

SUBJECT: Administering, monitoring psychotropic medications for foster children

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Debbie Andolino; Katherine Barillas, One Voice Texas; Vivian Dorsett, Foster Care Alumni of America - Texas Chapter; Mike Foster, TACPA; Cathy Hamilton and Andrea Sparks, CASA; Javier Henderson; Richard Lavallo, Disability Rights Texas; Tyrone Obaseki; Tressa Provost; Kristopher Sharp; Lee Spiller, Citizens Commission on Human Rights; Laquinton Wagner; (*Registered, but did not testify:* John Breeding; Sarah Crockett, Texas Association for Infant Mental Health; Eileen Garcia, Texans Care for Children; Becky Haskin, CASA; Paul Hastings, Texas Home School Coalition; Brett Merfish, Texas Appleseed; Susan Milam, National Association of Social Workers - Texas Chapter; Jim Moore, CCHR; Jessica Sheely, Texas CASA)

Against — None

On — Tina Amberboy, Supreme Court of Texas Children's Commission; Elizabeth "Liz" Kromrei, Department of Family and Protective Services; William Streusand; Eric Woomer, Federation of Texas Psychiatry; (*Registered, but did not testify:* Heather Fazio, Texans for Accountable Government; Michelle Harper, Health and Human Services Commission; Kerry Raymond, Department of State Health Services; James Rogers, DFPS; Andy Vasquez, HHSC)

BACKGROUND: Family Code, ch. 262, authorizes a governmental entity with an interest in a child to file a suit affecting the parent-child relationship or to take possession of a child without a court order in certain situations.

Family Code, ch. 263, governs the review of children under Department of Family Services (DFPS) care, including procedures at permanency and

placement review hearings.

Family Code, ch. 266, governs the medical care and educational services provided to children in foster care, including provisions that require training, judicial review of medical care, and parental notification. It also allows a foster child who is at least 16 years old to seek the court's authorization to consent to medical care and requires DFPS or the private agency providing care to provide information about seeking authorization, informed consent, and the provision of medical care.

On December 1, 2011, the Texas Juvenile Probation Commission (TJPC) and Texas Youth Commission (TYC) were combined into the newly created Texas Juvenile Justice Department (TJJD).

DIGEST:

CSHB 915 would change the requirements for prescribing a psychotropic medication to a foster child and would modify legal and medical oversight of a foster child's medical care.

Definition. The bill would define a psychotropic medication as one prescribed to treat symptoms of psychosis or another mental, emotional, or behavioral disorder by affecting the central nervous system to change behavior, cognition, or affective state. This definition would include:

- psychomotor stimulants;
- antidepressants;
- antipsychotics or neuroleptics;
- agents for control of mania or depression;
- anti-anxiety agents; and
- sedatives, hypnotics, or other sleep-promoting medications.

Informed consent and notification. The bill would define consent procedures for psychotropic medications. Consent by a foster parent or other person authorized to give consent would be valid only if given voluntarily and without undue influence and if the person authorized to give consent had received verbal or written information about the:

- specific condition to be treated;
- expected beneficial effects on that condition from the medication;
- probable health and mental consequences of not consenting;
- probable clinically significant side effects and risks from the

medication;

- generally accepted alternative medications and any non-pharmacological options; and
- reasons the physician recommends proposed treatment.

The consent would need to be signed by both the person authorized to give consent and the prescribing health care provider (or designee), and the completed form would be kept in the child's case file and medical records.

The foster child's authorized consentor would have to ensure the child had an office visit with the prescribing physician at least every 90 days to allow the physician to monitor side effects, determine whether the medication was helping achieve the physician's treatment goals, and decide if continued use of the medication was appropriate.

The bill would require DFPS, at the soonest scheduled meeting, to notify a foster child's parents of any prescription or dosage change of a psychotropic medication.

Medication review. The bill would change the duties of a child's court-appointed representatives in a suit affecting the parent-child relationship. It would require attorneys ad litem and guardians ad litem to review a child's medical care and attempt to determine, in a developmentally appropriate way, the child's opinion on that care. If the child were more than 16 years of age, it would require an attorney ad litem to advise the child of the right to seek the court's authorization to consent to medical care.

