

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 915
By: Kolkhorst et al. (Nelson)
Health & Human Services
5/7/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 915 ensures that the use of psychotropic medications by foster youth is appropriate, necessary, and monitored.

Specifically, C.S.H.B. 915:

- increases accountability and awareness for those making medical decisions by defining informed consent;
- requires notification of biological parents when there are changes in the psychotropic medication plan for their youth in foster care;
- strengthens transition plans for foster youth by including resources to manage medications after exiting foster care;
- requires the authorized medical consenter for a foster child who has been prescribed a psychotropic medication to ensure the child sees the prescribing physician, physician assistant, or advanced practice nurse, at least once every 90 days;
- strengthens training on psychotropic medications for medical consenters of foster children; and
- provides additional tools to the child's guardian ad litem, attorney ad litem, caseworker, and court to protect the health and safety of a child.

C.S.H.B. 915 amends current law relating to the administration and monitoring of health care provided to foster children.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.002, Family Code, by adding Subsection (b-1) to require a guardian ad litem appointed for a child in a proceeding under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) or 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services), in addition to the duties required by Subsection (b) (relating to certain requirements of a guardian ad litem appointed for a child), to review the medical care provided to the child, and in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided.

SECTION 2. Amends Section 107.003, Family Code, as follows:

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD AND AMICUS ATTORNEY. (a) Creates this subsection from existing text. Makes no further change to this subsection.

(b) Requires an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263, in addition to the duties required by Subsection (a) (relating to requiring an attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court in certain research, considerations, and

investigations; be trained in child advocacy; and be entitled to request, receive, and participate in certain legal matters), to:

- (1) review the medical care provided to the child;
- (2) in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided; and
- (3) for a child at least 16 years of age, advise the child of the child's right to request the court to authorize the child to consent to the child's own medical care under Section 266.010 (Consent to Medical Care by Foster Child at Least 16 Years of Age).

SECTION 3. Amends Section 263.001, Family Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (3-a), to define “advanced practice nurse” and “physician assistant,” and to make a nonsubstantive change.

SECTION 4. Amends Section 263.306(a), Family Code, as follows:

(a) Requires the court at each permanency hearing to:

- (1)-(7) Makes no change to these subdivisions;
- (8) review the medical care provided to the child as required by Section 266.007 (Judicial Review of Medical Care);
- (9) ensure the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on the medical care provided;
- (10) for a child receiving psychotropic medication, determine whether the child has been provided appropriate psychosocial therapies, behavior strategies, and other non-pharmacological interventions, and has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days for purposes of the review required by Section 266.011;
- (11)-(14) Makes nonsubstantive changes;
- (15) if the child is committed to the Texas Juvenile Justice Department (TJJD) or released under supervision by TJJD, rather than committed to the Texas Youth Commission (TYC) or released under supervision by TYC, determine whether the child's needs for treatment, rehabilitation, and education are being met; and
- (16) Makes nonsubstantive changes.

SECTION 5. Amends Section 263.503(a), Family Code, as follows:

(a) Requires the court, at each placement review hearing, to determine whether:

- (1)-(3) Makes no change to these subdivisions;
- (4) the child is receiving appropriate medical care;
- (5) the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on the medical care provided;
- (6) a child who is receiving psychotropic medication has been provided appropriate psychosocial therapies, behavior strategies, and other non-pharmacological interventions, and has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days for purposes of the review required by Section 266.011;

(7)-(11) Makes nonsubstantive changes; and

(12) if the child is committed to TJJD or released under supervision by TJJD, rather than committed to TYC or released under supervision by TYC, the child's needs for treatment, rehabilitation, and education are being met.

SECTION 6. Amends Section 264.121, Family Code, by adding Subsection (g), to require the Department of Family and Protective Services (DFPS), for a youth taking prescription medication, to ensure that the youth's transition plan includes provisions to assist the youth in managing the use of the medication and in managing the child's long-term physical and mental health needs after leaving foster care, including provisions that inform the youth about the use of the medication, the resources that are available to assist the youth in managing the use of the medication, and informed consent and the provision of medical care in accordance with Section 266.010(l) (relating to requiring DFPS, before a foster child reaches the age of 16, or the private agency providing substitute care or case management services to the foster child to advise the foster child of the right to a hearing to determine whether the foster child is authorized to consent to medical care).

SECTION 7. Amends Section 266.001, Family Code, by amending Subdivision (1) and adding Subdivisions (1-a), (6), and (7), to define "advanced practice nurse," "physician assistant," and "psychotropic medication," and to make a nonsubstantive change.

SECTION 8. Amends Section 266.004, Family Code, by adding Subsections (h-1) and (h-2), as follows:

(h-1) Requires that the training required by Subsection (h) (relating to prohibiting a person from being authorized to consent to medical care provided to a foster child unless the person has completed a DFPS-approved training program related to informed consent and the provision of all areas of medical care as defined by Section 266.001(Definitions)) include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications.

(h-2) Requires each person required to complete a training program under Subsection (h) to acknowledge in writing that the person has received the training described by Subsection (h-1), understands the principles of informed consent for the administration of psychotropic medication, and understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consenting to the use of a psychotropic medication.

SECTION 9. Amends Chapter 266, Family Code, by adding Section 266.0042, as follows:

Sec. 266.0042. CONSENT FOR PSYCHOTROPIC MEDICATION. Provides that consent to the administration of a psychotropic medication is valid only if:

(1) the consent is given voluntarily and without undue influence; and

(2) the person authorized by law to consent for the foster child receives verbally or in writing information that describes the specific condition to be treated, the beneficial effects on that condition expected from the medication, the probable health and mental health consequences of not consenting to the medication, the probable clinically significant side effects and risks associated with the medication, and the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment.

SECTION 10. Amends the heading to Section 266.005, Family Code, to read as follows:

Sec. 266.005. PARENTAL NOTIFICATION OF CERTAIN MEDICAL CONDITIONS.

SECTION 11. Amends Section 266.005, Family Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Requires DFPS to notify the child's parents of the initial prescription of a psychotropic medication to a foster child and of any change in dosage of the psychotropic medication at the first scheduled meeting between the parents and the child's caseworker after the date the psychotropic medication is prescribed or the dosage is changed.

(c) Provides that DFPS is not required to provide notice under Subsection (b) (relating to requiring DFPS to make reasonable efforts to notify a child's parents within 24 hours of a significant medical condition involving a foster child, and the enrollment or participation of a foster child in a drug research program) or (b-1) to a parent who has had certain parental rights terminated or relinquished or whose information cannot be located or ascertained by DFPS.

SECTION 12. Amends Section 266.007(a), Family Code, as follows:

(a) Requires the court, at each hearing under Chapter 263, or more frequently if ordered by the court, to review a summary of the medical care provided to the foster child since the last hearing. Requires that the summary include information regarding:

(1)-(2) Makes no change to these subdivisions;

(3) Makes nonsubstantive changes;

(4) for a child receiving a psychotropic medication any psychosocial therapies, behavior strategies, or other non-pharmacological interventions that have been provided to the child; and the dates since the previous hearing of any office visits the child had with the prescribing physician, physician assistant, or advanced practice nurse as required by Section 266.011; and

(5)-(9) Makes nonsubstantive changes.

SECTION 13. Amends Chapter 266, Family Code, by adding Section 266.011, as follows:

Sec. 266.011. MONITORING USE OF PSYCHOTROPIC DRUG. Requires the person authorized to consent to medical treatment for a foster child prescribed a psychotropic medication to ensure that the child has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

(1) appropriately monitor the side effects of the medication; and

(2) determine whether the medication is helping the child achieve the treatment goals, and continued use of the medication is appropriate.

SECTION 14. Amends Section 533.0161(b), Government Code, as follows:

(b) Requires the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program, as appropriate (HHSC), to implement a system under which HHSC will use Medicaid prescription drug data to monitor the prescribing of psychotropic drugs for:

(1) children who are in the conservatorship of DFPS and enrolled in the STAR Health Medicaid managed care program or eligible for both Medicaid and Medicare; and

(2) children who are under the supervision of DFPS through an agreement under the Interstate Compact on the Placement of Children under Subchapter B (Interstate Compact on the Placement of Children), Chapter 162 (Adoption), Family Code.

Makes nonsubstantive changes.

SECTION 15. Repealer: the heading to Subchapter A (General Provisions), Chapter 266 (Medical Care and Educational Services for Children in Foster Care), Family Code.

SECTION 16. Provides that the changes in law made by this Act apply to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 17. Effective date: September 1, 2013.