Amend **CSSB 6** (House Committee printing, page 59, line 9-page 66, line 24) by striking Section 1.45 of the bill and substituting the following:

SECTION 1.45. (a) Subtitle E, Title 5, Family Code, is amended by adding Chapter 266 to read as follows:

CHAPTER 266. MEDICAL CARE AND EDUCATIONAL SERVICES FOR CHILDREN IN FOSTER CARE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 266.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of Family and Protective Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Foster child" means a child who resides in a child-care institution, foster group home, foster home, agency foster group home, or agency foster home, as those terms are defined by Section 42.002, Human Resources Code.

(5) "Medical care" includes:

(A) routine medical care, including treatment of illnesses commonly associated with childhood, and administration of medication;

(B) immunizations and vaccinations commonly administered in childhood;

(C) mental health treatment including the administration of medication;

(D) emergency medical care and administration of related medication; and

(E) surgery and administration of related medication.

Sec. 266.002. CONSTRUCTION WITH OTHER LAW. This chapter does not limit the right to consent to medical, dental, psychological, and surgical treatment under Chapter 32.

Sec. 266.003. MEDICAL SERVICES FOR CHILD ABUSE AND NEGLECT VICTIMS. (a) Subject to the availability of funds, the commission shall collaborate with health care and child welfare professionals

to design a comprehensive, cost-effective medical services delivery model to meet the needs of children served by the department, either directly or by contract. The medical services delivery model must include:

(1) the designation of health care facilities with expertise in the forensic assessment, diagnosis, and treatment of child abuse and neglect as pediatric centers of excellence;

(2) a statewide telemedicine system to link department investigators and caseworkers with pediatric centers of excellence or other medical experts for consultation;

(3) identification of a medical home for each foster child on entering foster care at which the child will receive an initial comprehensive assessment as well as preventive treatments, acute medical services, and therapeutic and rehabilitative care to meet the child's ongoing physical and mental health needs throughout the duration of the child's stay in foster care;

(4) a review system composed of medical and mental health professionals to assess clinical care recommendations as needed for individual foster children; and

(5) development of protocols for use of psychotropic medications for foster children based on the recommendations and best practices manual developed by an ad hoc work group consisting of experts from the fields of pharmacy, psychiatry, pediatrics, family practice, and internal medicine and staff from the commission.

(b) The commission shall collaborate with health and human services agencies, community partners, the health care community, and federal health and social services programs to maximize services and benefits available under this section.

(c) Notwithstanding any other provision in this section, the commission shall implement Subsections (a)(4) and (5) regardless of whether the commission implements the other provisions of Subsection (a).

(d) The executive commissioner shall adopt rules necessary to implement this chapter.

Sec. 266.004. CONSENT FOR MEDICAL CARE. (a) Medical care may not be provided to a child in foster care unless the person

authorized by this section has provided consent.

(b) Except as provided by Section 266.010, the court may authorize the following persons to consent to medical care for a foster child:

(1) an individual designated by name in an order of the court, including the child's foster parent or the child's parent, if the parent's rights have not been terminated and the court determines that it is in the best interest of the parent's child to allow the parent to make medical decisions on behalf of the child; or

(2) the department or an agent of the department.

(c) If the person authorized by the court to consent to medical care is the department or an agent of the department, the department shall, not later than the fifth business day after the date the court provides authorization, file with the court and each party the name, address, and telephone number of the individual who will exercise the duty and responsibility of providing informed consent on behalf of the department. If that individual changes, the department shall file notice of the change with the court and each party not later than the fifth business day after the date of the change.

(d) A physician or other provider of medical care acting in good faith may rely on the representation by a person that the person has the authority to consent to the provision of medical care to a foster child as provided by Subsection (b).

(e) The department, a person authorized to consent to medical care under Subsection (b), the child's parent if the parent's rights have not been terminated, a guardian ad litem or attorney ad litem if one has been appointed, or the person providing foster care to the child may petition the court for any order related to medical care for a foster child that the department or other person believes is in the best interest of the child. Notice of the petition must be given to each person entitled to notice under Section 263.301(b).

(f) If a physician who has examined or treated the foster child has concerns regarding the medical care provided to the foster child, the physician may file a letter with the court stating

the reasons for the physician's concerns. The court shall provide a copy of the letter to each person entitled to notice under Section 263.301(b).

(g) On its own motion or in response to a petition under Subsection (e) or Section 266.010, the court may issue any order related to the medical care of a foster child that the court determines is in the best interest of the child.

(h) Notwithstanding Subsection (b), a person may not be authorized to consent to medical care provided to a foster child unless the person has completed a department-approved training program related to informed consent and the provision of all areas of medical care as defined by Section 266.001. This subsection does not apply to a parent whose rights have not been terminated unless the court orders the parent to complete the training.

(i) A person authorized under Subsection (b) to consent to medical care for a foster child shall attend or shall participate by telephone, if feasible, in each appointment of the child with the provider of the medical care, other than any counseling or therapy session.

(j) A person authorized under Subsection (b) to give consent to medical care for a foster child must be aware of the child's medical condition and history before giving consent.

Sec. 266.005. PARENTAL NOTIFICATION OF SIGNIFICANT MEDICAL CONDITIONS. (a) In this section, "significant medical condition" means an injury or illness that is life-threatening or has potentially serious long-term health consequences, including hospitalization for surgery or other procedures, except minor emergency care.

(b) Except as provided by Subsection (c), the department shall notify the child's parents of any significant medical condition involving a foster child as soon as practicable, but not later than 24 hours after the department learns of the significant medical condition.

(c) The department is not required to provide notice under Subsection (b) to a parent who:

(1) has failed to give the department current contact information and cannot be located;

(2) has executed an affidavit of relinquishment of parental rights; or

(3) has had the parent's parental rights terminated.

Sec. 266.006. HEALTH PASSPORTS. (a) The commission shall make available to the person authorized to consent to medical care under Section 266.004(b) and any provider of medical care to a foster child the most complete health history, including any emergency medical care, of the child available to the department.

(b) The commission shall develop a health passport for each foster child. The commission in conjunction with the department shall determine the format of the passport. The passport may be maintained in an electronic format. The passport must include the most complete medical and mental health history, including any emergency care, of the child available to the department and must be readily accessible to medical care providers.

(c) The department shall maintain the passport as part of the department's records for the child as long as the child remains in foster care.

Sec. 266.007. JUDICIAL REVIEW OF MEDICAL CARE. (a) At each hearing under Chapter 263, or more frequently if ordered by the court, the court shall review a summary of the medical care provided to the foster child since the last hearing. The summary must include information regarding:

(1) 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;

(2) all medical and mental health treatment that the child is receiving and the child's progress with the treatment;

(3) 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;

(4) 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;

(5) any adverse reaction to or side effects of any medical treatment provided to the child;

(6) any specific medical condition of the child that

has been diagnosed or for which tests are being conducted to make a diagnosis;

(7) 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; and

(8) other information required by department rule or by the court.

(b) At or before each hearing under Chapter 263, the department shall provide the summary of medical care described by Subsection (a) to:

(1) the court;

(2) the person authorized to consent to medical treatment for the child;

(3) the guardian ad litem or attorney ad litem, if one has been appointed by the court;

(4) the child's parent, if the parent's rights have not been terminated; and

(5) any other person determined by the department or the court to be necessary or appropriate for review of the provision of medical care to foster children.

(c) At each hearing under Chapter 263, the foster child shall be provided the opportunity to express to the court the child's views on the medical care being provided to the child.

Sec. 266.008. EDUCATION. (a) The commission shall develop an education passport for each foster child. The commission, in conjunction with the department, shall determine the format of the passport. The passport may be maintained in an electronic format. The passport must contain educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other educational information the commission determines is important.

(b) The department shall maintain the passport as part of the department's records for the child as long as the child remains in foster care.

(c) The department shall make the passport available to the person authorized to consent to medical care for the foster child and to a provider of medical care to the foster child if access to

the foster child's educational information is necessary to the provision of medical care and is not prohibited by law.

(d) The department and the commission shall collaborate with the Texas Education Agency to develop policies and procedures to ensure that the needs of foster children are met in every school district.

Sec. 266.009. PROVISION OF MEDICAL CARE IN EMERGENCY. (a) Consent or court authorization for the medical care of a foster child otherwise required by this chapter is not required in an emergency during which it is immediately necessary to provide medical care to the foster child to prevent the imminent probability of death or substantial bodily harm to the child, including circumstances in which:

(1) the child is overtly or continually threatening or attempting to commit suicide or cause self-inflicted serious bodily harm; or

(2) the child is behaving in a manner that indicates that the child is unable to satisfy the child's need for nourishment, essential medical care, or self-protection.

(b) The physician providing the medical care or designee shall notify the person authorized to consent to medical care for a foster child about the decision to provide medical care without consent or court authorization in an emergency not later than the second business day after the date of the provision of medical care under this section. This notification must be documented in the foster child's health passport.

(c) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

Sec. 266.010. CONSENT TO MEDICAL CARE BY FOSTER CHILD AT LEAST 16 YEARS OF AGE. (a) A foster child who is at least 16 years of age may consent to the provision of medical care, except as provided by Chapter 33, if the court with continuing jurisdiction determines that the child has the capacity to consent to medical care. If the child provides consent by signing a consent form, the form must be written in language the child can understand.

(b) A court with continuing jurisdiction may make the determination regarding the foster child's capacity to consent to medical care during a hearing under Chapter 263 or may hold a hearing to make the determination on its own motion. In addition, a foster child who is at least 16 years of age, or the foster child's attorney ad litem, may file a petition with the court for a hearing. If the court determines that the foster child lacks the capacity to consent to medical care, the court may consider whether the foster child has acquired the capacity to consent to medical care at subsequent hearings under Section 263.503.

(c) If the court determines that a foster child lacks the capacity to consent to medical care, the person authorized by the court under Section 266.004 shall continue to provide consent for the medical care of the foster child.

(d) If a foster child who is at least 16 years of age and who has been determined to have the capacity to consent to medical care refuses to consent to medical care and the department or private agency providing substitute care or case management services to the child believes that the medical care is appropriate, the department or the private agency may file a motion with the court requesting an order authorizing the provision of the medical care.

(e) The motion under Subsection (d) must include:

(1) the child's stated reasons for refusing the medical care; and

(2) a statement prepared and signed by the treating physician that the medical care is the proper course of treatment for the foster child.

(f) If a motion is filed under Subsection (d), the court shall appoint an attorney ad litem for the foster child if one has not already been appointed. The foster child's attorney ad litem shall:

(1) discuss the situation with the child;

(2) discuss the suitability of the medical care with the treating physician;

(3) review the child's medical and mental health records; and

(4) advocate to the court on behalf of the child's

expressed preferences regarding the medical care.

(g) The court shall issue an order authorizing the provision of the medical care in accordance with a motion under Subsection (d) to the foster child only if the court finds, by clear and convincing evidence, after the hearing that the medical care is in the best interest of the foster child and:

(1) the foster child lacks the capacity to make a decision regarding the medical care;

(2) the failure to provide the medical care will result in an observable and material impairment to the growth, development, or functioning of the foster child; or

(3) the foster child is at risk of suffering substantial bodily harm or of inflicting substantial bodily harm to others.

(h) In making a decision under this section regarding whether a foster child has the capacity to consent to medical care, the court shall consider:

(1) the maturity of the child;

(2) whether the child is sufficiently well informed to make a decision regarding the medical care; and

(3) the child's intellectual functioning.

(i) In determining whether the medical care is in the best interest of the foster child, the court shall consider:

(1) the foster child's expressed preference regarding the medical care, including perceived risks and benefits of the medical care;

(2) likely consequences to the foster child if the child does not receive the medical care;

(3) the foster child's prognosis, if the child does receive the medical care; and

(4) whether there are alternative, less intrusive treatments that are likely to reach the same result as provision of the medical care.

(j) This section does not apply to emergency medical care. An emergency relating to a foster child who is at least 16 years of age, other than a child in an inpatient mental health facility, is governed by Section 266.009.

(k) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

(l) Before a foster child reaches the age of 16, the department or the private agency providing substitute care or case management services to the foster child shall advise the foster child of the right to a hearing under this section to determine whether the foster child may consent to medical care.

(b) The Health and Human Services Commission is required to develop and implement the passport programs required by Sections 266.006 and 266.008, Family Code, as added by this section, if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, develop and implement the passport programs using other appropriations available for that purpose. In addition, the commission may develop and implement the passport programs required by Sections 266.006 and 266.008, Family Code, as added by this section, only if technology necessary to ensure privacy is available.

(c) If the Health and Human Services Commission develops and implements the passport programs required by Sections 266.006 and 266.008, Family Code, as added by this section, the commission shall:

(1) finalize the form and content of the passports not later than March 1, 2006;

(2) make the health passport required by Section 266.006, Family Code, as added by this section, available in an electronic format not later than September 1, 2007; and

(3) ensure, not later than September 1, 2008, that the health passport required by Section 266.006, Family Code, as added by this section, can interface directly with other electronic health record systems that contain information that impacts the health care of the child.