



**To: Texas Judges Who Hear CPS Cases**

**From: The Honorable Robin Sage Jurist in Residence, Office of Court Administration**

**Date: October 28, 2013**

**RE: Legislative Changes Regarding Medical Care for Foster Youth**

During the last legislative session, the Texas Legislature expanded the role of the judge in the oversight of medical care and use of psychotropic medications for children in the State's care. Also, in September of this year, HHSC and DFPS released the fourth edition of *Psychotropic Medication Utilization Parameters for Children and Youth in Foster Care (Parameters)*, the guidelines developed to offer instruction on the appropriate prescribing and management of psychotropic medications.

**Q: What do I need to know about changes to the Family Code regarding the use of psych meds?**

**A: Courts** must review at each hearing under Chapter 263, a summary of the medical care provided to the foster child since the last hearing, and ensure the child has been provided the opportunity to express their opinion on the medical care being provided. For children receiving psychotropic medication, determine whether the child:

- has been provided appropriate psychosocial therapies, behavior strategies, and other non-pharmacological interventions; and
- is being seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days.

**GALs/AALs** have new responsibilities. Attorneys and Guardians ad Litem must:

- 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.

Further, Attorneys ad Litem must:

- 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.

**Informed Consent** for the administration of a psychotropic medication is now valid only if:

- consent is given voluntarily and without undue influence; and
- the person authorized by law to consent to medical care for the foster child receives verbally or in writing information that describes (i) the specific condition to be treated; (ii) beneficial effects on that condition expected from the medication; (iii) probable health and mental health consequences of not consenting to the medication; (iv) probable clinically significant side effects and risks associated with the medication; (v) generally accepted alternative medications and non-pharmacological interventions to the medication; and (vi) the reasons for the proposed course of treatment.

**Medical Consenters** must take new training on giving informed consent and must acknowledge in writing that they have: (i) received such training; (ii) understand the principles of informed consent for psychotropic medication; and (iii) understand that non-pharmacological interventions should be considered and discussed with the prescribing practitioner before consenting to the use of a psychotropic medication.

**Parents Must Be Notified** by DFPS of the initial prescription, and any change in dosage of a psychotropic medication to a foster child, 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.

**Youth Transitioning from Foster Care** must have transition plans that include 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 how to use the medication and resources available to assist the youth in managing their medications.

**Children Placed in Texas Pursuant to the ICPC** and children who are dually eligible for Medicaid and Medicare must also have psychotropic medications monitoring. HHSC and DFPS have identified these populations of children and are currently collaborating to determine a medication monitoring process.

**Q: Does the updated fourth edition of the Parameters change the medication criteria?**

**A: Yes!** The new 2013 Parameters trigger a review of psychotropic medications for children in foster care when a child's medication regimen includes 4 or more psychotropic medications (previously it was reviewed at 5). Also, a ninth criterion has been added to the Parameters, calling for a review of a child's clinical care if a child is receiving an antipsychotic medication without the appropriate metabolic monitoring for glucose and lipids levels.

As a result of the wide use of the Parameters in Texas, the prescription patterns of psychotropic medications for children in foster care have improved significantly since 2004, and we expect the 2013 changes to further that improvement.

The 2013 Parameters are available at:

[http://www.dfps.state.tx.us/Child\\_Protection/Medical\\_Services/guide-psychotropic.asp](http://www.dfps.state.tx.us/Child_Protection/Medical_Services/guide-psychotropic.asp)