14717.1(d)(3) on the presumptive transfer decision. The committee wanted the court to review these responsibilities through the report required by the rules to ensure that the placing agency is meeting these requirements.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that there will be additional costs to courts when a hearing under the rule is granted, although this has more to do with the implementation of AB 1299 than with the proposal. The proposal does require the clerk to provide notice of the hearing date, because clerks are more likely to be able to provide effective and correct notice.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency's determination on the request for waiver will be extended from three court days to seven court days.
- What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?
- Should any other individuals be included as those that may petition the court for review of the placing agency's presumptive transfer individualized exception determination?
- Should the rule include the requirements of the placing agency's responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?
- Should the rule include factors that the court may consider when making its determination of the child's best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule?
- Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer?
- Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?
- Is there any concern with subdivision (b)(2) reflecting a timeline of seven *calendar* days as opposed to seven *court* days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.
- Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 5.647 and 5.648, at pages 12–22
2. Forms JV-214, JV-214(A), JV-214-INFO, and JV-215, at pages 23–29

Rules 5.647 and 5.648 of the California Rules of Court would be adopted, effective September 1, 2018, to read:

1 **Title 5. Family and Juvenile Rules**

2
3 **Chapter 10. Medication, Mental Health, and Education**

4
5 **Rule 5.647. Medi-Cal: Presumptive Transfer of Specialty Mental Health Services**

6
7 **(a) Applicability**

8
9 This rule applies to the court’s review under Welfare and Institutions Code section
10 14717.1 of the presumptive transfer of the responsibility to arrange and provide for
11 the child or nonminor’s specialty mental health services to the child or nonminor’s
12 county of residence. The rule applies to presumptive transfer following any change
13 of placement within California for a child or nonminor to a placement outside the
14 county of original jurisdiction, including the initial placement. Nothing in this rule
15 relieves the placing agency of the reporting requirements and duties under section
16 14717.1 when no hearing under this rule is held.

17
18 **(b) Request for the waiver of presumptive transfer (§ 14717.1)**

19
20 (1) The following individuals may request that the placing agency consider the
21 application of a waiver to the presumptive transfer of the responsibility for
22 providing specialty mental health services to the child or nonminor’s county
23 of residence:

24
25 (A) The foster child or nonminor;

26
27 (B) The person or agency that is responsible for making mental health care
28 decisions on behalf of the foster child or nonminor;

29
30 (C) The child welfare services agency or the probation agency with
31 responsibility for the care and placement of the child; or

32
33 (D) The attorney of the child or nonminor.

34
35 (2) A request for waiver must be made to the placing agency within seven
36 calendar days of the determination that the child or nonminor will be in a
37 placement outside the county of original jurisdiction or within two court days
38 of the agency providing notice in subdivision (d)(1)(C).

39
40 (3) The individual who requested the waiver, or any other party to the case who
41 disagrees with the placing agency’s determination on the application of an

1 exception to presumptive transfer, may request a judicial review of the
2 placing agency's determination.

3
4 (4) A request for a hearing may be made by filing a Request for a Hearing on the
5 Determination of Presumptive Transfer of the Responsibility for Mental
6 Health Services (form JV-214), or by the filing of substantially similar
7 information. This document must be filed with the court and provided to the
8 placing agency within three court days of being informed of the placing
9 agency's determination on the application of a waiver of presumptive
10 transfer.

11
12 (5) The transfer of the responsibility for providing specialty mental health
13 services cannot occur until the court makes a ruling on the application in (4).

14
15 **(c) Setting of a hearing. (§14717.1)**

16
17 (1) The court on its own motion may direct the clerk to set a hearing, or deny the
18 request for a hearing without a ruling on the application of a waiver of
19 presumptive transfer.

20
21 (2) If the court sets a hearing, the clerk must provide notice of the hearing date
22 no later than five court days after the form was filed. Notice must be provided
23 to:

24
25 (A) The parents unless parental rights have been terminated, or guardians of
26 the child;

27
28 (B) The petitioner;

29
30 (C) The social worker or probation officer;

31
32 (D) The developmental rights holder or surrogate parent;

33
34 (E) The child or nonminor if the child is 10 years of age or older; and

35
36 (F) All other persons entitled to notice under section 293.

37
38 (3) If the court grants a hearing under (c)(1), responsibility for providing
39 specialty mental health services cannot be transferred until the court's
40 determination is final.

