

AN ACT

relating to the administration and monitoring of health care provided to foster children.

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

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

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

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

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

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

(1) shall:

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

- (i) the child in a developmentally 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 263.001, Family Code, is amended by
23 amending Subdivision (1) and adding Subdivisions (1-a) and (3-a) to
24 read as follows:

25 (1) "Advanced practice nurse" has the meaning assigned
26 by Section 157.051, Occupations Code.

27 (1-a) "Department" means the Department of Family and

1 Protective Services.

2 (3-a) "Physician assistant" has the meaning assigned
3 by Section 157.051, Occupations Code.

4 SECTION 4. Section 263.306(a), Family Code, is amended to
5 read as follows:

6 (a) At each permanency hearing the court shall:

7 (1) identify all persons or parties present at the
8 hearing or those given notice but failing to appear;

9 (2) review the efforts of the department or another
10 agency in:

11 (A) attempting to locate all necessary persons;

12 (B) requesting service of citation; and

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

16 (3) review the efforts of each custodial parent,
17 alleged father, or relative of the child before the court in
18 providing information necessary to locate another absent parent,
19 alleged father, or relative of the child;

20 (4) return the child to the parent or parents if the
21 child's parent or parents are willing and able to provide the child
22 with a safe environment and the return of the child is in the
23 child's best interest;

24 (5) place the child with a person or entity, other than
25 a parent, entitled to service under Chapter 102 if the person or
26 entity is willing and able to provide the child with a safe
27 environment and the placement of the child is in the child's best

1 interest;

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

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

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

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

13 (10) for a child receiving psychotropic medication,
14 determine whether the child:

15 (A) has been provided appropriate psychosocial
16 therapies, behavior strategies, and other non-pharmacological
17 interventions; and

18 (B) has been seen by the prescribing physician,
19 physician assistant, or advanced practice nurse at least once every
20 90 days for purposes of the review required by Section 266.011;

21 (11) determine whether:

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

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

27 (C) other plans or services are needed to meet

1 the child's special needs or circumstances;

2 (12) [~~(9)~~] if the child is placed in institutional
3 care, determine whether efforts have been made to ensure placement
4 of the child in the least restrictive environment consistent with
5 the best interest and special needs of the child;

6 (13) [~~(10)~~] if the child is 16 years of age or older,
7 order services that are needed to assist the child in making the
8 transition from substitute care to independent living if the
9 services are available in the community;

10 (14) [~~(11)~~] determine plans, services, and further
11 temporary orders necessary to ensure that a final order is rendered
12 before the date for dismissal of the suit under this chapter;

13 (15) [~~(12)~~] if the child is committed to the Texas
14 Juvenile Justice Department [~~Youth Commission~~] or released under
15 supervision by the Texas Juvenile Justice Department [~~Youth~~
16 ~~Commission~~], determine whether the child's needs for treatment,
17 rehabilitation, and education are being met; and

18 (16) [~~(13)~~] determine the date for dismissal of the
19 suit under this chapter and give notice in open court to all parties
20 of:

21 (A) the dismissal date;

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

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

24 SECTION 5. Section 263.503(a), Family Code, is amended to
25 read as follows:

26 (a) At each placement review hearing, the court shall
27 determine whether:

1 (1) the child's current placement is necessary, safe,
2 and appropriate for meeting the child's needs, including with
3 respect to a child placed outside of the state, whether the
4 placement continues to be appropriate and in the best interest of
5 the child;

6 (2) efforts have been made to ensure placement of the
7 child in the least restrictive environment consistent with the best
8 interest and special needs of the child if the child is placed in
9 institutional care;

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

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

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

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

18 (A) has been provided appropriate psychosocial
19 therapies, behavior strategies, and other non-pharmacological
20 interventions; and

21 (B) has been seen by the prescribing physician,
22 physician assistant, or advanced practice nurse at least once every
23 90 days for purposes of the review required by Section 266.011;

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

26 (8) [~~5~~] the department or authorized agency has
27 exercised due diligence in attempting to place the child for

1 adoption if parental rights to the child have been terminated and
2 the child is eligible for adoption;

3 (9) [~~(6)~~] for a child for whom the department has been
4 named managing conservator in a final order that does not include
5 termination of parental rights, a permanent placement, including
6 appointing a relative as permanent managing conservator or
7 returning the child to a parent, is appropriate for the child;

8 (10) [~~(7)~~] for a child whose permanency goal is
9 another planned, permanent living arrangement, the department has:

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

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

16 (11) [~~(8)~~] the department or authorized agency has
17 made reasonable efforts to finalize the permanency plan that is in
18 effect for the child; and

19 (12) [~~(9)~~] if the child is committed to the Texas
20 Juvenile Justice Department [~~Youth Commission~~] or released under
21 supervision by the Texas Juvenile Justice Department [~~Youth~~
22 ~~Commission~~], the child's needs for treatment, rehabilitation, and
23 education are being met.

24 SECTION 6. Section 264.121, Family Code, is amended by
25 adding Subsection (g) to read as follows:

26 (g) For a youth taking prescription medication, the
27 department shall ensure that the youth's transition plan includes

1 provisions to assist the youth in managing the use of the medication
2 and in managing the child's long-term physical and mental health
3 needs after leaving foster care, including provisions that inform
4 the youth about:

- 5 (1) the use of the medication;
6 (2) the resources that are available to assist the
7 youth in managing the use of the medication; and
8 (3) informed consent and the provision of medical care
9 in accordance with Section 266.010(1).

