

By: Kolkhorst, N. Gonzalez of El Paso,  
Burkett, Naishtat, Dukes, et al.

H.B. No. 915

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the administration and monitoring of health care  
3 provided to foster children.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 107.002, Family Code, is amended by  
6 adding Subsection (b-1) to read as follows:

7 (b-1) In addition to the duties required by Subsection (b),  
8 a guardian ad litem appointed for a child in a proceeding under  
9 Chapter 262 or 263 shall:

10 (1) review the medical care provided to the child; and  
11 (2) in a developmentally appropriate manner, seek to  
12 elicit the child's opinion on the medical care provided.

13 SECTION 2. Section 107.003, Family Code, is amended to read  
14 as follows:

15 Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR  
16 CHILD AND AMICUS ATTORNEY. (a) An attorney ad litem appointed to  
17 represent a child or an amicus attorney appointed to assist the  
18 court:

19 (1) shall:

20 (A) subject to Rules 4.02, 4.03, and 4.04, Texas  
21 Disciplinary Rules of Professional Conduct, and within a reasonable  
22 time after the appointment, interview:

23 (i) the child in a developmentally  
24 appropriate manner, if the child is four years of age or older;

1 (ii) each person who has significant  
2 knowledge of the child's history and condition, including any  
3 foster parent of the child; and

4 (iii) the parties to the suit;

5 (B) seek to elicit in a developmentally  
6 appropriate manner the child's expressed objectives of  
7 representation;

8 (C) consider the impact on the child in  
9 formulating the attorney's presentation of the child's expressed  
10 objectives of representation to the court;

11 (D) investigate the facts of the case to the  
12 extent the attorney considers appropriate;

13 (E) obtain and review copies of relevant records  
14 relating to the child as provided by Section 107.006;

15 (F) participate in the conduct of the litigation  
16 to the same extent as an attorney for a party;

17 (G) take any action consistent with the child's  
18 interests that the attorney considers necessary to expedite the  
19 proceedings;

20 (H) encourage settlement and the use of  
21 alternative forms of dispute resolution; and

22 (I) review and sign, or decline to sign, a  
23 proposed or agreed order affecting the child;

24 (2) must be trained in child advocacy or have  
25 experience determined by the court to be equivalent to that  
26 training; and

27 (3) is entitled to:

- 1 (A) request clarification from the court if the  
2 role of the attorney is ambiguous;
- 3 (B) request a hearing or trial on the merits;
- 4 (C) consent or refuse to consent to an interview  
5 of the child by another attorney;
- 6 (D) receive a copy of each pleading or other  
7 paper filed with the court;
- 8 (E) receive notice of each hearing in the suit;
- 9 (F) participate in any case staffing concerning  
10 the child conducted by an authorized agency; and
- 11 (G) attend all legal proceedings in the suit.

12 (b) In addition to the duties required by Subsection (a), an  
13 attorney ad litem appointed for a child in a proceeding under  
14 Chapter 262 or 263 shall:

- 15 (1) review the medical care provided to the child;
- 16 (2) in a developmentally appropriate manner, seek to  
17 elicit the child's opinion on the medical care provided; and
- 18 (3) for a child at least 16 years of age, advise the  
19 child of the child's right to request the court to authorize the  
20 child to consent to the child's own medical care under Section  
21 266.010.

22 SECTION 3. Section 263.306(a), Family Code, is amended to  
23 read as follows:

- 24 (a) At each permanency hearing the court shall:
- 25 (1) identify all persons or parties present at the  
26 hearing or those given notice but failing to appear;
- 27 (2) review the efforts of the department or another

1 agency in:

2 (A) attempting to locate all necessary persons;

3 (B) requesting service of citation; and

4 (C) obtaining the assistance of a parent in  
5 providing information necessary to locate an absent parent, alleged  
6 father, or relative of the child;

7 (3) review the efforts of each custodial parent,  
8 alleged father, or relative of the child before the court in  
9 providing information necessary to locate another absent parent,  
10 alleged father, or relative of the child;

11 (4) return the child to the parent or parents if the  
12 child's parent or parents are willing and able to provide the child  
13 with a safe environment and the return of the child is in the  
14 child's best interest;

15 (5) place the child with a person or entity, other than  
16 a parent, entitled to service under Chapter 102 if the person or  
17 entity is willing and able to provide the child with a safe  
18 environment and the placement of the child is in the child's best  
19 interest;