41
42 **(d) Reports**

1 When a hearing is granted under (c)(1), the social worker or probation officer must
2 provide a report including discussion or documentation of the following:

3
4 (1) That notice consistent with section 361.2(h) of the presumptive transfer
5 requirements under section 14717.1 was provided. The notice must include a
6 description of exceptions to presumptive transfer, the option to request a
7 waiver of presumptive transfer if an exception exists, and how to make such a
8 request to the placing agency. The notice must be provided to:

9
10 (A) The child if aged 12 years old or older, or nonminor;

11
12 (B) The attorney of the child or nonminor; and

13
14 (C) The person or agency responsible for making mental health care
15 decisions on behalf of the child or nonminor.

16
17 (2) The placing agency's rationale for the presumptive transfer decision,
18 including:

19
20 (A) Any request for waiver, and the exceptions claimed as the basis for that
21 request;

22
23 (B) A determination whether a waiver is determined to be appropriate
24 under section 14717.1(d)(5)(A-D);

25
26 (C) Any objections to the placing agency's determination; and

27
28 (D) How the child's or nonminor's best interests will be promoted by the
29 placing agency's presumptive transfer determination.

30
31 (3) That the placing agency informed the following of its initial presumptive
32 transfer determination, which includes a determination by the placing agency
33 that an exception to presumptive transfer applies, within three days of that
34 determination:

35
36 (A) The child or nonminor,

37
38 (B) The Child and Family Team coordinator if one exists, or the placing
39 agency's case-carrying social worker or deputy probation officer,

40
41 (C) The attorney of the child or nonminor,
42

1 (D) The biological parents when appropriate (if they are not already a
2 member of the Child and Family Team).

3
4 (4) That the Child and Family Team, and others who serve the child or nonminor
5 as appropriate, such as the therapist, developmental decision maker, and
6 Court Appointed Special Advocate volunteer, were consulted regarding the
7 waiver determination.

8
9 (5) That notice of the placing agency’s determination of whether to waive
10 presumptive transfer was provided to the individual who requested waiver of
11 presumptive transfer, along with all parties to the case, within three court
12 days of the placing agency’s decision on the application of waiver to
13 presumptive transfer.

14
15 (6) Whether the mental health provider in the county of original jurisdiction
16 demonstrates an existing contract with a specialty mental health services
17 provider, or the ability to enter into a contract with a specialty mental health
18 services provider within 30 days of the waiver decision, and the ability to
19 deliver timely specialty mental health services directly to the foster child or
20 youth.

21
22 **(e) Conduct of the hearing.**

23
24 (1) The social worker or probation officer must provide a report no later than two
25 court days after the hearing is set under (c)(1) that includes the information
26 required in (d).

27
28 (2) At the hearing, the court must confirm or deny the transfer of the
29 responsibility to arrange and provide for the child or nonminor’s specialty
30 mental health services or the application of an exception to presumptive
31 transfer based on the best interests of the child or nonminor. A waiver of
32 presumptive transfer is contingent on the mental health provider in the county
33 of original jurisdiction demonstrating an existing contract with a specialty
34 mental health services provider, or the ability to enter into a contract with a
35 specialty mental health services provider within 30 days of the waiver
36 decision, and the ability to deliver timely specialty mental health services
37 directly to the child or nonminor.

38
39 (3) The hearing must conclude within five court days of the initial hearing date,
40 unless a showing of good cause consistent with section 352 supports a
41 continuance of the hearing beyond five days.

1 appropriate under Welfare and Institutions Code section 14717.1, and any objections to the
2 determination must be documented in the child's or nonminor's case plan under Welfare and
3 Institutions Code section 16501.1. An exception to presumptive transfer means that the
4 responsibility to provide and arrange for specialty mental health services will remain in the
5 original county of jurisdiction. This is true when a child moves from one out-of-county placement
6 to another out-of-county placement.

7
8 **Rule 5.648 Medi-Cal: Presumptive Transfer for Out-of-County Children and**
9 **Nonminors.***

10
11 **(a) Applicability**

12
13 This rule applies to the court's review under Welfare and Institutions Code section
14 14717.1 of the presumptive transfer of the responsibility to arrange and provide for
15 the child's or nonminor's specialty mental health services to the child's or youth's
16 county of residence for any child or nonminor that resides outside their county of
17 original jurisdiction as of December 31, 2017. Nothing in this rule relieves the
18 placing agency of the reporting requirements and duties under section 14717.1
19 when no hearing under this rule is held. This rule will sunset and only applies to
20 those children or nonminors that reside in a placement outside their county of
21 original jurisdiction as of December 31, 2017.