At each hearing for a foster child who was prescribed a psychotropic medication, the court would have to be updated on non-pharmacological options provided to child and the dates of office visits with the prescribing physician since the last hearing. At a permanency or placement review hearing, the court would review the child's medical care and determine whether the child was provided an appropriate opportunity to express an opinion on that medical care and, for a child receiving psychotropic medication, whether the child had been provided with non-pharmacological options and had seen the prescribing physician at least once every 90 days.

Training. DFPS would be required to train individuals seeking to become authorized consentors on informed consent for psychotropic medications

and possible non-pharmacological options. Before an individual could consent to medical care for a foster child, that person would have to acknowledge in writing that he or she had received the training and understood the information.

If a child were taking prescription medication, DFPS would be required to include medical care information in a child's transition plan, including information about:

- using the medication;
- resources to assist with medication management; and
- informed consent and the right to seek the court's authorization to consent to medical care at age 16.

Data collection. The bill would require the Health and Human Services Commission (HHSC) to monitor the use of psychotropic medications for foster children dually eligible for Medicaid and Medicare or under DFPS supervision through an interstate agreement.

The bill would replace references to the Texas Youth Commission with the Texas Juvenile Justice Department.

The bill would take effect on September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 915 would add important protections for foster children prescribed psychotropic medications by improving oversight and accountability, establishing informed consent procedures, and enhancing training requirements.

Some Texas foster children are being over-medicated. Psychotropic medications are powerful drugs with significant side effects, and the number of foster children being prescribed these medications raises serious concerns about possible abuse and long-term consequences. A 2011 study by the U.S. Government Accountability Office (GAO) found that 32 percent of Texas foster children were on psychotropic medications, compared with only 7 percent of non-foster children. The number of very young foster children on these medications, as well as the number of foster children with multiple prescriptions, is also alarming.

CSHB 915 would increase medical and legal oversight, ensuring that these medications were prescribed only when medically necessary, that non-

pharmacological options were considered, and that all individuals, including children, were adequately informed. For example, the bill would require a foster child to have an office visit with the prescribing physician at least once every 90 days, enabling the physician to better evaluate the necessity of the medication and any negative side effects. It also would require the court and court-appointed representatives to seek the child's opinion on the medical care and involve the child in the treatment process.

The bill would add important protections for foster children dually eligible for Medicaid and Medicare or under DFPS supervision through an interstate agreement. HHSC would collect data on these children, enabling the agency to better identify red flags, such as the prescribing of potentially unsafe medications.

Although opponents argue that Texas is already reducing the number of foster children on psychotropic medications, CSHB 915 would help Texas make greater reductions more quickly, while adding important protections for foster children. Additional administrative burdens would be minimal and outweighed by the benefits of enhanced oversight and accountability.

OPPONENTS
SAY:

CSHB 915 would be unnecessary because recent reforms are moving Texas in the right direction with respect to children prescribed psychotropic medications. A recent study by the HHSC found the percentage of foster children on psychotropic medications has dropped to 32 percent from 42 percent in 2004, even as the number of foster children has increased. And although Texas has made great progress limiting these medications to medically necessary situations, foster children will probably always have a higher rate of psychotropic medication prescriptions because they often come from traumatic situations involving serious abuse and neglect.

By focusing on psychotropic medications, the bill could place additional administrative burdens on doctors. It is already difficult to find health care providers to serve this population, and additional regulations could exacerbate this shortage.

NOTES:

The committee substitute made substantial changes to the bill as filed. The original bill was limited to provisions:

- cross-referencing the definition of psychotropic drug to an existing section of the Family Code;

- cross-referencing consent procedures to existing section of the Health and Safety Code;
- requiring DFPS to include medical care information in a foster child's transition plan;
- requiring parental notification for prescription or dosage change of a psychotropic medication;
- requiring an office visit with the prescribing physician at least once every 90 days;
- requiring a court to review a foster child's psychotropic drug prescriptions and determine whether non-pharmacological options were considered; and
- requiring HHSC to collect data on foster children dually eligible for Medicaid and Medicare or under DFPS supervision through an interstate agreement.

According to the Legislative Budget Board, CSHB 915 would cost about \$1.1 million in general revenue related funds through the end of fiscal 2014-15 for staffing costs and additional technology. In fiscal years 2016-2018, the cost is estimated to be \$567,232 per year in general revenue related funds.