20 (6) evaluate the department's efforts to identify  
21 relatives who could provide the child with a safe environment, if  
22 the child is not returned to a parent or another person or entity  
23 entitled to service under Chapter 102;

24 (7) evaluate the parties' compliance with temporary  
25 orders and the service plan;

26 (8) review the medical care provided to the child as  
27 required by Section 266.007;

1           (9) ensure the child has been provided the  
2 opportunity, in a developmentally appropriate manner, to express  
3 the child's opinion on the medical care provided;

4           (10) for a child receiving psychotropic medication,  
5 determine whether the child:

6                   (A) has been provided appropriate psychosocial  
7 therapies, behavior strategies, and other non-pharmacological  
8 interventions; and

9                   (B) has been seen by the prescribing physician at  
10 least once every 90 days for purposes of the review required by  
11 Section 266.011;

12           (11) determine whether:

13                   (A) the child continues to need substitute care;

14                   (B) the child's current placement is appropriate  
15 for meeting the child's needs, including with respect to a child who  
16 has been placed outside of the state, whether that placement  
17 continues to be in the best interest of the child; and

18                   (C) other plans or services are needed to meet  
19 the child's special needs or circumstances;

20           (12) [~~(9)~~] if the child is placed in institutional  
21 care, determine whether efforts have been made to ensure placement  
22 of the child in the least restrictive environment consistent with  
23 the best interest and special needs of the child;

24           (13) [~~(10)~~] if the child is 16 years of age or older,  
25 order services that are needed to assist the child in making the  
26 transition from substitute care to independent living if the  
27 services are available in the community;

1           (14) [~~(11)~~] determine plans, services, and further  
2 temporary orders necessary to ensure that a final order is rendered  
3 before the date for dismissal of the suit under this chapter;

4           (15) [~~(12)~~] if the child is committed to the Texas  
5 Juvenile Justice Department [~~Youth Commission~~] or released under  
6 supervision by the Texas Juvenile Justice Department [~~Youth~~  
7 ~~Commission~~], determine whether the child's needs for treatment,  
8 rehabilitation, and education are being met; and

9           (16) [~~(13)~~] determine the date for dismissal of the  
10 suit under this chapter and give notice in open court to all parties  
11 of:

12                           (A) the dismissal date;

13                           (B) the date of the next permanency hearing; and

14                           (C) the date the suit is set for trial.

15           SECTION 4. Section 263.503(a), Family Code, is amended to  
16 read as follows:

17           (a) At each placement review hearing, the court shall  
18 determine whether:

19                           (1) the child's current placement is necessary, safe,  
20 and appropriate for meeting the child's needs, including with  
21 respect to a child placed outside of the state, whether the  
22 placement continues to be appropriate and in the best interest of  
23 the child;

24                           (2) efforts have been made to ensure placement of the  
25 child in the least restrictive environment consistent with the best  
26 interest and special needs of the child if the child is placed in  
27 institutional care;

1 (3) the services that are needed to assist a child who  
2 is at least 16 years of age in making the transition from substitute  
3 care to independent living are available in the community;

4 (4) the child is receiving appropriate medical care;

5 (5) the child has been provided the opportunity, in a  
6 developmentally appropriate manner, to express the child's opinion  
7 on the medical care provided;

8 (6) a child who is receiving psychotropic medication:

9 (A) has been provided appropriate psychosocial  
10 therapies, behavior strategies, and other non-pharmacological  
11 interventions; and

12 (B) has been seen by the prescribing physician at  
13 least once every 90 days for purposes of the review required by  
14 Section 266.011;

15 (7) other plans or services are needed to meet the  
16 child's special needs or circumstances;

17 (8) [~~5~~] the department or authorized agency has  
18 exercised due diligence in attempting to place the child for  
19 adoption if parental rights to the child have been terminated and  
20 the child is eligible for adoption;

21 (9) [~~6~~] for a child for whom the department has been  
22 named managing conservator in a final order that does not include  
23 termination of parental rights, a permanent placement, including  
24 appointing a relative as permanent managing conservator or  
25 returning the child to a parent, is appropriate for the child;

26 (10) [~~7~~] for a child whose permanency goal is  
27 another planned, permanent living arrangement, the department has:

1 (A) documented a compelling reason why adoption,  
2 permanent managing conservatorship with a relative or other  
3 suitable individual, or returning the child to a parent is not in  
4 the child's best interest; and

5 (B) identified a family or other caring adult who  
6 has made a permanent commitment to the child;

7 (11) [~~(8)~~] the department or authorized agency has  
8 made reasonable efforts to finalize the permanency plan that is in  
9 effect for the child; and

10 (12) [~~(9)~~] if the child is committed to the Texas  
11 Juvenile Justice Department [~~Youth Commission~~] or released under  
12 supervision by the Texas Juvenile Justice Department [~~Youth~~  
13 ~~Commission~~], the child's needs for treatment, rehabilitation, and  
14 education are being met.

15 SECTION 5. Section 264.121, Family Code, is amended by  
16 adding Subsection (g) to read as follows:

17 (g) For a youth taking prescription medication, the  
18 department shall ensure that the youth's transition plan includes  
19 provisions to assist the youth in managing the use of the medication  
20 and in managing the child's long-term physical and mental health  
21 needs after leaving foster care, including provisions that inform  
22 the youth about:

23 (1) the use of the medication;

24 (2) the resources that are available to assist the  
25 youth in managing the use of the medication; and

26 (3) informed consent and the provision of medical care  
27 in accordance with Section 266.010(1).

1 SECTION 6. Section 266.001, Family Code, is amended by  
2 adding Subdivision (6) to read as follows:

3 (6) "Psychotropic medication" means a medication that  
4 is prescribed for the treatment of symptoms of psychosis or another  
5 mental, emotional, or behavioral disorder and that is used to  
6 exercise an effect on the central nervous system to influence and  
7 modify behavior, cognition, or affective state. The term includes  
8 the following categories when used as described by this  
9 subdivision:

- 10 (A) psychomotor stimulants;  
11 (B) antidepressants;  
12 (C) antipsychotics or neuroleptics;  
13 (D) agents for control of mania or depression;  
14 (E) antianxiety agents; and  
15 (F) sedatives, hypnotics, or other  
16 sleep-promoting medications.

17 SECTION 7. Section 266.004, Family Code, is amended by  
18 adding Subsections (h-1) and (h-2) to read as follows:

19 (h-1) The training required by Subsection (h) must include  
20 training related to informed consent for the administration of  
21 psychotropic medication and the appropriate use of psychosocial  
22 therapies, behavior strategies, and other non-pharmacological  
23 interventions that should be considered before or concurrently with  
24 the administration of psychotropic medications.

25 (h-2) Each person required to complete a training program  
26 under Subsection (h) must acknowledge in writing that the person:

- 27 (1) has received the training described by Subsection

1 (h-1);

2 (2) understands the principles of informed consent for  
3 the administration of psychotropic medication; and

4 (3) understands that non-pharmacological  
5 interventions should be considered and discussed with the  
6 prescribing physician before consenting to the use of a  
7 psychotropic medication.

8 SECTION 8. Chapter 266, Family Code, is amended by adding  
9 Section 266.0042 to read as follows:

10 Sec. 266.0042. CONSENT FOR PSYCHOTROPIC MEDICATION. (a)  
11 Consent to the administration of a psychotropic medication is valid  
12 only if:

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

15 (2) the person authorized by law to consent for the  
16 foster child receives verbally or in writing information that  
17 describes:

18 (A) the specific condition to be treated;

19 (B) the beneficial effects on that condition  
20 expected from the medication;

21 (C) the probable health and mental health  
22 consequences of not consenting to the medication;

23 (D) the probable clinically significant side  
24 effects and risks associated with the medication; and

25 (E) the generally accepted alternative  
26 medications and non-pharmacological interventions to the  
27 medication, if any, and the reasons the physician recommends the

1 proposed course of treatment.

2 (b) Consent to the administration of a psychotropic  
3 medication must be evidenced by the completion of a form prescribed  
4 by the department that is signed by the person authorized to consent  
5 to medical care for the foster child and by the health care provider  
6 administering the psychotropic medication or a person designated by  
7 that health care provider.

8 (c) The completed form must be filed in the child's case  
9 file and in the child's medical records.

