PSYCHOTROPIC MEDICATION

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, major depressive disorder, or psychosis. Other children need to use psychotropic medications on a more temporary basis 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 can be a controversial issue. Psychiatric medication may be life-saving and relieve challenging and sometimes severe symptoms of mental health disorders. Children and youth in foster care may benefit from medication to address mental illness exacerbated by 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 relatively little research has been conducted to understand the effects of long-term use in children and adolescents. Many psychotropic medications do not have Food and Drug Administration (FDA) approved labeling for use in children.[208] Therefore, it is imperative that a comprehensive evaluation be performed before beginning treatment with psychotropic medication for a mental or behavioral disorder. Except in the case of an emergency, a child should receive a thorough health history, psychosocial assessment, mental status exam, and physical exam before being prescribed a psychotropic medication.[209]

Under Tex. Fam. Code § 266.001, 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 79th Texas Legislature enacted Senate Bill 6. This sweeping legislation proposed reforms for DFPS, including a plan to place all foster children and youth 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 (6th Version) (Parameters).[210] The Parameters are updated periodically and serve as a resource for physicians and clinicians who care for children diagnosed with mental health disorders.

Additionally, DFPS' Behavioral Health Services Division includes a Behavioral Health Services Division Administrator, a Trauma-Informed Care Manager, six new regional Trauma-Informed Care Program Specialist positions, a new Behavioral Health Program Specialist position, three Substance Use Program Specialists, two CANS Program Specialists, and a Mental Health Program Specialists. You can read more about this division under the Bench Book chapter entitled *Substance Use Disorders*.

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 available online and typically takes an estimated two and half hours to complete.[211]

DFPS also has a two-hour online Psychotropic Medication Training for DFPS staff, foster parents and residential providers, relative caregivers, and youth medical consenters.[212]

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;
    - 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 obtained from appropriate parties with the child or adolescent assenting before beginning psychotropic medication, which includes discussing the following with the prescribing provider before consenting:

- A DSM-5 (or current edition of the Diagnostic and Statistical Manual of Mental Disorders) psychiatric diagnosis for which the medication is being prescribed;
- Target symptoms;
- Expected benefits of treatment;
- Risks of treatment, including common side effects, laboratory finding, and uncommon but potentially severe adverse events;
- Risks of no treatment;
- Alternative treatments available and/or attempted treatments.[213];

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 paradigm shift for the entire system and acts as a lens through which children, youth, and families experiencing the child welfare system are viewed. 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 should not only screen for trauma exposure and related symptoms, but 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, the comprehensive assessment for children and youth in state conservatorship, called Child Assessment of Needs and Strengths is known as CANS 2.0,

described in detail in the Health Care chapter herein. Not later than the 45th day after the date a child enters the conservatorship of DFPS, the child shall receive a developmentally appropriate comprehensive assessment, or CANS 2.0. This statute was updated in 2017 to require that any SSCC providing therapeutic foster care services to a child ensure that 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).

CPS requires children and youth placed in substitute care ages 3 to 17 years old to receive a CANS 2.0 assessment within 30 days of removal. The CANS 2.0 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.[214] 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 evaluated 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

The STAR Health Managed Care Organization (MCO) 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 MCO clinical staff routinely conduct 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:

- 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 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 [215]

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 the STAR Health MCO 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. The STAR Health MCO 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.

The STAR Health MCO is in a good position to intervene and educate the prescribing physician because it holds a contract with these providers to participate in 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-prescribing or dangerous prescribing. Qualifying cases may be referred to the Peer Review Committee for further investigation and action. The Peer Review Committee is established by the MCO, consisting of network providers to review PMUR concerns for STAR Health Members that exceed the Quality of Care thresholds. Superior Healthplan 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.