22
23 **(b) Request for the waiver of presumptive transfer (§ 14717.1)**

24
25 (1) The following individuals may request that the placing agency consider the
26 application of a waiver to the presumptive transfer of the responsibility for
27 providing specialty mental health services to the child or nonminor's county
28 of residence:

29
30 (A) The foster child or nonminor;

31
32 (B) The person or agency that is responsible for making mental health care
33 decisions on behalf of the foster child or nonminor;

34
35 (C) The child welfare services agency or the probation agency with
36 responsibility for the care and placement of the child; or

37
38 (D) The attorney of the child or nonminor.
39

* Rule 5.648 is substantially similar to rule 5.647. To assist the reader, the differences between the two rules are highlighted in grey. This footnote and the grey highlights will not appear in the final rule.

1 (2) A request for waiver must be made to the placing agency within seven
2 calendar days of the determination that the child or nonminor will be in a
3 placement outside the county of original jurisdiction or within two court days
4 of the agency providing notice in subdivision (d)(1)(C).

5
6 (3) The individual who requested the waiver, or any other party to the case who
7 disagrees with the placing agency's determination on the application of an
8 exception to presumptive transfer, may request a judicial review of the
9 placing agency's determination.

10
11 (4) A request for a hearing may be made by filing a Request for a Hearing on the
12 Determination of Presumptive Transfer of the Responsibility for Mental
13 Health Services (form JV-214), or by the filing of substantially similar
14 information. This document must be filed with the court and provided to the
15 placing agency within three court days of being informed of the placing
16 agency's determination on the application of a waiver of presumptive
17 transfer.

18
19 (5) The transfer of the responsibility for providing specialty mental health
20 services cannot occur until the court makes a ruling on the application in (4).

21
22 **(c) Setting of a hearing. (§14717.1)**

23
24 (1) The court on its own motion may direct the clerk to set a hearing, or deny the
25 request for a hearing without a ruling on the application of a waiver of
26 presumptive transfer.

27
28 (2) If the court sets a hearing, the clerk must provide notice of the hearing date
29 no later than five court days after the form was filed. Notice must be provided
30 to:

31
32 (A) The parents unless parental rights have been terminated, or guardians of
33 the child;

34
35 (B) The petitioner;

36
37 (C) The social worker or probation officer;

38
39 (D) The developmental rights holder or surrogate parent;

40
41 (E) The child or nonminor if the child is 10 years of age or older; and

42
43 (F) All other persons entitled to notice under section 293.

1
2 (3) If the court grants a hearing under (c)(1), responsibility for providing
3 specialty mental health services cannot be transferred until the court's
4 determination is final.

5
6 **(d) Reports**

7
8 When a hearing is granted under (c)(1), the social worker or probation officer must
9 provide a report including discussion or documentation of the following:

10
11 (1) That notice was provided prior to the determination of presumptive transfer at
12 least 10 days prior to the child's or nonminor's next section 366 status review
13 hearing that occurs after December 31, 2017, or as soon as thereafter, of the
14 presumptive transfer requirements under section 14717.1. The notice must
15 include a description of exceptions to presumptive transfer, the option to
16 request a waiver of presumptive transfer if an exception exists, and how to
17 make such a request to the placing agency. The notice must be provided to:

18
19 (A) The child if aged 12 years old or older, or nonminor;

20
21 (B) The attorney of the child or nonminor; and

22
23 (C) The person or agency responsible for making mental health care
24 decisions on behalf of the child or nonminor.

25
26 (2) The placing agency's rationale for the presumptive transfer decision,
27 including:

28
29 (A) Any request for waiver, and the exceptions claimed as the basis for that
30 request;

31
32 (B) A determination whether a waiver is determined to be appropriate
33 under section 14717.1(d)(5)(A–D);

34
35 (C) Any objections to the placing agency's determination; and

36
37 (D) How the child's or nonminor's best interests will be promoted by the
38 placing agency's presumptive transfer determination.

39
40 (3) That at least 10 days prior to the child's or nonminor's next status review
41 hearing that occurs after December 31, 2017, the placing agency informed the
42 following of its initial presumptive transfer determination, which includes a

1 determination by the placing agency that an exception to presumptive transfer
2 applies, within three days of that determination:

3
4 (A) the child or nonminor,

5
6 (B) the Child and Family Team coordinator if one exists, or the placing
7 agency's case-carrying social worker or deputy probation officer,

8
9 (C) the attorney of the child or nonminor,

10
11 (D) the biological parents when appropriate (if they are not already a
12 member of the Child and Family Team).