10 SECTION 9. The heading to Section 266.005, Family Code, is  
11 amended to read as follows:

12 Sec. 266.005. PARENTAL NOTIFICATION OF CERTAIN  
13 [SIGNIFICANT] MEDICAL CONDITIONS.

14 SECTION 10. Section 266.005, Family Code, is amended by  
15 adding Subsection (b-1) and amending Subsection (c) to read as  
16 follows:

17 (b-1) The department shall notify the child's parents of the  
18 initial prescription of a psychotropic medication to a foster child  
19 and of any change in dosage of the psychotropic medication at the  
20 first scheduled meeting between the parents and the child's  
21 caseworker after the date the psychotropic medication is prescribed  
22 or the dosage is changed.

23 (c) The department is not required to provide notice under  
24 Subsection (b) or (b-1) to a parent who:

25 (1) has failed to give the department current contact  
26 information and cannot be located;

27 (2) has executed an affidavit of relinquishment of

1 parental rights;

2 (3) has had the parent's parental rights terminated;

3 or

4 (4) has had access to medical information otherwise  
5 restricted by the court.

6 SECTION 11. Section 266.007(a), Family Code, is amended to  
7 read as follows:

8 (a) At each hearing under Chapter 263, or more frequently if  
9 ordered by the court, the court shall review a summary of the  
10 medical care provided to the foster child since the last hearing.  
11 The summary must include information regarding:

12 (1) the nature of any emergency medical care provided  
13 to the child and the circumstances necessitating emergency medical  
14 care, including any injury or acute illness suffered by the child;

15 (2) all medical and mental health treatment that the  
16 child is receiving and the child's progress with the treatment;

17 (3) any medication prescribed for the child, ~~and~~ the  
18 condition, diagnosis, and symptoms for which the medication was  
19 prescribed, and the child's progress with the medication;

20 (4) for a child receiving a psychotropic medication:

21 (A) any psychosocial therapies, behavior  
22 strategies, or other non-pharmacological interventions that have  
23 been provided to the child; and

24 (B) the dates since the previous hearing of any  
25 office visits the child had with the prescribing physician as  
26 required by Section 266.011;

27 (5) the degree to which the child or foster care

1 provider has complied or failed to comply with any plan of medical  
2 treatment for the child;

3           (6) [~~(5)~~] any adverse reaction to or side effects of  
4 any medical treatment provided to the child;

5           (7) [~~(6)~~] any specific medical condition of the child  
6 that has been diagnosed or for which tests are being conducted to  
7 make a diagnosis;

8           (8) [~~(7)~~] any activity that the child should avoid or  
9 should engage in that might affect the effectiveness of the  
10 treatment, including physical activities, other medications, and  
11 diet; and

12           (9) [~~(8)~~] other information required by department  
13 rule or by the court.

14           SECTION 12. Chapter 266, Family Code, is amended by adding  
15 Section 266.011 to read as follows:

16           Sec. 266.011. MONITORING USE OF PSYCHOTROPIC DRUG. The  
17 person authorized to consent to medical treatment for a foster  
18 child prescribed a psychotropic medication shall ensure that the  
19 child has an office visit with the prescribing physician at least  
20 once every 90 days to allow the physician to:

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

23           (2) determine whether:

24                   (A) the medication is helping the child achieve  
25 the physician's treatment goals; and

26                   (B) continued use of the medication is  
27 appropriate.

1 SECTION 13. Section 533.0161(b), Government Code, is  
2 amended to read as follows:

3 (b) The commission shall implement a system under which the  
4 commission will use Medicaid prescription drug data to monitor the  
5 prescribing of psychotropic drugs for [~~children who are~~]:

6 (1) children who are in the conservatorship of the  
7 Department of Family and Protective Services[+] and

8 [~~(2)~~] enrolled in the STAR Health Medicaid managed care  
9 program or eligible for both Medicaid and Medicare; and

10 (2) children who are under the supervision of the  
11 Department of Family and Protective Services through an agreement  
12 under the Interstate Compact on the Placement of Children under  
13 Subchapter B, Chapter 162, Family Code.

14 SECTION 14. The heading to Subchapter A, Chapter 266,  
15 Family Code, is repealed.

16 SECTION 15. The changes in law made by this Act apply to a  
17 suit affecting the parent-child relationship pending in a trial  
18 court on or filed on or after the effective date of this Act.

19 SECTION 16. This Act takes effect September 1, 2013.