

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CALIFORNIA DID NOT COMPLY WITH  
REQUIREMENTS FOR DOCUMENTING  
PSYCHOTROPIC AND OPIOID  
MEDICATIONS PRESCRIBED FOR  
CHILDREN IN FOSTER CARE**

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**December 2023  
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# *Office of Inspector General*

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## Report in Brief

Date: December 2023

Report No. A-05-22-00007

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Audit

The United States Food and Drug Administration issued a safety announcement stating that a review found the combined use of opioid and some psychotropic medications can result in serious side effects, including slowed or difficult breathing and death. In addition, ineffective oversight of psychotropic and opioid medications may increase the risk of inappropriate dosing or medication combinations. To receive Federal funding for child welfare services, States are required to have a plan for the oversight of prescription medications, including psychotropic and opioid medications prescribed for children in foster care. In recent audits, we found that psychotropic and opioid medications prescribed for children in foster care were not accurately documented in the States' child welfare information systems.

Our objective was to determine whether California complied with State requirements related to the psychotropic and opioid medications prescribed for children in foster care who were eligible for assistance under Title IV-E of the Social Security Act (the Act).

### How OIG Did This Audit

We randomly selected 115 children who were prescribed psychotropic or opioid medications. We reviewed the Medicaid claim data, case records in the Child Welfare Services Case Management System (CWS/CMS), and other documentation for the children in our sample.

## California Did Not Comply With Requirements for Documenting Psychotropic and Opioid Medications Prescribed for Children In Foster Care

### What OIG Found

California did not always comply with State requirements related to the psychotropic and opioid medications prescribed for children in foster care who were eligible for assistance under the Act. Specifically, we found that the documentation for children in our sample contained the following deficiencies: (1) the opioid medications prescribed for 25 children in the sample were not recorded in CWS/CMS; (2) the psychotropic medications prescribed for 22 children were not recorded in CWS/CMS; and (3) for 28 children who were prescribed psychotropic medications, the court authorizations were not maintained in CWS/CMS, and California was not able to provide the court authorizations from the children's case files.

### What OIG Recommends and California Comments

We recommend that California: (1) establish procedures for county agency staff to document all medications (including opioid medications) prescribed for children in foster care in CWS/CMS, to the extent allowable under California law; (2) coordinate with California Department of Health Care Services to modify the existing data sharing agreement to obtain access to Medicaid claim data for all medications prescribed for children under its care and supervision, to the extent allowable under California law; (3) establish procedures for county agency staff to utilize Medicaid data match reports to verify that court authorizations for psychotropic medications prescribed for children in foster care are documented and maintained; and (4) develop and implement procedures for county agency staff to upload the court authorizations for psychotropic medications prescribed for children in foster care into CWS/CMS.

California partially concurred with our first, third, and fourth recommendations and described actions it plans to take to address them. For example, California plans to publish an information notice to all counties that will highlight procedures for county agency staff to document opioid medications, reiterate how counties may use existing Medicaid data reports to identify cases where court authorizations have not been documented in CWS/CMS, and highlight the benefits of uploading psychotropic medication authorizations into CWS/CMS. California did not concur with our second recommendation and cited privacy concerns that may limit the sharing of a foster child's health data. After reviewing California's comments, we maintain that our recommendations are valid. However, we modified the wording of two recommendations to reflect the privacy concerns raised by California.

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## INTRODUCTION

### WHY WE DID THIS AUDIT

Psychotropic medications treat mental health disorders such as schizophrenia, depression, bipolar disorder, anxiety disorders, and attention deficit/hyperactivity disorder. Opioid medications are narcotics that manage pain from surgery, injury, or illness. Psychotropic and opioid medications have a high risk for abuse and misuse. In August 2016, the United States Food and Drug Administration (FDA) issued a safety announcement stating that a review found the combined use of opioid and some psychotropic medications<sup>1</sup> can result in serious side effects, including slowed or difficult breathing and death.<sup>2</sup> In addition, ineffective oversight of psychotropic and opioid medications may increase the risk of inappropriate dosing or medication combinations.

Children in foster care are more likely to be prescribed psychotropic medications compared with children not in foster care.<sup>3</sup> To receive Federal funding for child welfare services, States are required to have a plan for overseeing and coordinating health care services for any child in foster care placement, including psychotropic and opioid medications prescribed for children in foster care.<sup>4</sup> In recent audits, we found that psychotropic and opioid medications prescribed for children in foster care were not accurately documented in the States' child welfare information systems.

Appendix B contains a list of prior Office of Inspector General (OIG) reports related to psychotropic and opioid medications prescribed for children in foster care.

### OBJECTIVE

Our objective was to determine whether the California Department of Social Services (State agency) complied with State requirements related to the psychotropic and opioid medications prescribed for children in foster care who were eligible for assistance under Title IV-E of the Social Security Act (the Act).

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<sup>1</sup> Prescribed psychotropic medications include medications that depress the central nervous system.

<sup>2</sup> FDA Drug Safety Communications, "FDA warns about serious risks and death when combining opioid pain or cough medicines with benzodiazepines; requires its strongest warning" (issued Aug. 31, 2016).

<sup>3</sup> Between 16 and 33 percent of children in out-of-home care may be using psychotropic medication on any given day, although the rate of use varies significantly based on certain factors, including the child's age, placement setting, and length of involvement with the child welfare agency. Among children generally, about 6 percent are taking psychotropic medications at some point during a given year. *Child Welfare: Oversight of Psychotropic Medication for Children in Foster Care*, Congressional Research Service (Feb. 17, 2017).

<sup>4</sup> Social Security Act § 422(b)(15)(A).

## **BACKGROUND**

### **Federal Foster Care Program and Federal Funding for Child Welfare Services**

Title IV-E of the Act established the Federal Foster Care Program, which allows States to provide safe and stable out-of-home care for children who meet certain eligibility requirements until they are safely returned home, placed permanently with adoptive families, or placed in other planned arrangements. Title IV-B of the Act provides funding for States to address the provision of child welfare services that can be used for prevention of and response to child abuse and neglect. At the Federal level, the Administration for Children and Families (ACF) administers the Foster Care program.

To receive Title IV-E funding, the Act requires a State to submit a State plan that designates a State agency that will administer the program (the Act § 471(a)(2)) and establish and maintain standards (including safety standards) for foster family homes and child care institutions.

Federal law requires States to have a plan for overseeing and coordinating health care services for any child in foster care placement. The States' Title IV-B plans must include an outline of the oversight of prescription medicines, including protocols for the appropriate use and monitoring of psychotropic medications (the Act § 422(b)(15)(A)). The State plan applies to children eligible for Title IV-E foster care payments, as well as all other children in foster care placements. The State agency is responsible for administering the Title IV-E program and the Title IV-B program.

Children in foster care who are eligible for assistance payments through Title IV-E of the Act are mandatorily eligible for Medicaid (the Act § 1902(a)(10)(A)(i)(I)). Additionally, any State with a Medicaid system funded with an enhanced Federal match must ensure that it is able to interact with health information exchanges, public health agencies, human services programs, and community organizations providing outreach and enrollment assistance services (42 CFR § 433.112(b)(16)).<sup>5</sup> The California Department of Health Care Services administers the Medicaid program, overseeing the Medicaid claim processing and information system in California.

### **Federal Funds for State Child Welfare Information Systems**

The Statewide Automated Child Welfare Information System (SACWIS) was a federally funded, voluntary, comprehensive, and automated case management tool that supported child welfare practices in States (58 Fed. Reg. 67939, 67945 (Dec. 22, 1993)). On June 2, 2016, ACF published the Comprehensive Child Welfare Information System (CCWIS) final rule. The CCWIS final rule replaces the SACWIS regulations (81 Fed. Reg. 35450 (June 2, 2016)). CCWIS is a federally funded case management information system that Title IV-E agencies may, at their option, develop to support their child welfare program needs. This rule provided a transition period of

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<sup>5</sup> The California Medicaid system is funded by an enhanced Federal match.

24 months from the effective date of the rule, which ended on August 1, 2018. During the transition period, the Title IV-E agencies with a SACWIS were required to indicate whether they would transition from the SACWIS to a CCWIS (81 Fed. Reg. 35450, 35452 (June 2, 2016)).

CCWIS regulations require, to the extent practicable, the Title IV-E agency's CCWIS to exchange relevant data, including data that may benefit Title IV-E agencies and data exchange partners in serving clients and improving outcomes, with other State systems, e.g., the Medicaid Management Information System (MMIS) (45 CFR § 1355.52(e)(2)).<sup>6</sup>

ACF provided clarification that Title IV-E agencies must maintain in the CCWIS: (1) the available medical record information received from the MMIS, including Medicaid claim history, or (2) provider encounter data for those enrolled in managed care. Additionally, regarding the Health Insurance Portability and Accountability Act rules, ACF provided clarification that the Title IV-E agencies are required to exchange and maintain CCWIS data in accordance with the confidentiality requirements of applicable Federal and State laws. ACF clarified that Title IV-E agencies should support a data exchange that shares information with the MMIS to process Medicaid claims and perform other management functions to the extent practicable. The CCWIS requirements do not require the agencies to exchange all information, but the information exchanged must be in accordance with applicable confidentiality rules (81 Fed. Reg. 35450, 35465 (June 2, 2016)).

California's child welfare system is called the Child Welfare Services Case Management System (CWS/CMS). In 2018, California declared that it would transition its SACWIS to the CCWIS. However, during our audit period, calendar years (CYs) 2019 and 2020, CWS/CMS was still operating according to the SACWIS requirements.<sup>7</sup>

### **California Department of Social Services**

The State agency is responsible for the oversight and administration of programs serving California's most vulnerable residents. The State agency's mission is to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence. The State agency has over 5,800 employees located throughout the State, including 51 offices, 58 county welfare departments, and community-based organizations.

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<sup>6</sup> States use the MMIS to process claims for Medicaid payment from providers of medical care and services furnished to beneficiaries under the medical assistance program and to perform other functions necessary for economic and efficient operations, management, monitoring, and administration of the Medicaid program (42 CFR § 433.111(b)(2)(ii)(B)).

<sup>7</sup> As of January 2023, the State agency was in the development phase of CCWIS.

The State agency's out-of-home care is designed to protect those children who cannot safely remain with their families. Most children in foster care are removed from their parents and made dependents of the State agency. A smaller number of children are wards of juvenile probation or live with legal guardians. Some are voluntarily placed in out-of-home care by their parents. Children in foster care can be placed in family homes with relatives, licensed foster family homes, homes certified by foster family agencies, and group homes.

A written case plan is developed for each child and family to ensure care and protection consistent with the best interests and special needs of the child in mind.<sup>8</sup> The plan includes a judicial or administrative review every 6 months to determine whether out-of-home care is still required. If family reunification is not possible, an alternative permanent placement plan becomes the goal for the child.

### **State Requirements for Maintaining Case Documentation**

In California, CWS/CMS is a statewide child welfare information system designed to automate the case management, planning, and collection and reporting of information for child welfare service programs, including foster care.<sup>9</sup> Health information for all children in foster care is documented in the CWS/CMS. Public health nurses (PHNs), social workers, and probation officers (county agency staff) enter data into the health and education notebook in CWS/CMS. Medication information is documented on the medications page of the health and education notebook. PHNs ensure that children in foster care have a current record of prescribed medications. The health and education passport is a printable document of the child's information from the health and education notebook in CWS/CMS.<sup>10</sup> Entry of health information into the CWS/CMS and provision of the health and education passport to the child's caregiver<sup>11</sup> are required under State law to assist with the coordination of health care services for the child.<sup>12</sup>

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<sup>8</sup> "Case plan" is defined as a written document that specifies the type of home in which the child must be placed, the safety of that home, and the appropriateness of that home to meet the child's needs. It must also include the agency's plan for ensuring that the child receives proper care and protection in a safe environment, and must set forth the appropriate services to be provided to the child, the child's family, and the foster parents, in order to meet the child's needs while in foster care, and to reunify the child with their family. In addition, the plan must specify the services that will be provided or steps that will be taken to facilitate an alternate permanent plan if reunification is not possible. WIC, § 11400(b) (effective Jan. 1, 2018).

<sup>9</sup> WIC, § 16501.5 (effective June 27, 2012).

<sup>10</sup> State agency's Annual Progress and Services Report (APSR) (2019) and Child and Family Services Plan (CFSP) (2020-2024).

<sup>11</sup> "Caregiver" means any licensed or certified foster parent, approved relative caregiver, or approved nonrelative extended family member, or approved resource family. WIC, § 16501.02 (effective Jan. 1, 2019).

<sup>12</sup> California Civil Code (CIV), § 56.103 (effective Jan. 1, 2016). State agency, All County Information Notice (ACIN) 1-20-08 (issued Mar. 26, 2008).

For a child in foster care who is prescribed psychotropic medication, judicial approval is required prior to the administration of the psychotropic medication. The court authorization is based on a request from the child's physician, social worker, probation officer, or the child's caregiver indicating the reasons for the request, a description of the child's diagnosis and behavior, and the expected results and side effects of the medication. The social worker or probation officer coordinates with the juvenile court staff to obtain official documentation of the court's approval or denial of the use of psychotropic medication for the child. The court authorization for psychotropic medication becomes part of the child's case file. Furthermore, psychotropic medications and court authorization dates are entered into the child's CWS/CMS case record.<sup>13</sup>

## HOW WE CONDUCTED THIS AUDIT

Of the 56,953 children under the care of the State agency who were eligible for Title IV-E foster care funding during CYs 2019 and 2020, we identified 3,987 children who were prescribed psychotropic or opioid medications while residing in a foster care setting. Of the 3,987 children, we identified 3,529 children who were prescribed psychotropic medications, 288 children who were prescribed opioid medications, and 170 children who were prescribed psychotropic and opioid medications. Specifically, 45,158 psychotropic and opioid medications were prescribed for the 3,987 children during CYs 2019 and 2020. Of the 45,158 prescription claims, 99 percent were psychotropic medications (44,532 claims), and 1 percent were opioid medications (626 claims).<sup>14</sup>

The State agency defines psychotropic medications as medications prescribed to affect the central nervous system to treat psychiatric disorders or illnesses.<sup>15</sup> Using the therapeutic classes from the Medicaid prescription claims, we determined that the 44,532 psychotropic medications prescribed for the children in foster care during our audit period were classified as: (1) antidepressants and anxiolytic agents, (2) psychostimulants, (3) mood stabilizers, (4) antipsychotics, and (5) hypnotics. (See Figure 1 on the next page.)

