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SENATE BILL 583

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO CHILDREN; ENACTING A NEW SECTION OF THE CHILDREN'S
CODE TO ESTABLISH CERTAIN REQUIREMENTS, PROCEDURES AND NOTICE
RELATING TO THE PRESCRIPTION AND MONITORING OF PSYCHOTROPIC
MEDICATIONS FOR CHILDREN IN FOSTER CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Children's Code is
enacted to read:

"[NEW MATERIAL] CHILDREN IN DEPARTMENT CUSTODY--
PSYCHOTROPIC MEDICATIONS--REQUIRED PROCEDURES AND
REVIEW--NOTIFICATION.--

A. The secretary of children, youth and families
shall adopt and promulgate rules establishing procedures
relating to the following requirements for the prescribing and
use of psychotropic medications for children placed in

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1 department custody:

2 (1) before a child in department custody is
3 prescribed a psychotropic medication, a licensed health
4 professional and a qualified mental health professional with
5 expertise in children's mental health shall provide a second
6 level review and approval process, as those terms are defined
7 in department rules, shall assess the child and document in the
8 child's medical record:

9 (a) the risks of prescribing a
10 psychotropic medication to the child; and

11 (b) an assessment of any peer-reviewed
12 medical literature relating to the use in children of the
13 psychotropic medication intended for prescription;

14 (2) a foster parent shall notify the
15 department within one working day after receiving a new
16 prescription of a psychotropic medication for a child in
17 department custody placed with the foster parent;

18 (3) the department shall provide to the
19 child's parent and the parent's legal representative, if any,
20 and the child's legal representative or the court-appointed
21 special advocate the following information:

22 (a) the prescribed psychotropic
23 medication;

24 (b) the amount of the dosage;

25 (c) the dosage recommended pursuant to a

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1 medically accepted indication;

2 (d) the reason for prescribing the
3 psychotropic medication;

4 (e) an indication of the risks of
5 prescribing a psychotropic medication to the child;

6 (f) an assessment of any peer-reviewed
7 medical literature relating to the use in children of the
8 psychotropic medication intended for prescription; and

9 (g) the possible side effects of the
10 psychotropic medication; and

11 (4) the department shall monitor the child's
12 well-being while the child is taking psychotropic medication,
13 including an annual review of medications by a licensed medical
14 professional or qualified mental health professional with
15 authority to prescribe drugs, who is not the prescriber of the
16 psychotropic medication.

17 B. A psychotropic medication shall not be
18 prescribed for a child in department custody unless the
19 prescribed use of the psychotropic medication is for a
20 medically accepted indication that is age-appropriate and its
21 proposed beneficial properties outweigh any risks identified in
22 peer-reviewed medical literature relating to children's use of
23 the psychotropic medication.

24 C. Court reports for every judicial review shall
25 include a list of the child's prescribed psychotropic

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1 medications, dosage, reason, risks and side effects.

2 D. The legal representative of the child or the
3 child's youth attorney may petition the court for a hearing if
4 the child's parent, the legal representative of the parent, the
5 legal representative of the child or the child's youth attorney
6 objects to the use of or the prescribed dosage of the
7 psychotropic medication. The court may order:

8 (1) an independent evaluation of the need for
9 or the prescribed dosage of the psychotropic medication; and

10 (2) that administration of the psychotropic
11 medication be discontinued or the prescribed dosage be modified
12 upon a showing that either the prescribed medication or the
13 dosage is, or both are, inappropriate.

14 E. The assigned caseworker or foster parent shall
15 not approve of a child taking any psychotropic medication
16 without the approval of the child's licensed clinician, mental
17 health provider and parent or guardian.

18 F. The human services department shall:

19 (1) coordinate with the children, youth and
20 families department to provide information, training, data and
21 support to monitor psychotropic medication trends and outliers;
22 and

23 (2) direct the medical assistance division of
24 the human services department to provide the children, youth
25 and families department with a quarterly report of each child

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1 in protective custody, which report shall include the name,
2 number, dosage and type of psychotropic medication that the
3 child uses.

4 G. The children, youth and families department
5 shall analyze the report that the human services department
6 provides pursuant to Subsection F of this section and consult
7 with a board-certified child and adolescent psychiatrist
8 regarding any child who:

9 (1) is at least five years of age and has been
10 prescribed two or more psychotropic medications; and

11 (2) is under five years of age and has been
12 prescribed any psychotropic medication.

13 H. The human services department and the children,
14 youth and families department shall collaborate on training
15 prescribers on:

16 (1) psychotropic medication prescribing
17 standards;

18 (2) statistics on the overuse of psychotropic
19 medications prescribed for children who are in protective
20 custody; and

21 (3) mental health care best practices.

22 I. The human services department shall direct
23 medicaid managed care organizations to:

24 (1) create a registry of all psychotropic
25 medications administered to, or self-administered by, children

1 in residential treatment centers, accredited residential
2 treatment centers, group homes and treatment foster care
3 facilities;

4 (2) collaborate regularly with the behavioral
5 health services division of the human services department and
6 the children, youth and families department to:

7 (a) review reports and trends relating
8 to psychotropic medications and children in protective custody;
9 and

10 (b) review the case files of children in
11 protective custody and address any concerns that may require
12 immediate correction or further oversight relating to the
13 prescription, administration or self-administration of
14 psychotropic medications to or by children in protective
15 custody; and

16 (3) alert the children, youth and families
17 department and the human services department when any child's
18 psychotropic medication regime exceeds the "medically accepted
19 indication" standard.

20 J. As used in this section:

21 (1) "medically accepted indication" means any
22 use for a covered outpatient drug that is approved pursuant to
23 federal law or the use of which is supported by one or more
24 citations included or approved for inclusion in any of the
25 following compendia:

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- (a) the American hospital formulary service drug information;
 - (b) the United States pharmacopoeia drug information or any successor publication;
 - (c) the DRUGDEX information system; or
 - (d) peer-reviewed medical literature;
- and

(2) "psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood or behavior, including antipsychotic, antidepressant and anxiolytic medication and behavior medications; provided that the classification of a medication depends upon its stated intended effect when prescribed, because it may have many different effects."