13
14 (4) That the Child and Family Team, and others who serve the child or nonminor
15 as appropriate, such as the therapist, developmental decision maker, and
16 Court Appointed Special Advocate volunteer, were consulted regarding the
17 waiver determination.

18
19 (5) That notice of the placing agency's determination of whether to waive
20 presumptive transfer was provided to the individual who requested waiver of
21 presumptive transfer, along with all parties to the case, within three court
22 days of the placing agency's decision on the application of waiver to
23 presumptive transfer.

24
25 (6) Whether the mental health provider in the county of original jurisdiction
26 demonstrates an existing contract with a specialty mental health services
27 provider, or the ability to enter into a contract with a specialty mental health
28 services provider within 30 days of the waiver decision, and the ability to
29 deliver timely specialty mental health services directly to the foster child or
30 youth.

31
32 (7) That for a child or nonminor who resides in a county other than the county of
33 original jurisdiction after June 30, 2017, that is not receiving specialty mental
34 health services consistent with his or her mental health needs as specified in
35 the child's or nonminor's client plan, the placing agency ensured:

36
37 (A) That the child or nonminor has been provided a mental health screening
38 prior to completing the steps of presumptive transfer, unless a waiver is
39 requested; and

40
41 (B) For a child or nonminor that has been screened and assessed as needing
42 specialty mental health services but is not receiving them, that
43 presumptive transfer occurs consistent with this rule.

1
2 **(e) Conduct of the hearing**
3

4 (1) The social worker or probation officer must provide a report no later than two
5 court days after the hearing is set under (c)(1) that includes the information
6 required in (d).
7

8 (2) At the hearing, the court must confirm or deny the transfer of the
9 responsibility to arrange and provide for the child or nonminor’s specialty
10 mental health services or the application of an exception to presumptive
11 transfer based on the best interests of the child or nonminor. A waiver of
12 presumptive transfer is contingent on the mental health provider in the county
13 of original jurisdiction demonstrating an existing contract with a specialty
14 mental health services provider, or the ability to enter into a contract with a
15 specialty mental health services provider within 30 days of the waiver
16 decision, and the ability to deliver timely specialty mental health services
17 directly to the child or nonminor.
18

19 (3) The hearing must conclude within five court days of the initial hearing date,
20 unless a showing of good cause consistent with section 352 supports a
21 continuance of the hearing beyond five days.
22

23 (4) When considering whether it is in the child’s best interests to confirm or deny
24 the request for a waiver to presumptive transfer, the court may consider the
25 following:
26

27 (A) The access to mental health services and the child’s current provision
28 of specialty mental health services, and whether any important service
29 relationships will be impacted;
30

31 (B) If reunification services are being provided, the impact the transfer
32 would have on reunification services;
33

34 (C) The anticipated length of stay in the child’s or nonminor’s new
35 placement;
36

37 (D) The child’s or nonminor’s position on presumptive transfer, or the
38 child’s or nonminor’s attorney’s position on transfer; and
39

40 (E) The ability to maintain specialty mental health services in the county of
41 original jurisdiction after the child changes placements.
42

JV-214

Request for a Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services

Clerk stamps date here when form is filed.

Use this form to request a court hearing to challenge the decision made by the placing agency on the presumptive transfer determination. (Read JV-214-INFO, *Instruction Sheet for Requesting a Hearing to Review the Transfer of the Responsibility for Arranging and Providing for Specialty Mental Health Services*).

- 1 Your relationship to the child or nonminor:
 - a. Self
 - b. Person or agency that is responsible for making mental health decisions on behalf of the child or nonminor
 - c. The child's or nonminor's attorney
 - d. Parent or legal guardian
 - e. Other: _____

Fill in court name and street address:

Superior Court of California, County of

- 2 Your contact information:
 - a. Name:
 - b. Street Address:
 - c. City/State/Zip:
 - d. Telephone Number:
 - e. E-mail Address:

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

- 3 The child or nonminor is placed or will be placed in a county that is not the county of original jurisdiction. The out-of-county placement is in *(name county)*: _____ county.
- 4 A request was made to the agency that is making this placement asking that the responsibility for providing the mental health services for the child or nonminor not be transferred to the new county. That request was made on: *(date)* _____ by *(name)* _____.
- 5 On *(date)*: _____, the agency that is making the placement informed me:
 - a. That the agency thinks that it is best to transfer the responsibility for the child or nonminor's mental health care services to the new county.
 - b. That the agency agrees that there is an exception to the rule that the responsibility for providing mental health care services be transferred to the county where the child or non-minor lives or is being moved to, and that the responsibility should remain with the child or nonminor's home county.
- 6 I disagree with the agency's decision about transferring the responsibility for mental health care services to the new county, as follows:
 - a. The responsibility for providing or arranging for the child's or nonminor's specialty mental health services should transfer to the county where the child's or nonminor's lives or is being moved to.