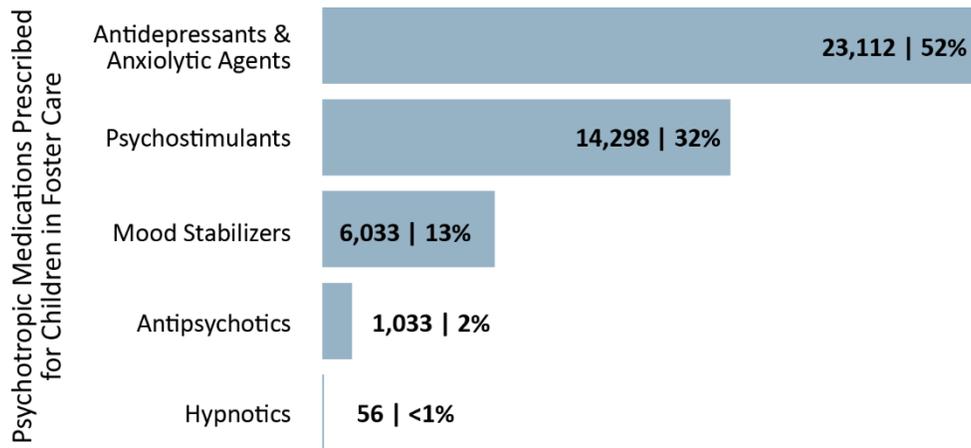
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<sup>13</sup> ACIN 1-20-08 (issued Mar. 26, 2008). ACIN 1-30-15 (issued May 1, 2015).

<sup>14</sup> The Medicaid prescription claims did not always contain the dates the medications were prescribed for the children. The California Department of Health Care Services confirmed the Medicaid prescription claims did not always contain the prescribed date during our audit period. As a result, the sampling frame did not contain all the children who were eligible for Title IV-E foster care funding and who were prescribed psychotropic or opioid medications while residing in a foster care setting.

<sup>15</sup> They may include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants. WIC, § 369.5(d) (effective Jan. 1, 2016). California Rules of Court Rule 5.640(a) (effective Jan. 1, 2009).

**Figure 1: Amount of Psychotropic Medications Prescribed for Children by Drug Classification During CYs 2019 and 2020**



Number | Percentage\* of Prescriptions

\*Percentages adjusted for rounding.

Source: OIG analysis of Medicaid claim data.

From the 3,987 children who were prescribed 1 or more psychotropic or opioid medications, we randomly selected 115 children.<sup>16</sup> Of the 115 randomly selected children, 41 were outside the scope of our review because they were prescribed psychotropic or opioid medications after being designated by California as nonminor dependents (NMDs) during part or all of our audit period.<sup>17</sup> Based on California law, NMDs have all legal decision-making authority as any other adult, including rights to privacy regarding medical conditions and providing consent to receive treatment or to take medications, including psychotropic medications.<sup>18</sup> Consequently, the NMDs control information about known medical problems, medications, and other relevant health information. This information is not shared with the State agency (or subsequently recorded in CWS/CMS) without written consent from the NMDs.

<sup>16</sup> The 115 children were selected randomly from 3 categories. We selected a random sample of 55 children who were prescribed at least 1 psychotropic medication, a random sample of 30 children who were prescribed at least 1 opioid medication, and a random sample of 30 children who were prescribed at least 1 psychotropic and at least 1 opioid medication.

<sup>17</sup> The State agency defines NMDs as participating in California’s Extended Foster Care Program and having attained the age of 18 but not yet reached the age of 21. WIC, § 11400(v) (effective Jan. 1, 2018).

<sup>18</sup> WIC, § 369.5(f) (effective Jan. 1, 2016).

Therefore, the results of our audit are limited to the 74 (of the 115 randomly selected) children who were dependents of the State agency during our audit period and who were prescribed 1 or more psychotropic or opioid medications.<sup>19</sup> For these children, we reviewed the Medicaid claim data, case records in CWS/CMS, and documentation maintained outside of CWS/CMS to determine whether the State agency maintained the medication documentation in accordance with State requirements.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology.

## FINDINGS

The State agency did not always comply with State requirements related to the psychotropic and opioid medications prescribed for children in foster care who were eligible for assistance under Title IV-E of the Act. Specifically, we found that the documentation for the 74 children in our sample contained the following deficiencies:<sup>20</sup>

- The opioid medications prescribed for 25 children were not recorded in CWS/CMS.
- The psychotropic medications prescribed for 22 children were not recorded in CWS/CMS.
- For 28 children who were prescribed psychotropic medications, the court authorizations were not maintained in CWS/CMS, and the State agency was not able to provide the court authorizations from the children's case files.

These deficiencies occurred because the State agency did not have adequate controls to ensure the documentation of medications prescribed for children in foster care were maintained in accordance with State requirements. Specifically, the State agency did not have: (1) adequate procedures for documenting opioid medications prescribed for children in foster care and (2) training and procedures to ensure the psychotropic medications prescribed for the children were accurately documented and maintained. Without adequate controls in place, the State

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<sup>19</sup> The 74 children consisted of 48 children who were prescribed at least 1 psychotropic medication, 8 children who were prescribed at least one opioid medication, and 18 children who were prescribed at least 1 psychotropic and at least 1 opioid medication. Specifically, 26 children (8 plus 18) were prescribed at least 1 opioid medication, and 66 children (48 plus 18) were prescribed at least 1 psychotropic medication during our audit period.

<sup>20</sup> For the children in the sample who were prescribed psychotropic and opioid medications, there could be more than one finding related to a child.

agency could not ensure that children in foster care received the necessary monitoring and care. As a result, the children’s health and safety and quality of care may have been at risk.

## **THE STATE AGENCY DID NOT DOCUMENT THE OPIOID MEDICATIONS PRESCRIBED FOR CHILDREN IN FOSTER CARE IN ACCORDANCE WITH REQUIREMENTS**

### **State Requirements for Documenting Medications**

The case plan for a child placed in foster care must include a health and education summary in the form of a health and education passport, or a comparable format, designed by the county agency. The health information includes, but not limited to, the child’s health providers, immunizations, medical history, hospitalizations, medication, and any other relevant health information. As soon as possible, but not later than 30 days after the initial placement of the child in foster care, the county agency staff must provide the caregiver with the child’s current health and education summary. After each required visit, the county agency staff must obtain any new information and update the summary as appropriate. In addition, the county agency staff must take the necessary steps to assist the caregiver in obtaining relevant health information for the child’s summary.<sup>21</sup>

In California, CWS/CMS is a statewide child welfare information system designed to automate the case management, planning, and collection and reporting of information for child welfare service programs, including foster care.<sup>22</sup> Health information for children in foster care is documented in the CWS/CMS. County agency staff enter data into the health and education notebook in CWS/CMS. Medication information is documented on the medications page of the health and education notebook. PHNs ensure that children in foster care have a current record of prescribed medications. The health and education passport is a printable document that is required under State law to be provided to the child's caregiver to assist with the coordination of health care services.<sup>23</sup>

Figure 2 on the next page shows the requirements for documenting medication information in the CWS/CMS health and education passport.

