By: Kolkhorst, N. Gonzalez of El Paso, Burkett, Naishtat, Dukes, et al. H.B. No. 915

Substitute the following for H.B. No. 915:

By: Zedler C.S.H.B. No. 915

A BILL TO BE ENTITLED

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;

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

(iii) the parties to the suit;

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

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

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

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

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

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

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

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

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

(3) is entitled to:

(A) request clarification from the court if the role of the attorney is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the child by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing concerning the child conducted by an authorized agency; and

(G) attend all legal proceedings in the suit.

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

(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.

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

(a) At each permanency hearing the court shall:

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

(2) review the efforts of the department or another

agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

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

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

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

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

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

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

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

(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:

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

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

(11) determine whether:

(A) the child continues to need substitute care;

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

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

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

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

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

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

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

(A) the dismissal date;

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

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

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

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

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

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

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

(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:

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

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

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

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

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

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

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

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

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

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

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

(g) For a youth taking prescription medication, the department shall 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:

(1) the use of the medication;

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

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

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

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

(A) psychomotor stimulants;

(B) antidepressants;

(C) antipsychotics or neuroleptics;

(D) agents for control of mania or depression;

(E) antianxiety agents; and

(F) sedatives, hypnotics, or other sleep-promoting medications.

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

(h-1) The training required by Subsection (h) must 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) Each person required to complete a training program under Subsection (h) must acknowledge in writing that the person:

(1) has received the training described by Subsection

(h-1);

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

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

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

Sec. 266.0042. CONSENT FOR PSYCHOTROPIC MEDICATION. (a) 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:

(A) the specific condition to be treated;

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

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

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

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

proposed course of treatment.

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

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

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

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

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

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

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

(2) has executed an affidavit of relinquishment of

parental rights;

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

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

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

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

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

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

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

(4) for a child receiving a psychotropic medication:

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

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

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

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

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

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

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

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

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

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

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

(2) determine whether:

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

(B) continued use of the medication is appropriate.

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

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

(1) children who are in the conservatorship of the Department of Family and Protective Services[~~,~~] and

[~~(2)~~] 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 the Department of Family and Protective Services through an agreement under the Interstate Compact on the Placement of Children under Subchapter B, Chapter 162, Family Code.

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

SECTION 15. 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 16. This Act takes effect September 1, 2013.