Child's/Nonminor's name:

Case Number:

- 6 b. The following exception to presumptive transfer should be applied and the responsibility for providing or arranging mental health services should remain with the child or nonminor's home county:
- (1) The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor.
 - (2) The transfer would interfere with family reunification efforts documented in the individual case plan.
 - (3) The child's or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.
 - (4) The child's or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

7 My request in number 6 is in the child's or nonminor's best interests because:

8 I am requesting that the court grant a hearing on this matter.

9 On (date): I informed the placing agency that I was requesting a court hearing to review the decision on presumptive transfer by providing the placing agency with a copy of this form.

Date:

Type or print name

Sign your name

JV-214(A)

Order on the Request and Notice of Hearing to Review Presumptive Transfer of the Responsibility for Specialty Mental Health Services

Clerk stamps date here when form is filed.

The court finds and orders:

① A hearing on the application will be held as follows:

a. Date: _____ Time: _____
Dept.: _____ Div.: _____
Room: _____

b. Address of court: _____

② The request for a hearing is denied.

Date: _____

Judge (or Judicial Officer)

Notice: The court must provide notice to the parents unless parental rights have been terminated, or guardians of the child; the petitioner; the social worker or probation officer; the developmental rights holder or surrogate parent, the child or nonminor if the child is 10 years of age or older, and all other persons entitled to notice under section 293.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

Notice to (*name and address*):

③ Child's/nonminor's name:

④ a. The court has granted a hearing on the above date to review the presumptive transfer of the responsibility for providing specialty responsibility to provide for mental health services to the county of the child's/nonminor's residence.

b. The request for a hearing to review the presumptive transfer of the responsibility for providing specialty mental health services to the county of the child's/nonminor's residence has been denied.

⑤ The hearing will be held:

a. Date: _____ Time: _____ Dept.: _____
Div.: _____ Room: _____

b. Address of court: _____

Date: _____

Type or print name

Sign your name

Instruction Sheet for Requesting a Hearing to Review the Transfer of the Responsibility for Arranging and Providing for Specialty Mental Health Services

① What is presumptive transfer?

Most foster children are eligible for specialty mental health services, which consist of services such as therapy to address emotional, behavioral, and developmental problems. When a child is removed from their parent's or guardian's home, the child's home county where the child lived is responsible for arranging, paying, and providing these services. When a child or nonminor changes placement and is placed outside their home county, the responsibility for providing these services is required to transfer to the county where the child lives, unless certain exceptions apply. This process is called "presumptive transfer." The purpose of presumptive transfer is to ensure that foster children who are placed outside of their home county receive access to these services without any delay, based upon their individual strengths and needs.

② What are exceptions to the presumptive transfer of the responsibility for arranging of specialty mental health services?

There are four exceptions to presumptive transfer:

- The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor. In other words, the child's services would be interrupted in some way by the presumptive transfer.
- The transfer would interfere with family reunification efforts documented in the individual case plan.
- The child or nonminor's placement in a county other than the home county is expected to last less than six months.
- The child or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

③ Who is noticed of the decision?

When a decision is made to move the child or nonminor to a placement outside the home county, the social worker or probation officer must inform certain individuals of the presumptive transfer requirements

and a description of exceptions, and the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency. These individuals include the following:

- the child (if 12 years old) or nonminor,
- the attorney of the child or nonminor,
- and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor (the parent or guardian unless the court has made an order appointing someone else).

④ Requesting that a waiver be applied to presumptive transfer

You may believe it would better if the child's or nonminor's home county remained responsible for the child's or nonminor's mental health services. Maybe this is because the child or nonminor would lose an important service relationship, or reunification services might be impacted. The child or nonminor, the attorney of the child or nonminor, and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor can request that the placing agency consider applying an exception to presumptive transfer and keep the responsibility for mental health services in the home county. The placing agency is required to inform the person that requested the waiver and any party to the case of their decision. The person that requested the waiver and any party to the case can ask the court to review the placing agency's decision.