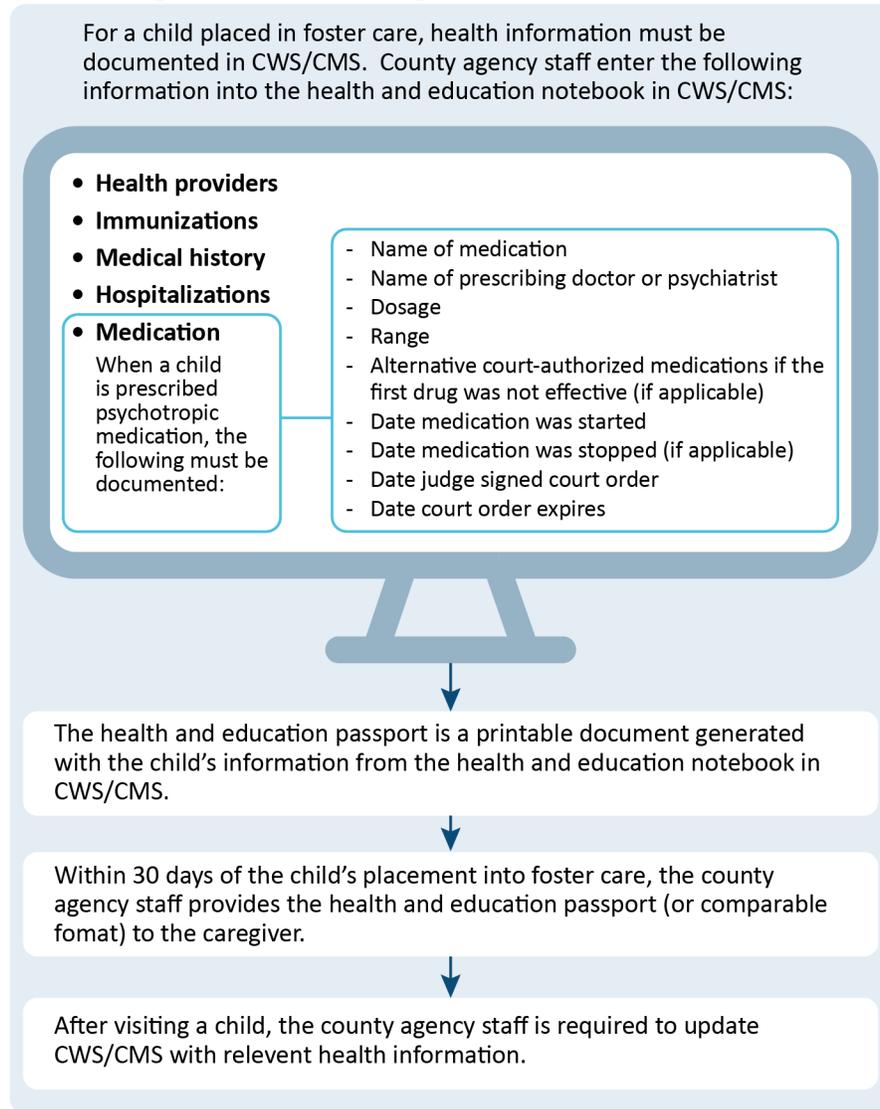
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<sup>21</sup> WIC, § 16010(a), (c), and (e) (effective Jan. 1, 2018).

<sup>22</sup> WIC, § 16501.5 (effective June 27, 2012).

<sup>23</sup> California Civil Code, section 56.103 (effective Jan. 1, 2016). ACIN 1-20-08 (issued Mar. 26, 2008). APSR and CFSP.

**Figure 2: Documenting Medications in CWS/CMS**



Source: WIC, § 16010. ACIN 1-20-08.

### **Opioid Medications Prescribed for Children in Foster Care Were Not Documented in CWS/CMS**

The State agency did not document the prescribed opioid medications in accordance with State requirements for 25 of the 26 sampled children who were prescribed 1 or more opioid medications.<sup>24</sup> Specifically, the opioid medications were not entered into CWS/CMS. We determined, from other documentation maintained within CWS/CMS, that two of the children who were prescribed an opioid medication had undergone a medical procedure. The remaining

<sup>24</sup> Of the 26 children who were prescribed opioid medications during our audit period, 1 was prescribed an opioid medication between foster care placements. As a result, the opioid medication prescribed for the child was not required to be documented in CWS/CMS.

23 children who were prescribed opioid medications had no medical information in the case records at the time the opioid medications were prescribed.<sup>25</sup>

The following are examples of children who were prescribed opioid medications that were not documented in CWS/CMS.

**Example 1: CWS/CMS Did Not Contain the Opioid Medication Prescribed for a Child in Foster Care**

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For one child in our sample (11 years old), the State agency did not document the opioid medication prescribed for the child. The notes in the CWS/CMS case record indicated the child had undergone an adenoidectomy and tonsillectomy. According to the Medicaid claim data, the child was prescribed a 10-day supply of an opioid medication following the medical procedure. When we reviewed the medications page of the health and education notebook, we found that the opioid medication prescribed for the child was not recorded in CWS/CMS.

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**Example 2: A Child Was Prescribed Opioid and Psychotropic Medications, and CWS/CMS Did Not Contain the Medications Prescribed for the Child**

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For one child in our sample (17 years old), the State agency did not document the opioid medication prescribed for the child. The reason the opioid medication was prescribed was not indicated in CWS/CMS. According to the Medicaid claim data, the child was prescribed a 4-day supply of an opioid medication. In addition, the child was prescribed a psychotropic medication during the same month that the opioid medication was prescribed. The psychotropic medication prescribed for the child was classified as an antidepressant medication. Neither medication prescribed for the child was recorded in CWS/CMS.

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**The State Agency Did Not Have Adequate Procedures for Documenting Opioid Medications Prescribed for Children in Foster Care**

The State agency procedures require documentation of the psychotropic medications only. The State agency's CWS/CMS health and education training manual provides information on entering health information in the health and education notebook in CWS/CMS, including entering medications prescribed to children in foster care.<sup>26</sup> Furthermore, the State agency has

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<sup>25</sup> For the children in our sample, we had access to the Medicaid claim data to identify the children who were prescribed 1 or more opioid medications.

<sup>26</sup> CWS/CMS Health and Education Student Guide (Rev. January 2019).

established procedures for documenting psychotropic medications prescribed for children in foster care. However, there are no procedures requiring county agency staff to document other medications prescribed to children, including opioid medications. In addition, California statutes and regulations do not outline the specific information that is required to be documented in the child's case record in CWS/CMS.

Furthermore, the State agency has a data sharing agreement with the California Department of Health Care Services.<sup>27</sup> According to the State agency, the data sharing agreement was implemented for the purpose of providing oversight, coordination, monitoring, and evaluation of the provision of medication and health services for children in foster care. On a quarterly basis, California Department of Health Care Services provides the State agency with the Medicaid claim data for children in foster care who were prescribed psychotropic medications. The State agency provides monthly Medicaid claim data to the county agencies for monitoring and oversight of children in foster care who are prescribed psychotropic medications. However, the data sharing agreement does not include other medications prescribed to children in foster care, including opioid medications.