10 SECTION 7. Section 266.001, Family Code, is amended by
11 amending Subdivision (1) and adding Subdivisions (1-a), (6), and
12 (7) to read as follows:

13 (1) "Advanced practice nurse" has the meaning assigned
14 by Section 157.051, Occupations Code.

15 (1-a) "Commission" means the Health and Human Services
16 Commission.

17 (6) "Physician assistant" has the meaning assigned by
18 Section 157.051, Occupations Code.

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

26 (A) psychomotor stimulants;

27 (B) antidepressants;

- 1 (C) antipsychotics or neuroleptics;
- 2 (D) agents for control of mania or depression;
- 3 (E) antianxiety agents; and
- 4 (F) sedatives, hypnotics, or other
- 5 sleep-promoting medications.

6 SECTION 8. Section 266.004, Family Code, is amended by
7 adding Subsections (h-1) and (h-2) to read as follows:

8 (h-1) The training required by Subsection (h) must include
9 training related to informed consent for the administration of
10 psychotropic medication and the appropriate use of psychosocial
11 therapies, behavior strategies, and other non-pharmacological
12 interventions that should be considered before or concurrently with
13 the administration of psychotropic medications.

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

16 (1) has received the training described by Subsection
17 (h-1);

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

20 (3) understands that non-pharmacological
21 interventions should be considered and discussed with the
22 prescribing physician, physician assistant, or advanced practice
23 nurse before consenting to the use of a psychotropic medication.

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

26 Sec. 266.0042. CONSENT FOR PSYCHOTROPIC MEDICATION.

27 Consent to the administration of a psychotropic medication is valid

1 only if:

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

4 (2) the person authorized by law to consent for the
5 foster child receives verbally or in writing information that
6 describes:

7 (A) the specific condition to be treated;

8 (B) the beneficial effects on that condition
9 expected from the medication;

10 (C) the probable health and mental health
11 consequences of not consenting to the medication;

12 (D) the probable clinically significant side
13 effects and risks associated with the medication; and

14 (E) the generally accepted alternative
15 medications and non-pharmacological interventions to the
16 medication, if any, and the reasons for the proposed course of
17 treatment.

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

20 Sec. 266.005. PARENTAL NOTIFICATION OF CERTAIN
21 [SIGNIFICANT] MEDICAL CONDITIONS.

22 SECTION 11. Section 266.005, Family Code, is amended by
23 adding Subsection (b-1) and amending Subsection (c) to read as
24 follows:

25 (b-1) The department shall notify the child's parents of the
26 initial prescription of a psychotropic medication to a foster child
27 and of any change in dosage of the psychotropic medication at the

1 first scheduled meeting between the parents and the child's
2 caseworker after the date the psychotropic medication is prescribed
3 or the dosage is changed.

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

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

8 (2) has executed an affidavit of relinquishment of
9 parental rights;

10 (3) has had the parent's parental rights terminated;
11 or

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

14 SECTION 12. Section 266.007(a), Family Code, is amended to
15 read as follows:

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

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

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

25 (3) any medication prescribed for the child, ~~and~~ the
26 condition, diagnosis, and symptoms for which the medication was
27 prescribed, and the child's progress with the medication;

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

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

5 (B) the dates since the previous hearing of any
6 office visits the child had with the prescribing physician,
7 physician assistant, or advanced practice nurse as required by
8 Section 266.011;

9 (5) the degree to which the child or foster care
10 provider has complied or failed to comply with any plan of medical
11 treatment for the child;

12 (6) [~~5~~] any adverse reaction to or side effects of
13 any medical treatment provided to the child;

14 (7) [~~6~~] any specific medical condition of the child
15 that has been diagnosed or for which tests are being conducted to
16 make a diagnosis;

17 (8) [~~7~~] any activity that the child should avoid or
18 should engage in that might affect the effectiveness of the
19 treatment, including physical activities, other medications, and
20 diet; and

21 (9) [~~8~~] other information required by department
22 rule or by the court.

23 SECTION 13. Chapter 266, Family Code, is amended by adding
24 Section 266.011 to read as follows:

25 Sec. 266.011. MONITORING USE OF PSYCHOTROPIC DRUG. The
26 person authorized to consent to medical treatment for a foster
27 child prescribed a psychotropic medication shall ensure that the

1 child has been seen by the prescribing physician, physician
2 assistant, or advanced practice nurse at least once every 90 days to
3 allow the physician, physician assistant, or advanced practice
4 nurse to:

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

7 (2) determine whether:

8 (A) the medication is helping the child achieve
9 the treatment goals; and

10 (B) continued use of the medication is
11 appropriate.

12 SECTION 14. Section 533.0161(b), Government Code, is
13 amended to read as follows:

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

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

19 [~~2~~] enrolled in the STAR Health Medicaid managed care
20 program or eligible for both Medicaid and Medicare; and

21 (2) children who are under the supervision of the
22 Department of Family and Protective Services through an agreement
23 under the Interstate Compact on the Placement of Children under
24 Subchapter B, Chapter 162, Family Code.

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

27 SECTION 16. The changes in law made by this Act apply to a

H.B. No. 915

1 suit affecting the parent-child relationship pending in a trial
2 court on or filed on or after the effective date of this Act.

3 SECTION 17. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 915 was passed by the House on April 19, 2013, by the following vote: Yeas 138, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 915 on May 16, 2013, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 915 was passed by the Senate, with amendments, on May 15, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor