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# PSYCHOTROPIC MEDICATION

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Psychotropic medications are substances that affect the mind and alter mental processes such as perception, mood and behavior. Psychotropic drugs include stimulants, antidepressants, antipsychotics and mood stabilizers. Some children need to use psychotropic medications long-term to treat mental health disorders that they inherited or developed, such as attention deficit hyperactivity disorder, severe depression, or psychosis. Other children need to use psychotropic medications temporarily to help relieve severe emotional stress and help them function in school, at home, and in the community.

The use of psychotropic medication in children in foster care has been the subject of a heated national debate. Psychiatric medication may be life-saving and relieve disabling and sometimes deadly symptoms of mental health disorders. Children and youth in foster care may benefit from medication to ameliorate the effects of trauma brought on from exposure to abuse or neglect. However, studies have shown that psychotropic medications can have serious side effects on adults using them, and little yet is known about the effects of long-term use in children.

In 2013, the 83<sup>rd</sup> Texas Legislature amended [Tex. Fam. Code § 266.001](#) to add a definition of a psychotropic medication. A “psychotropic medication” means a medication that is prescribed for the treatment of symptoms or psychosis or another mental, emotional, or behavioral disorder and that is used to exercise an effect on the central nervous system to influence or modify behavior, cognition, or affective state. The term includes the following categories when used as described by [Tex. Fam. Code § 266.001\(7\)](#):

- Psychomotor stimulants;
- Antidepressants;
- Antipsychotics or neuroleptics;
- Agents for control of mania or depression;
- Anti-anxiety agents; and
- Sedatives, hypnotics, or other sleep-promoting medications. [Tex. Fam. Code § 266.001\(7\)](#).

Texas led the nation in creating oversight protocols in 2005 when the 79<sup>th</sup> Texas Legislature enacted Senate Bill 6. This sweeping legislation proposed reforms for DFPS, including a plan to place all foster children under a single comprehensive managed care system. Texas was the first state to develop a “best practices” guide for oversight of psychotropic medications for children in foster care. Released in 2005 and most recently updated in June 2019, DFPS, the Department of State Health Services (DSHS), and the Health and Human Services Commission (HHSC) [developed the Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health, 6<sup>th</sup> Edition](#) (Parameters).<sup>125</sup> The Parameters serve as a resource for physicians and clinicians who care for children diagnosed with mental health disorders. Additionally, DFPS’s newly formed Behavioral Health Division is fully staffed and includes a Behavioral Health Services Division Administrator who manages Substance Use Disorder, CANS, Trauma-Informed Care, and Mental Health subject matter experts. You can read more about this division under the “Substance Use Disorders” chapter.

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The Texas Legislature also enacted [Tex. Fam. Code Chapter 266](#) which governs medical care and education services for children in foster care primarily through three processes:

- Medical Consenter;
- Agency Oversight; and
- Judicial Review.

## A. Medical Consenter

[Tex. Fam. Code § 266.004\(h\)](#) requires medical consenter training, which 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. [Tex. Fam. Code § 266.004\(h-1\)](#).

Each person required to complete a training program under [Tex. Fam. Code § 266.004\(h\)](#) must acknowledge in writing that the person:

- Has received the training described by [Tex. Fam. Code § 266.004\(h-1\)](#);
- Understands the principles of informed consent for the administration of psychotropic medication; and
- Understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consent to the use of a psychotropic medication. [Tex. Fam. Code § 266.004\(h-2\)](#).

The *DFPS Medical Consent Training for Caregivers* is about two and half hours long and can be found at: [https://www.dfps.state.tx.us/Training/Medical\\_Consent/](https://www.dfps.state.tx.us/Training/Medical_Consent/) .

DFPS also has a two-hour online *Psychotropic Medication Training* for DFPS staff, foster parents and residential providers, relative caregivers, and youth medical consenters. Please see: [https://www.dfps.state.tx.us/Training/Psychotropic\\_Medication/](https://www.dfps.state.tx.us/Training/Psychotropic_Medication/)

### 1. Informed Consent

Although the term “informed consent” as it relates to medical care for a child in foster care is not defined in [Tex. Fam. Code Chapter 266](#), the Texas Legislature has defined consent for psychotropic medication. Consent to the administration of a psychotropic medication is valid only if:

- The consent is given voluntarily and without undue influence;
- The person authorized by law to consent for the foster child receives verbally or in writing information that provides:
  - the specific condition to be treated;
  - the beneficial effects on that condition expected from the medication;

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- the probable health and mental health consequences of not consenting to the medication;
  - the probable clinically significant side effects and risks associated with the medication; and
  - the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment. [Tex. Fam. Code § 266.0042](#).

The Parameters describe what is meant by informed consent by stating that consent to medical treatment in non-emergency situations must be informed consent, which includes discussing the following with the prescribing doctor/psychiatrist before consenting:

- A DSM-5 (or current edition) psychiatric diagnosis for which the medication is being prescribed;
- Target symptoms;
- Treatment goals (expected benefits);
- Risks of treatment, including common side effects, laboratory finding, and uncommon but potentially severe adverse events;
- Risks of no treatment;
- Overall potential benefit to risk of treatment;
- Alternative treatments available and/or tried;
- The date the child was first placed in current placement;
- Child's current weight in pounds; and
- Child's date of birth, necessary to classify child as a child (age 1-12 years) or as an adolescent (age 13-18 years), because some medications are approved for children but not adolescents and vice versa.

Included in the idea of informed consent is the consideration of alternative treatments and trauma-informed care. The concept of trauma-informed care is a huge paradigm shift for the entire system that will take some time. The Introduction and General Principles Section of the Parameters promote a trauma-informed child and family-serving system where all parties involved recognize and respond to the varying impact of traumatic stress on those who have contact with the system, including youth, caregivers, and service providers. A robust trauma-informed system would not only screen for trauma exposure and related symptoms, but would also use culturally and linguistically appropriate, evidence-based assessments and treatment.

In 2015, the 84th Texas Legislature added [Tex. Fam. Code § 266.012](#) regarding comprehensive assessments. In Texas, this is the CANS 2.0, described in detail in the "Health Care" chapter. Not later than the 45<sup>th</sup> day after the date a child enters the conservatorship of DFPS, the child shall receive a developmentally appropriate comprehensive assessment. This statute was updated in

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2017 to require any SSCC providing therapeutic foster care services to a child shall ensure the child receives a comprehensive assessment at least once every 90 days. [Tex. Fam. Code § 266.012\(c\)](#). The assessment must include:

- A screening for trauma; and
- Interviews with individuals who have knowledge of the child's needs. [Tex. Fam. Code § 266.012\(a\)](#).

Children and youth placed in substitute care ages 3 to 17 years old must receive a Child Assessment of Needs and Strengths 2.0 (CANS) completed as part of their assessment and service planning process within 30 days of removal. The CANS is used to gather information about the strengths and needs of the child and family and used in Service Planning to assist the child and family in reaching their goals.<sup>126</sup> DFPS may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether services are provided under the medical assistance program under [Tex. Hum. Res. Code Chapter 32](#), if DFPS otherwise has the authority under [Tex. Fam. Code § 266.004](#) to consent to health care services. [Tex. Fam. Code § 266.004\(k\)](#).

## 2. Monitoring Use of Psychotropic Drug

The Medical Consenter shall ensure that the child has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

- Appropriately monitor the side effects of the medication; and
- Determine whether:
  - the medication is helping the child achieve the treatment goals; and
  - continued use of the medication is appropriate. [Tex. Fam. Code § 266.011](#).

## B. Agency Oversight

The Parameters provide recommendations for the appropriate use of psychotropic medications for children served in the public behavioral health system, including children in foster care. They include criteria indicating the need for review of the child's clinical status. Medical Consenters, caregivers, judges, attorneys, and advocates also use the Parameters as they fulfill their duties of advocacy and oversight.

### 1. Medication Review

STAR Health oversees automated reviews of pharmacy claims data for all children in foster care receiving psychotropic medications to identify medication treatments which appear to be outside the Parameters. Additionally, STAR Health clinical staff routinely conducts telephonic health screenings when children newly enter DFPS conservatorship or change placements.

The telephonic health screening includes screening of the child's psychotropic medications treatment. The screening process includes criteria such as:

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- Does the child have a documented mental health diagnosis?
  - What is the child's age? (Prescriptions might need further review if the child is under age 3 or 4, depending on the class of medication.)
  - Is the child taking two or more medications from the same drug class? (Two mood stabilizers and long and short acting stimulants from the same family are allowed, but otherwise two or more medications from the same class call for further review.)
  - Is the child prescribed four or more psychotropic medications regardless of the class?

## **2. Psychotropic Medication Utilization Review** <sup>127</sup>

The Psychotropic Medication Utilization Review (PMUR) is designed to determine whether a child's psychotropic medication treatment is outside of the Parameters and, if so, whether a consultation call from a STAR Health child psychiatrist to the prescribing physician is indicated. A PMUR can be initiated by STAR Health if indicated by a health screening or pharmacy claim review. A PMUR may also be triggered by a request from any judge, attorney, caseworker, advocate, foster parent, Medical Consenter or other concerned person working with the child. The PMUR examines child-specific clinical information about a child's diagnoses, medication dosage, and whether the medication treatment is in compliance with the Parameters. STAR Health has committed to priority responses to inquiries from judges concerning children under their supervision. PMUR findings are usually sent to the child's caseworker or can be faxed or emailed directly to the court, if requested.

All PMUR requests are reviewed by one of two STAR Health Licensed Behavior Health Clinicians who gather medical records and screen children's psychotropic medication treatment for compliance with the Parameters. If the treatment is outside the Parameters, the clinician refers the case to a STAR Health child psychiatrist to conduct a PMUR. The child psychiatrist outreaches to the treating physician, works with the treating physician to reduce polypharmacy if indicated, and prepares a PMUR report. The PMUR report will contain a formal determination about the foster child's medication treatment. The possible determinations are as follows:

- Medication treatment within Parameters;
- Medication treatment outside Parameters. Medication treatment reviewed and found to be within the standard of care;
- Medication treatment is outside Parameters and there is opportunity to reduce polypharmacy; or
- Medication treatment is outside Parameters and there is risk for or evidence of significant side effects.

STAR Health is in a good position to intervene and educate the prescribing physician because all providers are clinically privileged by STAR Health. Physicians who appear to consistently prescribe outside the Parameters despite risk for or evidence of significant side effects, or when there is an opportunity to reduce polypharmacy, are referred to the Quality of Care (QOC) review process. Additional records are examined for pervasive patterns of over or dangerous prescribing. Qualifying cases may be referred to the Peer Review Committee for further investigation and

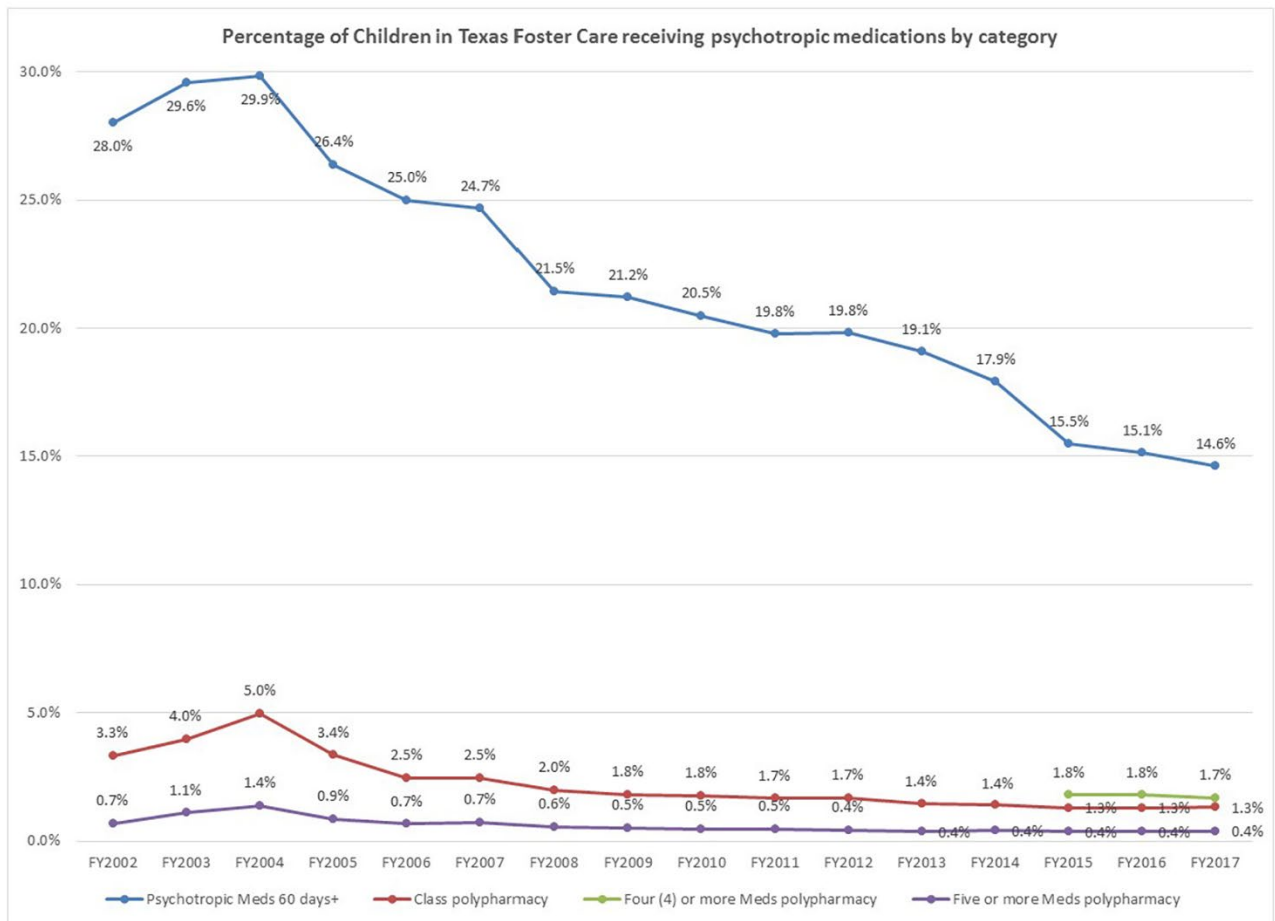
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action. The Peer Review Committee is a peer review committee established by the Managing Care Organization, Superior Health, consisting of network providers to review PMUR concerns for STAR Health Members that exceed the Quality of Care thresholds. Superior Health also utilizes consultant physicians as needed to review specific specialist issues, if a need is identified. The results of Quality Improvement and Peer Review Committee investigations and actions are confidential and may not be released to or discussed with the public. All QOC issues are tracked and trended. Any practitioner showing a pattern or trend may be placed on corrective action and/or face disciplinary action up to and including termination of contract, if warranted.

A PMUR cannot address whether other medications might be effective, and this process is not the appropriate avenue to address immediate concerns about new medications or medication side effects; the informed consent process is considered the appropriate avenue to inquire about new medications and side effects. In these situations, STAR Health recommends that the Medical Consenter contact the prescribing physician directly. DFPS also employs CPS Nurse Consultants in each administrative region to assist CPS staff with children's health issues, including questions about psychotropic medications.

### **3. Effect of Texas' Oversight Process**

As a result of the various improvements to Texas' oversight process, including hiring a Medical Director at DFPS, implementing the Parameters as a statewide monitoring system, and launching managed care and clinical consultation by STAR Health, the prescription patterns of psychotropic medications for Texas foster children have improved significantly. Every year, the use of psychotropic medications in Texas foster care continues to decrease and has decreased from approximately 25% in 2002 to under 15% in 2017 for children prescribed psychotropic medications for 60 days or more.<sup>128</sup>



### C. Parental Notification of Certain Medical Conditions

DFPS must provide notice of significant events regarding a child in foster care to the child’s biological parents and others under [Tex. Fam. Code § 264.018](#) in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible. [Tex. Fam. Code § 264.018\(c\)](#).

Not later than 24 hours after an event described by [Tex. Fam. Code § 264.018\(d\)](#), DFPS shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the DFPS of:

- A significant change in medical condition of the child [as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#)];
- The enrollment or participation of the child in a drug research program under [Tex. Fam. Code § 266.0041](#); and
- An initial prescription of a psychotropic medication [as defined by [Tex. Fam. Code § 266.001](#)]. [Tex. Fam. Code § 264.018\(d\)](#).

As soon as possible but not later than the 10<sup>th</sup> day after the date DFPS becomes aware of a significant event affecting a child in the conservatorship of DFPS, DFPS shall provide notice of the significant event to the child’s parent. [Tex. Fam. Code § 264.018\(f\)](#).

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A significant event includes:

- A significant change in medical condition [as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#)]; and
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication [as defined by [Tex. Fam. Code § 266.001](#)].

For purposes of [Tex. Fam. Code § 264.018\(f\)](#), if a hearing for the child is conducted during the 10-day notice period described by [Tex. Fam. Code § 264.018\(f\)](#), DFPS shall provide notice of the significant event at the hearing. [Tex. Fam. Code § 264.018\(g\)](#).

DFPS is not required to provide notice under [Tex. Fam. Code § 264.018](#) to a parent of a child in the managing conservatorship of DFPS if:

- DFPS cannot locate the parent;
- A court has restricted the parent's access to the information;
- The child is in the permanent managing conservatorship of DFPS and the parent has not participated in the child's case for at least six months despite DFPS efforts to involve the parent;
- The parent's rights have been terminated; or
- DFPS has documented in the child's case file that it is not in the best interest of the child to involve the parent in case planning. [Tex. Fam. Code § 264.018\(h\)](#).

A person entitled to notice from DFPS under [Tex. Fam. Code § 264.018](#) shall provide current contact information pursuant to [Tex. Fam. Code § 264.018\(j\)](#).

## D. Judicial Review

The judiciary is charged with oversight of the safety, permanency and well-being of the children in their courts. [Tex. Fam. Code § 266.007](#) requires that the judge overseeing the case review a summary of the medical care being provided to the child at each hearing held pursuant to [Tex. Fam. Code Chapter 263](#), specifically the Permanency Hearings Before and After Final Order.

### 1. Court Shall Review Medical Summary

[Tex. Fam. Code Chapter 266](#) requires the summary of medical care to include:

- 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;
- All medical and mental health treatment that the child is receiving and the child's progress with the treatments;
- 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;



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- 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;
  - Any adverse reaction to or side effects of any medical treatment provided to the child;
  - Any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis; and
  - 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. [Tex. Fam. Code § 266.007.](#)

Additional information may be required to effectively oversee that informed consent has been given. [Tex. Fam. Code Chapter 266](#) requires that judges review the medical care at each hearing conducted under [Tex. Fam. Code Chapter 263](#).

The court must determine whether the child has been provided the opportunity, in a developmentally appropriate manner, to express opinion about medical care. [Tex. Fam. Code § 263.306\(a-1\)\(5\)\(D\)](#). For a child receiving psychotropic medication, the court must determine whether the child has:

- Been provided appropriate psychosocial therapies, behavior strategies, and non-pharmacological interventions; and
- Seen their prescribing physician at least every 90 days for review. [Tex. Fam. Code § 263.306\(a-1\)\(5\)\(F\)](#).

## **2. Youth in Foster Care Must Be Heard at Each Hearing Held under Tex. Fam. Code Chapter 263**

The Family Code provides that sixteen and seventeen-year-olds can serve as their own Medical Consenter with a judicial determination that the youth is capable of the role. [Tex. Fam. Code § 266.010](#). If the youth is not the Medical Consenter, [Tex. Fam. Code § 266.007\(c\)](#) requires that he or she be provided the opportunity to express to the court their views on the medical care being provided. Further, [Tex. Fam. Code § 263.302](#) requires that the youth attend Permanency Hearings Before and After Final Order. While this is the law, many youth and other stakeholders report that children and youth do not routinely attend their hearings. This is especially concerning with older youth, who are more likely than younger foster youth to be prescribed psychotropic medications.

## **3. Judicial Psychotropic Medication Information Line**

Another tool implemented in 2012 to improve information-sharing is the Judicial Medication Information Email Box ([MedQuestions@Cenpatico.com](mailto:MedQuestions@Cenpatico.com)) which allows judges to submit a request for general medication information. Emails are reviewed by a STAR Health Behavioral Health Service Manager, who has support from the STAR Health Behavioral Health Medical Director (child psychiatrist), the STAR Health Pharmacist, and clinical managers. An example of an appropriate type of question for the email box is: What are the side effects of a medication or combination of medications on a 12-year-old girl who weighs 100 pounds? STAR Health also maintains a 24/7 Behavioral Health hotline with access to behavioral health professionals when urgent needs arise. The hotline can be reached at 1-866-218-8263.

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#### **4. Some Courts Use Standardized Court Report**

A standardized court report may help provide a summary of medical information that directly follows [Tex. Fam. Code § 266.007](#). A standardized report may include the child's age and weight as well as information about medication and dosage, condition and diagnosis, symptom(s) being treated, last medication review, and the prescribing physician.

#### **5. Some Courts Use Specific Forms and Practices**

Some Texas child welfare judges have adopted a practice of ordering that in non-urgent situations, Medical Consenters must appear in court before giving consent to medication treatments that fall outside the Parameters. Also, to augment the information-sharing process, some judges are asking the Medical Consenters to complete a checklist of questions before appearing in court to ensure that the Consenter considered the many steps to informed consent (as defined by the Parameters).