Because opioid medications were not documented in the case records in CWS/CMS in accordance with requirements, the State agency could not ensure the children received the necessary medication management, thereby placing the children's health and safety at risk.

## **THE STATE AGENCY DID NOT CONSISTENTLY DOCUMENT PSYCHOTROPIC MEDICATIONS AND MAINTAIN DOCUMENTATION AUTHORIZING PSYCHOTROPIC MEDICATIONS PRESCRIBED FOR CHILDREN IN FOSTER CARE**

### **State Requirements for Authorizing Psychotropic Medications**

Under California law, the juvenile courts are responsible for directly authorizing and overseeing the administration of psychotropic medications for children in foster care. Judicial approval is required prior to the administration of psychotropic medications to any child who has been declared a dependent of the State agency and removed from the physical custody of the parents, or to any child who has been declared a ward of the court, removed from the physical custody of the parents, and placed into foster care.<sup>28</sup>

Under California law, only a juvenile court judicial officer has authority to make orders regarding the administration of psychotropic medication for a child unless the court determines otherwise.<sup>29</sup> As part of the psychotropic medication protocol for children in foster care,

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<sup>27</sup> Global Memorandum of Understanding (MOU) No. 15-MOU-00576 (executed April 8, 2015).

<sup>28</sup> California Rules of Court, Rule 5.640(b) (effective Jan. 1, 2019). ACIN 1-30-15 (issued May 1, 2015).

<sup>29</sup> California Rules of Court, Rule 5.640(b)(1) and (e) (effective Jan. 1, 2019).

physicians and county agency staff coordinate to initiate the court authorization of psychotropic medications following a request from the physician or psychiatrist indicating the reasons for the request, a description of the child’s diagnosis and behavior, and the expected results and side effects of the medication.<sup>30</sup> The county child welfare agencies and probation departments are encouraged to request authorization within three business days of the receipt of the request and necessary information from the physician, and the court must deny or approve the request within seven business days of receipt of the completed forms.<sup>31</sup> Psychotropic medications may be administered without court authorization in an emergency situation. However, court authorization must be obtained no more than two court days after the emergency administration of the psychotropic medication.<sup>32</sup> County agency staff coordinate with juvenile court staff to obtain official documentation of the court's approval or denial of the use of psychotropic medications. In addition, the county agency staff must provide the child’s caregiver with a copy of the court authorization approving or denying the request.<sup>33</sup>

If a child is removed from the custody of his or her parent or legal guardian, the court may order that the parent is authorized to approve or deny the administration of psychotropic medication.<sup>34</sup>

Updated information and requests must be provided to the court a minimum of every 180 days if the child is to continue taking the same psychotropic medication, and the administration of the psychotropic medication may only continue if the court renews the order for authorization.<sup>35</sup>

The court authorization becomes part of the child’s case file. Furthermore, the psychotropic medication and court authorization date are entered into the child’s CWS/CMS case record.<sup>36</sup>

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<sup>30</sup> WIC, § 739.5(a)(1) (effective Jan. 1, 2016).

<sup>31</sup> WIC, § 739.5(b) (effective Jan. 1, 2016). California Rules of Court, Rule 5.640(c) and (e) (effective Jan. 1, 2019). ACIN 1-30-15 (issued May 1, 2015).

<sup>32</sup> An emergency situation occurs when a physician finds that the child requires psychotropic medication to treat a psychiatric disorder or illness, and it is impractical to obtain authorization from the court before administering the psychotropic medication to the child. In addition, the purpose of the medication is to protect the life of the child or others, to prevent serious harm to the child or others, to treat current or imminent substantial suffering. WIC, § 739.6(a)(4) (effective June 27, 2017). California Rules of Court, Rule 5.640(i) (effective Jan. 1, 2019).

<sup>33</sup> California Rules of Court, Rule 5.640(d) (effective Jan. 1, 2019). ACIN 1-30-15 (issued May 1, 2015).

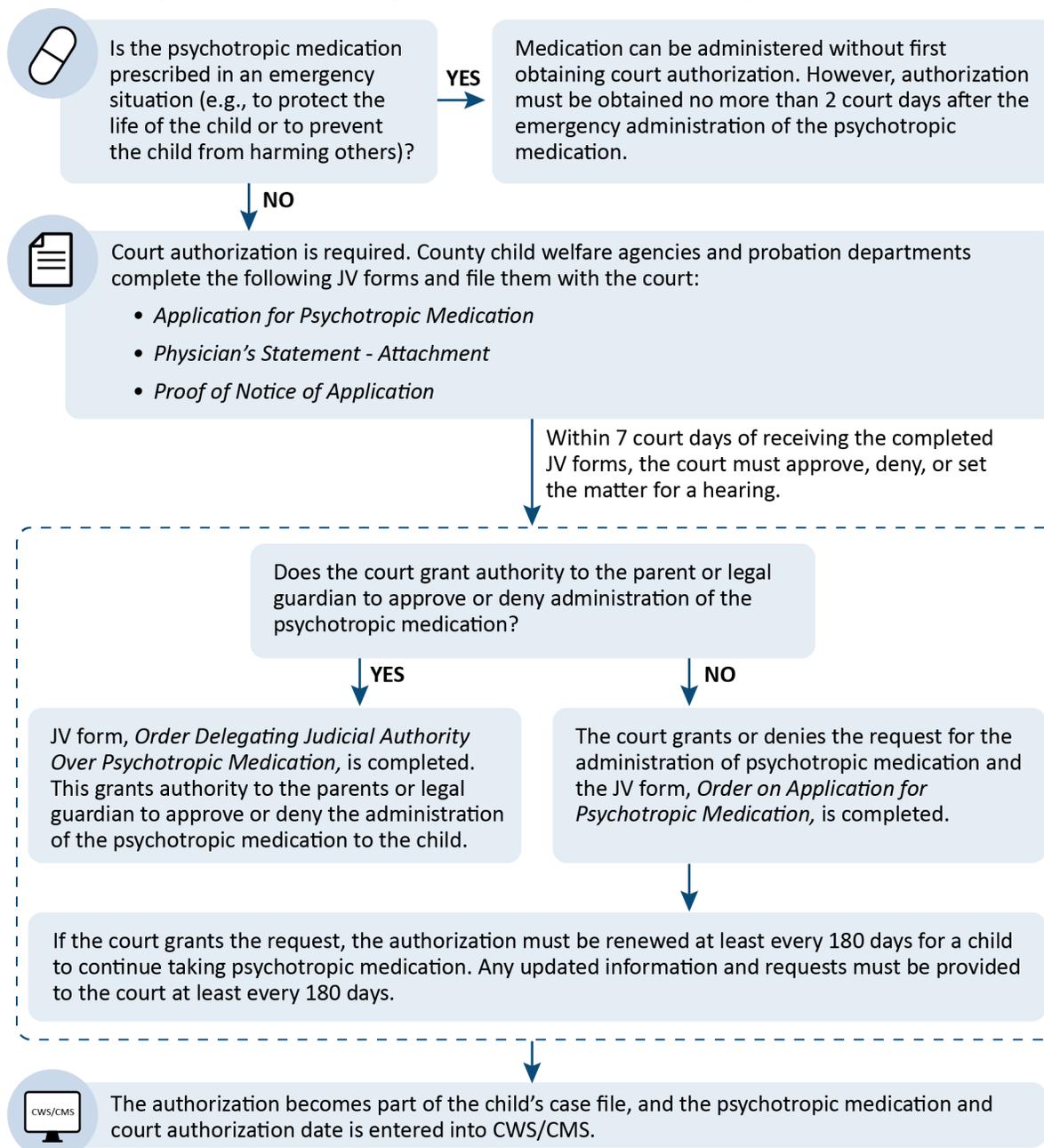
<sup>34</sup> WIC, § 369.5(a)(1) (effective Jan. 1, 2016). WIC, § 739.5(a) (effective Jan. 1, 2012). California Rules of Court, Rule 5.640(e) (effective Jan. 1, 2019).

<sup>35</sup> California Rules of Court, Rule 5.640(f) and (g) (effective Jan. 1, 2019). ACIN 1-30-15 (issued May 1, 2015).

<sup>36</sup> ACIN 1-30-15 (issued May 1, 2015).

Figure 3 shows the required court authorizations process for a child who is prescribed a psychotropic medication.

**Figure 3: Documenting Authorizations for Psychotropic Medications**



Sources: California Rules of Court, Rule 5.640. WIC, § 369.5. WIC, § 739.5.

## **Psychotropic Medications Prescribed for Children in Foster Care Were Not Consistently Documented**

The State agency did not consistently document psychotropic medications prescribed for children in foster care in accordance with State requirements. We found that the State agency did not comply with documentation requirements for 22 of the 66 sampled children who were prescribed 1 or more psychotropic medications. For 11 case records, none of the psychotropic medications prescribed were recorded in CWS/CMS, and 11 case records in CWS/CMS did not contain a complete listing of the psychotropic medications prescribed.

The following is an example of a child who was prescribed a psychotropic medication that was not documented in CWS/CMS.

### **Example 3: CWS/CMS Did Not Contain Any of the Psychotropic Medications Prescribed for the Child**

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For one child in our sample (10 years old), the State agency did not input any of the psychotropic medications prescribed during our audit period. According to the Medicaid claim data, the child was prescribed two different psychotropic medications during CYs 2019 and 2020. The psychotropic medications prescribed included drugs classified as psychostimulants. When we reviewed the medications page of the health and education notebook, we found that the psychotropic medications prescribed for the child were not recorded in CWS/CMS.

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## **Authorizations for Psychotropic Medications Were Not Always Maintained**

The State agency did not always adhere to the requirements for documenting authorizations for psychotropic medications prescribed for children in foster care. Of the 66 children who were prescribed 1 or more psychotropic medications, we found that the State agency did not comply with requirements for maintaining court authorizations for psychotropic medications prescribed for 28 children. Specifically, 24 case records in CWS/CMS did not contain any of the court authorizations and the State agency was not able to provide the court authorizations from the children's case files maintained outside of CWS/CMS. In addition, four case records were missing some of the court authorizations for the psychotropic medications and the State agency was not able to provide the missing court authorizations from children's case files maintained outside of CWS/CMS.

The following is an example of a child who was prescribed psychotropic medications and the required authorizations were not maintained by the State agency.

#### **Example 4: The State Agency Did Not Maintain Any of the Court Authorizations Psychotropic Medications Prescribed for the Child**

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For one child in our sample (13 years old), the State agency did not maintain any of the court authorizations for the psychotropic medications prescribed. According to the Medicaid claim data, the child was prescribed two different psychotropic medications during CYs 2019 and 2020. The psychotropic medications prescribed included drugs classified as antidepressant and psychostimulant medications. We found that the case record in CWS/CMS did not contain the initial court authorization for the psychotropic medications or the 180-day renewals. The State agency was not able to provide the court authorizations from the children’s case files maintained outside of CWS/CMS.

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#### **The State Agency’s Training and Procedures Did Not Ensure the County Agency Staff Documented Medications and Maintained Court Authorizations for Children Who Were Prescribed Psychotropic Medications**

The State agency’s CWS/CMS health and education training manual provides information on entering health information in the health and education notebook section of CWS/CMS for children who are prescribed psychotropic medications.<sup>37</sup> In addition, the State agency is required to provide psychotropic medication training to county agency staff. However, the training varies across the State as county agencies have the option to choose where their county agency staff take the training and which classes they take.<sup>38</sup>

Additionally, the State agency has a data sharing agreement with the California Department of Health Care Services.<sup>39</sup> On a quarterly basis, California Department of Health Care Services provides the State agency with the Medicaid claim data of children in foster care who were prescribed psychotropic medications. The State agency generates county-level reports for children who were prescribed psychotropic medications with no preceding court authorization dates for the prescribed medications. The State agency provides the monthly Medicaid claim data to the county agencies for monitoring and oversight of children in foster who are prescribed psychotropic medications. We found that the county agencies are not using the information from the reports provided by the State agency to ensure the court authorizations are maintained for the children in foster care who are prescribed psychotropic medications.

Finally, the State agency requires the court authorizations for psychotropic medications to become part of the children’s case files. However, there are no procedures requiring the county agency staff to upload the court authorizations to the case records in CWS/CMS. We

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<sup>37</sup> CWS/CMS Health and Education Student Guide (Rev. Jan. 2019).

<sup>38</sup> APSR and CFSP.

<sup>39</sup> MOU No. 15-MOU-00576 (executed April 8, 2015).

found the court authorizations were not consistently uploaded to the children’s case records in CWS/CMS, and the county agencies were not always able to provide the court authorizations from the children’s case files maintained outside of CWS/CMS.

To ensure the safety and well-being of the children under the State agency’s care and supervision, it is important to document prescribed psychotropic medications. Without proper oversight and procedures in place to ensure the psychotropic medications prescribed for children were accurately documented and maintained, the State agency could not be sure the children received the necessary medical care. As a result, the quality of care provided to children who were prescribed psychotropic medications may have been at risk.

### **RECOMMENDATIONS**

We recommend that the California Department of Social Services:

- establish procedures for county agency staff to document all medications (including opioid medications) prescribed for children in foster care in CWS/CMS, to the extent allowable under California law;
- coordinate with California Department of Health Care Services to modify the existing data sharing agreement to obtain access to Medicaid claim data for all medications prescribed for children under its care and supervision, to the extent allowable under California law;
- establish procedures for county agency staff to utilize Medicaid data match reports to verify that court authorizations for psychotropic medications prescribed for children in foster care are documented and maintained; and
- develop and implement procedures for county agency staff to upload the court authorizations for psychotropic medications prescribed for children in foster care into CWS/CMS.

### **STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, the State agency partially concurred with our first, third, and fourth recommendations and described actions it plans to take to address them. The State agency did not concur with our second recommendation and cited privacy concerns that may limit the sharing of a foster child’s health data. The State agency also provided technical comments that we addressed, as appropriate, in the report.

After reviewing the State agency’s comments, we maintain that our recommendations are valid. However, we modified the wording of two recommendations to reflect the privacy concerns raised by the State agency.

A summary of the State agency's comments and our responses follows. The State agency's written comments, excluding the technical comments, are included as Appendix C.

## **THE STATE AGENCY DID NOT DOCUMENT OPIOID MEDICATIONS PRESCRIBED FOR CHILDREN IN FOSTER CARE**

### **State Agency Comments**

The State agency partially concurred with our draft report's first recommendation. The State agency stated that it has procedures in place for county social workers to document medication information they receive for foster children, and it agrees with the importance of reiterating these procedures. In addition, the State agency indicated it will be publishing an updated and comprehensive ACIN that reiterates these procedures and highlights the importance of documenting opioid medications prescribed to a child or youth in foster care. The State agency noted however, that it only partially concurred with our recommendation because youth in foster care in California have privacy rights that protect some medications from being documented in CWS/CMS.

The State agency did not concur with our draft report's second recommendation. The State agency stated that it is committed to working with the California Department of Health Care Services to explore receiving Medicaid claim data for opioid medications for children in foster care, as appropriate, given the increased risks associated with these medications and the documentation concerns raised by our audit. However, the State agency stated that any exchange of health data must be consistent with the health privacy rights of foster children and youth and with appropriate legal authority for sharing such information.

### **Office of Inspector General Response**

With respect to our first recommendation, the State agency lacks procedures requiring county agency staff to document opioid medications in CWS/CMS. With respect to our second recommendation, the State agency's current Medicaid data sharing agreement with the California Department of Health Care Services does not include opioid medications.

However, for both our first and second recommendations, we acknowledge that children in foster care in California have privacy rights that protect some medications from being shared and documented in CWS/CMS. Accordingly, we added the wording "to the extent allowable under California law" to both recommendations.

## **THE STATE AGENCY DID NOT ESTABLISH PROCEDURES FOR MAINTAINING COURT AUTHORIZATIONS FOR CHILDREN WHO WERE PRESCRIBED PSYCHOTROPIC MEDICATIONS**

### **State Agency Comments**

The State agency partially concurred with our draft report's third recommendation. The State agency stated that it is committed to providing counties with information on how Medicaid data reports can be leveraged to improve monitoring of psychotropic medication for foster children and youth in their care. Specifically, the State agency plans to issue an ACIN reiterating how the data reports may be utilized and encouraging counties to have a process in place for ensuring appropriate staff can access the data reports. In addition, the State agency explained that it will work to develop a single report that combines the data from CWS/CMS and the matched Medicaid claim data set to make it easier for counties to identify children on psychotropic medications with court orders and potentially add a flag for children without court orders.

The State agency partially concurred with our draft report's fourth recommendation. The State agency stated that it has procedures in place for counties to upload the court authorizations for psychotropic medications to CWS/CMS. The State agency indicated that it is committed to promoting these procedures and highlighting the benefits of uploading psychotropic medication authorizations into CWS/CMS in an upcoming ACIN.

### **Office of Inspector General Response**

With respect to our third recommendation, the county agencies are not using the information from the Medicaid data reports provided by the State agency to ensure the court authorizations are maintained for the children in foster care who are prescribed psychotropic medications. With respect to our fourth recommendation, there were no procedures requiring the county agency staff to upload the court authorizations to the case records in CWS/CMS. We found the court authorizations were not consistently uploaded to CWS/CMS, and the county agencies were not always able to provide us with the court authorizations from the children's case files maintained outside of CWS/CMS.

We acknowledge the actions the State agency plans to take to improve the monitoring of children in foster care by uploading psychotropic medication authorizations to CWS/CMS.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

This audit covered 3,987 children in foster care we identified who were prescribed 1 or more psychotropic or opioid medications during CYs 2019 and 2020. We randomly selected a sample of 115 children from 3 categories: 55 children who were prescribed at least 1 psychotropic medication, 30 children who were prescribed at least 1 opioid medication, and 30 children who were prescribed at least 1 psychotropic and at least 1 opioid medication.

Of the 115 randomly selected children, 41 were outside the scope of our review because they were prescribed psychotropic or opioid medications after being designated by California as NMDs during part or all of our audit period. Therefore, the results of our audit are limited to the 74 children who were dependents of the State agency during part or all of our audit period and who were prescribed 1 or more psychotropic or opioid medications. For these children, we reviewed the Medicaid claim data, case records in CWS/CMS, and documentation maintained outside of CWS/CMS to determine whether the State agency maintained the medication documentation in accordance with State requirements.

We did not perform an overall assessment of the State agency's internal control structure. Rather, we limited our review of internal controls to those that were significant to our objective. Specifically, we: (1) assessed the State agency's procedures for maintaining documentation in accordance with requirements and (2) assessed the State agency's process for obtaining and documenting the health care information and inputting medications in CWS/CMS and maintaining court authorizations.

We conducted our audit from December 2021 to October 2023, which included meeting with State agency officials.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal foster care laws and State requirements for documenting medication prescribed for children in a foster care setting;
- met with State agency officials to determine how the State agency maintained the case records and documented health care information in CWS/CMS;
- obtained and reviewed the State agency's procedures for obtaining and maintaining health care information for children in foster care;
- reviewed the State agency's oversight procedures and the training curriculum provided to county agency staff;

- obtained the foster care placement data and Medicaid prescription claim data for children who were residing in a foster care setting and eligible for assistance under Title IV-E of the Act during CYs 2019 and 2020;
- identified 3,987 children who were in foster care and prescribed 1 or more psychotropic or opioid medications during CYs 2019 and 2020 (of the 56,953 children under the care of the State agency who were eligible for Title IV-E foster care funding);
- randomly selected 115 children who were in foster care and prescribed 1 or more psychotropic or opioid medications during CYs 2019 and 2020;
- removed 41 of the randomly selected children that were outside the scope of our review because they were prescribed psychotropic or opioid medications after being designated by California as NMDs during part or all of our audit period;
- reviewed the Medicaid claims for the psychotropic and opioid medications prescribed for the 74 sampled children;<sup>40</sup>
- reviewed the medication and related health care information in CWS/CMS for the 74 sampled children;
- reviewed the court authorizations for psychotropic medications prescribed for the 74 sampled children; and
- discussed the results of our audit with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>40</sup> The 74 children consisted of 48 children who were prescribed at least 1 psychotropic medication, 8 children who were prescribed at least 1 opioid medication, and 18 children who were prescribed at least 1 psychotropic and at least 1 opioid medication. Specifically, 26 children (8 plus 18) were prescribed at least 1 opioid medication, and 66 children (48 plus 18) were prescribed at least 1 psychotropic medication during our audit period.

**APPENDIX B: PRIOR OFFICE OF INSPECTOR GENERAL REPORTS RELATING TO PSYCHOTROPIC AND OPIOID MEDICATIONS PRESCRIBED FOR CHILDREN IN FOSTER CARE**

<b>Report Title</b>	<b>Report Number</b>	<b>Issue Date</b>
<i>Florida Did Not Comply With Requirements for Documenting Psychotropic and Opioid Medications Prescribed for Children in Foster Care</i>	<a href="#"><u>A-05-22-00009</u></a>	7/14/2023
<i>Michigan Did Not Comply With Requirements for Documenting Psychotropic and Opioid Medications Prescribed for Children In Foster Care</i>	<a href="#"><u>A-05-21-00030</u></a>	2/8/2023
<i>Indiana Did Not Comply With Requirements for Documenting Psychotropic and Opioid Medications Prescribed for Children in Foster Care</i>	<a href="#"><u>A-05-21-00020</u></a>	9/27/2022
<i>Ohio Did Not Ensure the Accuracy and Completeness of Psychotropic and Opioid Medication Information Recorded in Its Child Welfare Information System for Children in Foster Care</i>	<a href="#"><u>A-05-18-00007</u></a>	7/14/2020



KIM JOHNSON  
DIRECTOR

APPENDIX C: STATE AGENCY COMMENTS  
CALIFORNIA HEALTH & HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
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GAVIN NEWSOM  
GOVERNOR

November 17, 2023

Sheri L. Fulcher  
Regional Inspector General  
233 North Michigan, Suite 802  
Chicago, IL 60601

SUBJECT: REPORT A-05-22-0007, "CALIFORNIA DID NOT COMPLY WITH REQUIREMENTS FOR DOCUMENTING PSYCHOTROPIC AND OPIOID MEDICATIONS PRESCRIBED FOR CHILDREN IN FOSTER CARE"

Dear Sheri Fulcher:

The California Department of Social Services (CDSS) submits the responses below to the U.S Department of Health and Human Services Office of Inspector General's (OIG) recommendations in Report A-05-22-0007, entitled *California Did Not Comply with Requirements for Documenting Psychotropic and Opioid Medications Prescribed for Children in Foster Care*. The CDSS is committed to improving the documentation of medication provided to children and youth in foster care, with thoughtful consideration to the health privacy and confidentiality rights of foster children and youth.

**OIG RECOMMENDATION:** Establish procedures for county agency staff to document all medications prescribed for children in foster care, including opioid medications, in CWS/CMS.

**CDSS Response:** Partial concurrence as youth in foster care in California have privacy rights which protects some medications from being documented in the state-wide case management system.

California has procedures in place for county social workers to document medication information they receive for foster children; and CDSS agrees with the importance of reiterating the procedures for documenting medication within Child Welfare Services/Case Management System (CWS/CMS). The CDSS is committed to publishing an updated and comprehensive All County Information Notice (ACIN) that provides a review of these policies and procedures, including highlighting the importance of documenting opioid medications prescribed to a child or youth in foster care.

**OIG RECOMMENDATION:** Coordinate with California Department of Health Care Services (DHCS) to modify the existing data sharing agreement to obtain access to

Medicaid claim data for all medications prescribed for children under its care and supervision.

**CDSS Response:** Nonconcurrency. The CDSS is committed to working with DHCS to explore receiving claims data for opioid medications for children in foster care, as appropriate, given the increased risks associated with these medications and the documentation concerns raised by this audit. However, any exchange of health data, such as data for all medications prescribed to children in foster care, must be explored with thoughtful consideration to the existing privacy and confidentiality protections for a foster child or youth's health information and to ensure that appropriate legal authority permits the sharing of such information. For example, foster children and youth in California may access and consent to certain medical services without the consent of a parent or guardian, such as reproductive and sexual health care, including accessing contraceptives, pregnancy testing, prenatal care, or abortion and medication associated with this care. This information is confidential unless the foster youth chooses to disclose this information to their child welfare social worker or probation officer. The CDSS is committed to exploring how the existing data sharing agreement may be leveraged and shared to improve monitoring and oversight of health services, but only in a manner that is appropriately tailored and consistent with the health privacy rights of foster children and youth.

**OIG RECOMMENDATION:** Establish procedures for county agency staff to utilize Medicaid data match reports to verify that court authorizations for psychotropic medications prescribed for children in foster care are documented and maintained.

**CDSS Response:** Partial concurrence. The CDSS is committed to providing counties reports with additional information on how these data reports and existing data measures can be leveraged to improve monitoring of psychotropic medication for foster children and youth in their care. The CDSS plans to reiterate how the data reports may be utilized in a forthcoming ACIN. This comprehensive ACIN will also encourage counties to have a process in place for ensuring appropriate staff can access the report data.

Additionally, CDSS is committed to exploring how the existing data reports may be improved with the development of streamlined reports through the SafeMeasures application, which is currently leveraged to provide this information to counties, as well as through the implementation of Child Welfare Services-California Automated Response and Engagement System (CWS-CARES). Since early 2012, CDSS and the DHCS have collaborated on an initiative known as the Quality Improvement Project: Improving Psychotropic Medication Use in Children and Youth in Foster Care (QI Project). To enhance the oversight and monitoring of psychotropic medication use within the California foster care system, several aggregate data measures were

developed. These measures provide information on prescribing characteristics that pose the most risk to children and youth by using and matching data derived from the CWS/CMS and Medi-Cal paid claims data. Such data matches are made possible by the global data sharing agreement (GDSA) that currently exists between CDSS and DHCS.

Since 2015, the global data sharing agreement was made available for county child welfare agencies to receive data containing confidential information pertaining to the children and youth in foster care under their jurisdiction. Counties who access the SafeMeasures "Medi-Cal Reports" menu have access to client level psychotropic medication and specific laboratory claims data. This individual, client-level data is an important tool which allows counties to monitor the use of psychotropic medication more effectively among the children in foster care.

SafeMeasures also contains a report titled "Psychotropic Medication Authorization" which identifies cases that have an active court order for psychotropic medication. This report can be paired with the Medi-Cal Reports data to allow counties the ability to determine cases with active authorizations, expired authorization, or in-need of court authorization. The CDSS will work with Evident Change, the creator of SafeMeasures, to explore the development of a single report that combines the data from CWS/CMS and the matched claims data set to make it easier for counties to identify children on psychotropic meds with court orders and potentially add a flag for children without court orders.

The CDSS will continue its efforts to improve the existing data reports and will provide counties with information on how this data may be used to improve the oversight and monitoring of psychotropic medication provided to children in foster care through an ACIN.

**OIG RECOMMENDATION:** Develop and implement procedures for county agency staff to upload the court authorizations for psychotropic medications prescribed for children in foster care into CWS/CMS.

**CDSS Response:** Partial concurrence: California has procedures in place for counties to upload the court authorizations for psychotropic medications to CWS/CMS, as detailed in the CWS/CMS training curriculum. The CDSS is committed to promoting these procedures and highlighting the benefits of uploading psychotropic medication authorizations into CWS/CMS in a comprehensive ACIN provided to counties. Additionally, as CDSS continues to develop the new CWS-CARES system, CDSS is committed to exploring how this functionality may be improved upon and integrated into CWS-CARES.

The CDSS is committed to strengthening the documentation of psychotropic and opioid medications as raised by the OIG's audit report and recommendations. For any questions or requests for clarification regarding the information in this letter, please direct them to Rikki House, Family Permanency and Support Services Branch Program Analyst at [rikki.house@dss.ca.gov](mailto:rikki.house@dss.ca.gov).

In partnership,

/Kim Johnson/

KIM JOHNSON  
Director