SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1576

SPONSOR: Committee on Children and Families and Senator Campbell

SUBJECT: Children

DATE: February 26, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barnes	Whiddon	CF	Favorable/CS
2.			JU	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

CS/SB 1576 requires that if a child living in out-of-home care has been prescribed psychotropic medication by a medical provider, a court order must be obtained prior to the dispensing of that medication. However, a child who was taking psychotropic medication prescribed by a medical provider prior to an action being initiated under ch. 39, F.S., may continue to take that medication before a court order is issued if a physician determines that a delay would be detrimental to the child's condition.

The bill specifies requirements of a "complete medical passport" (detailed information on the child's medical history) to be prepared by the Department of Children and Family Services (department). Other information about the child's medical and psychiatric treatment and history must be submitted to the court, such as evidence that the prescribed medication is appropriate to the treatment of the child's diagnosed medical condition and evidence that an explanation has been provided to the child, if appropriate, and to the primary caregiver on the nature and purpose of the treatment and recognized side effects.

The bill requires that every 6 months the court review the status of the child's progress on the medication. The court may order that the treatment be suspended and may direct the department to seek alternative treatment if it determines that the statutory requirements for continued use of the medication are not being met. Also, the court may require further medical consultation (including second opinions) in considering the best interests of the child.

This bill amends sections 39.01, 39.407, 39.0015, and 39.302, of the Florida Statutes.

II. Present Situation:

According to the American Academy of Child and Adolescent Psychiatry, psychiatric medication is an important part of treating certain psychiatric disorders in children and adolescents but should be used only as one part of a comprehensive treatment plan with ongoing medical assessments and in conjunction with other services such as individual and family therapy. Medication may be prescribed for psychiatric symptoms and disorders, including, but not limited to: anxiety, attention deficit hyperactivity disorder, obsessive-compulsive disorder, depressive disorder, eating disorder, bipolar (manic-depressive) disorder, psychosis, bedwetting, sleep problems, autism, and severe aggression. The Academy emphasizes that children and adolescents and their parents or caregivers should be informed about the use of these medications as well as their side effects and the importance of medical monitoring and supervision.

The following is a list prepared by the American Academy of Child and Adolescent Psychiatry of psychiatric medication categories and the psychiatric disorders for which they are prescribed:

- **Stimulant Medications**: Useful for attention deficit hyperactive disorder. Examples include: Dextroamphet- amine (*Dexedrine, Adderal*), Methylphenidate (*Ritalin*), and Pemoline (*Cylert*).

- **Antidepressant Medications**: Used for depression, school phobias, panic attacks, and other anxiety disorders, bedwetting, eating disorders, obsessive-compulsive disorder, personality disorders, posttraumatic stress disorder, and attention deficit hyperactive disorder. Examples of antidepressant medications include:

    - tricyclics [Amitriptyline (*Elavil*), Clomipramine (*Anafranil*), Imipramine (*Tofranil*), and Nortriptyline (*Pamelor*)],
    - serotonin reuptake inhibitors [Fluoxetine (*Prozac*), Sertraline (*Zoloft*), Paroxetine (*Paxil*), Fluvoxamine (*Luvox*), Venlafaxine (*Effexor*), and Citalopram (*Celexa*)],
    - monoamine oxidase inhibitors [Phenelzine (*Nardil*), and Tranylcypromine (Parnate)]and
    - atypical [Bupropion (*Wellbutrin*), Nefazodone (*Serzone*), Trazodone (*Desyrel*), and Mirtazapine (*Remeron*)].

- **Antipsychotic Medications**: Helpful in controlling psychotic symptoms (delusions, hallucinations) or disorganized thinking and may also help muscle twitches ("tics") or verbal outbursts as seen in Tourette's Syndrome. Occasionally used to treat severe anxiety and may help in reducing very aggressive behavior. Examples of traditional antipsychotic medications include: Chlorpromazine (*Thorazine*), Thioridazine (*Mellaril*), Fluphenazine (*Prolixin*), Trifluoperazine (*Stelazine*), Thiothixene (*Navane*), and Haloperidol (*Haldol*). Newer antipsychotic medications (also known as atypical or novel) include: Clozapine (*Clozaril*), Risperidone (*Risperdal*), Quetiapine (*Seroquel*), Olanzapine (*Zyprexa*), and Ziprasidone (*Zeldox*).

- **Mood Stabilizers and Anticonvulsant Medications**: Used in treating manic-depressive episodes, excessive mood swings, aggressive behavior, impulse control disorders and severe mood symptoms in schizoaffective disorder and schizophrenia. Lithium (lithium

carbonate, *Eskalith*) is an example of a mood stabilizer. Some anticonvulsant medications can also help control severe mood changes. Examples include: Valproic Acid (*Depakote, Depakene*), Carbamazepine (*Tegretol*), Gabapentin (*Neurontin*), and Lamotrigine (*Lamictil*).

- **Anti-anxiety Medications**: Used in treating severe anxiety. There are several types of anti-anxiety medications:

    - Benzodiazepines [Alprazolam (*Xanax*), lorazepam (*Ativan*), Diazepam (*Valium*),and Clonazepam (*Klonopin*)];
    - Antihistamines [Diphenhydramine (*Benadryl*), and Hydroxizine (*Vistaril*)]; and
    - atypicals [Buspirone (*BuSpar*), and Zolpidem (*Ambien*)].

- **Sleep Medications**: A variety of medications may be used for a short period to help with sleep problems. Examples include: SRI anti-*depressants,* Trazodone (*Desyrel*), Zolpidem (*Ambien*), and Diphenhydramine (*Benadryl*).