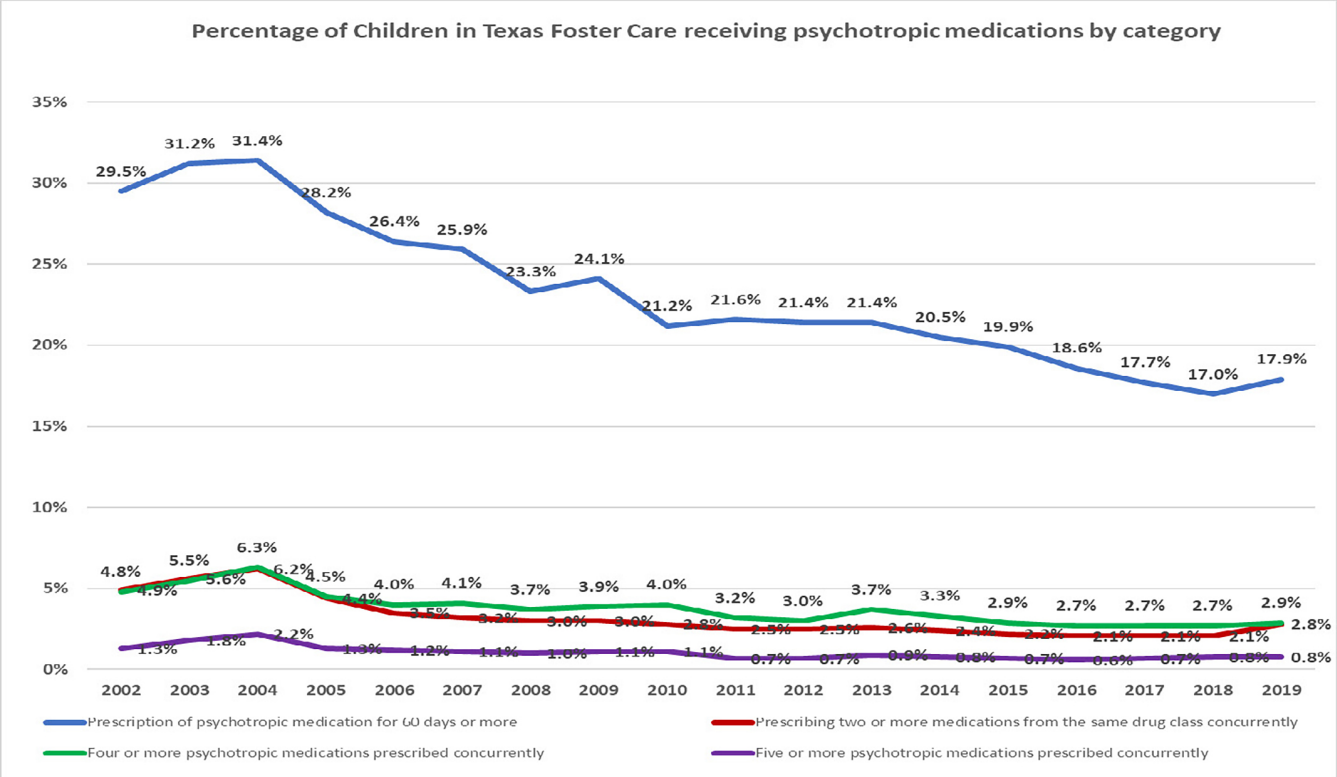
A PMUR cannot address whether other medications might be effective, and this process is not the appropriate avenue to address immediate concerns about new medications or medication side effects. Instead, the informed consent process is considered the appropriate avenue to inquire about new medications and side effects. In these situations, the STAR Health MCO 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.

See also the PMUR Process for STAR Health Members FAQ and Stakeholder Manual for more information on the process.[216]

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 the STAR Health programs, the prescription patterns of psychotropic medications for Texas foster children have improved significantly. Since implementation of the Parameters in 2005, the use of psychotropic medications in Texas foster care has decreased substantially from a high of 31.4% in 2004 to under 18% in 2019 for children prescribed psychotropic medications for 60 days or more (a roughly 42% decrease).[217] It should be noted in 2020, HHSC reran the foster care prescription data from SFY 2002 to 2019 using the new psychotropic drug list and other methodological changes to provide a single consistent historical timeline. Previous versions of the cited report incorporated changes as they occurred. Due to programming code changes, additional data becoming available, and additional medications being added to the list of psychotropic medications, the data has changed from previous versions of the report.[218]

Table 2: Percentage of Children in Texas Foster Care receiving psychotropic medications by measure



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 10th 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).

Under Tex. Fam. Code § 264.018(5), a significant event includes:

- a placement change, including failure by the department to locate an appropriate placement for at least one night;
- A significant change in medical condition as defined by Tex. Fam. Code § 264.018(a)(4);
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication as defined by Tex. Fam. Code § 266.001.
- a major change in school performance or a serious disciplinary event at school;
- a placement in a qualified residential treatment program as that term is defined by 42 U.S.C. Section 672(k)(4); or
- any event determined to be significant under department rule.

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;
- 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.

The regular use of videoconferencing has now made it easier for youth to attend hearings and judges should consider the mental health benefits for a youth when given the opportunity to advocate for themselves. For more ideas on involving youth in the court process, please see the Bench Book Chapter entitled *Child and Youth Voice*.

3. Judicial Psychotropic Medication Information Line

Another tool implemented in 2012 to improve information-sharing is the Judicial Medication Information Email Box which allows judges to submit a request for general medication information to SH_JudicialMailbox@superiorhealthplan.com. Judges should expect a response to general questions within 5 business days. Additionally, Superior Healthplan now has a Manager of Service Coordination dedicated to their judicial program. Veronica Anaya can be reached at Veronica.Anaya@superiorhealthplan.com or by cell at 210-262-2769.

Emails are reviewed by a STAR Health Behavioral Health Service Manager, who has support from the STAR Health Behavioral Health Team, including a Medical Director (child psychiatrist), a Clinical 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?")

The STAR Health MCO also maintains a 24/7 Behavioral Health hotline with access to behavioral health professionals when urgent needs arise. The hotline can be reached at 1-866-912-6283.

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).