A request for waiver must be made to the placing agency within seven calendar days of the determination that the child or nonminor will be moved to a placement outside the home county. The social worker or probation officer should inform you of the best way to make the request for waiver.

⑤ How is a determination on a request for waiver made?

The social worker or probation officer will make a determination of whether or not there is an exception to presumptive transfer. This decision must be communicated to the individual who requested waiver of presumptive transfer, along with all parties to the case, within three business days of the placing agency's decision. This could be communicated in writing or orally.

⑥ How to request a hearing

The person who requested the waiver or any other party to the case may request a court hearing to review the placing agency's decision on the waiver request. If you want to ask the court to review that decision, you must file a request for hearing with the Clerk in the Superior Court where the child or nonminor's case is being heard. This request must be filed with the clerk within three court days of the agency telling you their decision.

To request a hearing, you will need to file form JV-214. The form requires certain information. You will need to explain to the court why it would be better for the child to continue to have the home county maintain responsibility for mental health treatment, or if responsibility should be moved to the new county. The person requesting a hearing is also required to inform the placing agency that they are requesting a hearing. To do this, you will need to give a copy of the JV-214 form to the social worker or probation officer within three days of being informed of the placing agency's determination of the request for the waiver.

⑦ The hearing

The court will read the request for a hearing and make a decision on whether to grant a hearing based on the information that was provided in the JV-214 form. If no hearing is granted, the placing agency's decision will become final. If a hearing is granted, presumptive transfer will be on hold until the court makes a ruling on the request for a waiver. The clerk of the court will contact you either by phone or letter informing you of the court date.

At the court date, the judge will want to know why presumptive transfer should be waived or not. The court will make its decision based on the best interests of the child or nonminor. Therefore, be prepared to explain to the judge why you believe that it is in the child's or nonminor's best interests to keep the responsibility for mental health treatment in the home county or to move it to the child's new county of residence.

JV-215

Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

- 1 a. Hearing date: _____ Time: _____
Dept.: _____ Room: _____
- b. Judicial officer: _____
- c. Party (name): Present
- (1) Child:
Attorney:
- (2) Mother:
Attorney:
- (3) Father-presumed:
Attorney:
- (4) Father-biological:
Attorney:
- (5) Father-alleged:
Attorney:
- (6) Legal guardian:
Attorney:
- (7) Indian custodian:
Attorney:
- (8) De facto parent:
Attorney:
- (9) County agency social worker:
Attorney:
- (10) Tribal representative:
Attorney:
- (11) Other (specify):
Attorney:

The court finds and orders:

- 2 The social worker/probation officer provided a report no later than two days after a hearing was granted. The report included the information as required by rule 5.647(d) or 5.648(d) of the California Rules of Court.
- 3 The court has read and considered the report.
- 4 The child or nonminor
 - a. is being placed in a county outside the county of original jurisdiction on (date): _____
 - b. was placed in a county outside the county of original jurisdiction on (date): _____
- 5 The placing agency provided notice as required in rule 5.647(d)(1) or 5.648(d)(1) of the requirement of presumptive transfer and a description of exceptions, and the option to request a waiver of presumptive transfer.



Child's/Nonminor's name:

Case Number:

- A request to apply a waiver to presumptive transfer was made to the placing agency on *(date)*:
- The placing agency has determined an exception to the presumptive transfer of the responsibility to provide for and arrange for the child's or nonminor's specialty mental health services:
- a. Does not apply.
 - b. Does apply. The exception that applies is:
 - (1) The transfer would disrupt continuity of care or delay access to services provided to the foster child.
 - (2) The transfer would interfere with family reunification efforts documented in the individual case plan.
 - (3) The child or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.
 - (4) The child or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.
- a. The placing agency consulted the Child and Family Team and others who serve the child or nonminor as appropriate regarding the waiver determination.
- b. The decision on the waiver of presumptive transfer was communicated by the placing agency to the Child and Family Team on *(date)*:
- Notice of the placing agency's determination of whether to waive presumptive transfer was provided to the individual who requested waiver of presumptive transfer, along with all parties to the case, within three court days of the placing agency's determination.
- After having considered the basis for the application for the hearing, the report provided for the hearing, and any other evidence presented at the hearing, the court finds that waiver of presumptive transfer, or presumptive transfer is in the child's or nonminor's best interests.
- a. If waiver applies, the mental health provider in the county of original jurisdiction demonstrates an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.

Date:

Judicial Officer