Mental Health: A Report of the Surgeon General, released in 1999, states that dramatic increases have occurred over the past decade in the use of pharmacological therapies for children and adolescents with mental disorders, but psychopharmacological research has lagged behind. For most prescribed medications, there are no studies of safety and efficacy for children and adolescents. The problem is even more pronounced with newer medications, most of which have been introduced into the market for adults. According to testimony on May 8, 2001, before a U.S. Senate Committee by Janet Heinrich, Director of Health Care—Public Health Issues, there has been an increase in pediatric drug research since the passage of the Food and Drug Administration Modernization Act of 1997. Prior to that time, only about 25 percent of drugs in use had been studied and labeled for pediatric patients. Only in the case of psychostimulants for children with attention deficit hyperactive disorder is there an adequate body of research on their safety and efficacy in children and adolescents.

Section 743.0645(3), F.S., specifies that the department may consent to the medical care or treatment of any minor who is in its custody under ch. 39, F.S., when the person who has the power to consent, as otherwise provided by law, cannot be contacted and has not expressly objected to that consent.

Section 743.0645(1)(b), F.S., defines "medical care and treatment" to include **ordinary** and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, power of attorney, or informed consent as provided by law is required.

Chapter 65-12.001(18), Florida Administrative Code, defines "medical passport" as a written health history of a child who is in shelter care or foster care which is used to document health care. This health record is kept in the child's resource record, with the caregiver, and updated at each health care provider visit.

Section 39.812(3), F.S., states that the department shall be the guardian of the person of the child for whom the department has been granted custody. The department reports that several dependency court judges have recently taken the position that in cases where parental rights to a child have been terminated, the department is the custodian of the child and has the authority to make decisions regarding consent for medications for the child. Therefore, no court order was issued in these cases since, in the court's opinion, the department does not need the court's permission to consent to the administration of psychotropic drugs for these children. In the case of Department of Children and Families v. Bernard Martin, the Fifth District Court of Appeals rendered an opinion on February 4, 2002, denying the department's Emergency Petition for Writ of Mandamus Certiorari stating that "there is no issue to present to the court because the department does not need the court's order or permission authorizing the administration of a psychotropic drug to a child post-Termination of Parental Rights."

III. Effect of Proposed Changes:

CS/SB 1576 amends s. 39.407, F.S., to require that if a child living in out-of-home care has been prescribed psychotropic medication by a medical provider, a court order must be obtained prior to the dispensing of that medication. The bill amends s. 39.01, F.S., by adding a definition of "medical passport" that means a written health history of a child in shelter status or foster care which is used to document health care.

The bill requires that extensive medical information be gathered and presented to the court prior to the court authorizing the dispensing of medication. However, a child who was taking psychotropic medication prescribed by a medical provider prior to an action being initiated under ch. 39, F.S., may continue to take that medication before a court order is issued if a physician determines that a delay would be detrimental to the child's condition. The court order must be sought at either the next regularly scheduled court hearing required under ch. 39, F.S., or within 60 days after the date of the prescription, whichever occurs first.

The bill states that medical information that is required for a court order includes the following:

1. A complete medical passport which includes, at a minimum:

    - Names and telephone numbers of all physicians who have treated the child and the respective dates and purpose of treatment;
    - All known medical operations, procedures, and treatment that the child has undergone including psychiatric and psychological consultations with the dates for each;
    - All known previous hospitalizations with dates, locations, treating physicians, and reason for hospitalization;
    - All known medications currently and previously prescribed for the child with dates prescribed, dosage and frequency of administration, and any subsequent re-prescribing of each medication; and
    - Local after-hours department emergency contact phone numbers.

2. Medical records and other competent evidence demonstrating that:

- the prescribed psychotropic medication is appropriate to the treatment of the child's diagnosed medical condition and the symptoms the medication is expected to address;
- the prescribing physician has provided a clinically appropriate explanation of the nature and purpose of the treatment and its possible side effects to the child, if he or she is at the appropriate age, and to the child's primary caretaker;
- alternative methods of treatment for the child's condition have been considered by providers and an alternative treatment that would offer comparable benefits is unavailable or undesirable;
- the psychotropic medication replaces or supplements any other currently prescribed medications or treatments, the expected length of time on the medication, and the additional medical or counseling services needed to treat the child's medical condition.

The department reports that CS/SB 1576 would place an increased workload on the physicians who treat these children for medical and psychiatric purposes because of the extensive medical documentation requirements. These requirements may result in physicians no longer providing services to many of the children who are in the department's custody.

The bill states that the court must review the status of the child's progress on the psychotropic medication every 6 months and may do so during the review hearings specified in s. 39.701, F.S. If the court determines that the statutory requirements of s. 39.407, F.S., are not being met, it may order the department to produce evidence of compliance with the law or obtain a medical opinion that continued use of the medication under the circumstances is safe and medically appropriate for the child.

The bill specifies that prior to issuing an order approving the dispensing of psychotropic medication, the court may request additional medical consultations, such as second opinions, based on considerations of the best interests of the child.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Committee Substitute for Senate Bill 1576 could impact the families with private health insurance when a child is removed from the home and medical services are required to substantiate or support the need for psychotropic medication for the treatment of the child's mental disorder.

C. Government Sector Impact:

The department reports that there could be additional litigation costs and additional service costs associated with the provision for additional medical consultation (second opinions). Medical professionals state that the additional documentation requirement for physicians could result in higher physician costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.