

House Bill 428

By: Representative Waites of the 60th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 49 of the Official Code of Georgia, relating to the Department
2 of Human Services, so as to enact the "Foster Children's Psychotropic Medication
3 Monitoring Act"; to provide for a short title; to provide for legislative intent; to provide for
4 definitions; to require the Department of Human Services to establish regulations governing
5 the use of psychotropic medications for children in state custody; to provide for related
6 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 2 of Title 49 of the Official Code of Georgia, relating to the Department of Human
10 Services, is amended by adding a new article to read as follows:

11 "ARTICLE 3

12 49-2-30.

13 This article shall be known and may be cited as the 'Foster Children's Psychotropic
14 Medication Monitoring Act.'

15 49-2-31.

16 The intent of this article is to:

17 (1) Comply with the Health Care Oversight and Coordination Plan mandates of the
18 federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L.
19 110-351;

20 (2) Provide for the health and well-being of children who are in the custody of the
21 Department of Human Services because they have been abused, neglected, or abandoned;
22 and

23 (3) Manage Georgia's rising costs of health care by ensuring that children in state
24 custody receive appropriate and properly managed mental health care, including

25 psychotropic medications, in the context of a coordinated health care plan which provides
26 for the child's physical, developmental, emotional, and mental well-being.

27 49-2-32.

28 As used in this article, the term:

29 (1) 'Child' or 'children' means any person under the age of 18 who is in the custody of the
30 Department of Human Services. This term does not include children who are not in the
31 custody of the Department of Human Services. This term does include children who are
32 in the custody of the Department of Human Services and another state department or
33 agency as allowed by Georgia law; provided, however, that this shall not include children
34 in the custody of the Department of Juvenile Justice.

35 (2) 'Psychotropic medication' means medication for which the prescribed intent is to
36 affect or alter thought processes, mood, or behavior, including, but not limited to,
37 antipsychotic, antidepressant, and anxiolytic medication and behavior medications.

38 49-2-33.

39 (a) The Department of Human Services shall establish regulations for the use of
40 psychotropic medications for children in the custody of the Department of Human Services.
41 The regulations shall be adopted, promulgated, and implemented in accordance with this
42 article and Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

43 (b) Such regulations shall include:

44 (1) Provisions regarding the administration of psychotropic medications to children that
45 include, but are not limited to:

46 (A) Creation of psychotropic medication utilization parameters for children. The
47 utilization parameters shall be based on current, peer-reviewed research and best
48 practices in the field of child psychiatry and shall be consistent with parameters and
49 guidelines recommended by local and national experts in the fields of child psychiatry
50 and pharmacology;

51 (B) Requiring the Department of Human Services to have an independent clinical
52 review team conduct a semiannual review of each child's psychotropic medications and
53 mental or behavioral health services, treatments, and therapies. The independent
54 clinical review team shall include a child psychiatrist and shall not include the
55 prescriber or an employee or contractor of the child caring institution or residential
56 treatment facility where the child is housed;

57 (C) Regulations governing the provision of as-needed prescriptions for psychotropic
58 medications for children; and

- 59 (D) Encouraging the use of nonpharmacological interventions and therapies, in
 60 addition to or in the place of psychotropic medication, where appropriate;
- 61 (2) Provisions addressing informed consent and notifications related to the
 62 administration of psychotropic medications that include, but are not limited to:
- 63 (A) Notwithstanding Code Section 15-11-13 or any other provision of law, a process
 64 for including the child, the child's caregiver or foster parent, and the child's legal
 65 guardian in the mental health care of the child, which is documented in the child's
 66 health record;
- 67 (B) A process for obtaining written informed consent from the child's legal guardian
 68 and the child, if he or she is 14 years of age or older, in advance of the child starting
 69 psychotropic medication;
- 70 (C) A process for consulting with an independent clinical review team which includes
 71 a child psychiatrist before a prescription can be filled for a child for a psychotropic
 72 medication that falls outside the psychotropic medication utilization parameters. The
 73 independent clinical review team shall not include the prescriber or an employee or
 74 contractor of the child caring institution or residential treatment facility where the child
 75 is housed;
- 76 (D) Notwithstanding Code Section 15-11-13 or any other provision of law, a process
 77 for including the child's attorney and the child's guardian ad litem, if either are so
 78 appointed, in the development and implementation of the child's mental health plan;
- 79 (E) Requiring documentation of the child's assent or objection to psychotropic
 80 medications if the child is under 14 years of age;
- 81 (F) The administration of psychotropic medications in the event of a psychiatric
 82 emergency, as defined by regulation of the Department of Human Services; and
- 83 (G) An independent, fair process for resolving differences of opinions among
 84 prescribing providers, the child's legal guardian, the independent clinical review team,
 85 and the child or the child's attorney or guardian ad litem, if either are so appointed; and
- 86 (3) Reporting and tracking requirements related to the provision of mental health
 87 services and the administration of psychotropic medications that include, but are not
 88 limited to:
- 89 (A) Requirements that records maintained by the Department of Human Services on
 90 each child contain current information, including, but not limited to:
- 91 (i) All prescription medications the child is taking;
 92 (ii) The dosage of each medication;
 93 (iii) The associated diagnosis for each medication;
 94 (iv) The side effects of each medication; and

95 (v) All mental and behavioral health therapies, treatments, services, and interventions
 96 being provided to the child and recommended for the child.

97 Such records shall be maintained in accordance with the requirements of the federal
 98 Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191;

99 (B) As part of the informed consent process required pursuant to paragraph (2) of
 100 subsection (b) of this Code section, information required in subparagraph (A) of this
 101 paragraph shall be provided to the child, the child's caregiver or foster parent, and the
 102 child's legal guardian and to the child's attorney and guardian ad litem, if either are so
 103 appointed, every time a change is made;

104 (C) Information required in subparagraph (A) of this paragraph shall be presented at
 105 each judicial or agency review of the child's case; and

106 (D) Establishing a data base, or using an existing data base, to track the use of
 107 psychotropic medications with children in the custody of the Department of Human
 108 Services.

109 49-2-34.

110 Within 90 days of the effective date of this article, the Department of Human Services shall
 111 give notice of its intent to adopt the regulations required by this article in accordance with
 112 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

113 **SECTION 2.**

114 This Act shall become effective upon its approval by the Governor or upon its becoming law
 115 without such approval.

116 **SECTION 3.**

117 All laws and parts of laws in conflict with this Act are repealed.