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HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILD & FAMILY SECURITY
ANALYSIS

BILL #: HB 947

RELATING TO: Dependent Child/Psychotropic Meds.

SPONSOR(S): Representative(s) Ryan

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) CHILD & FAMILY SECURITY YEAS 8 NAYS 0
(2) JUDICIAL OVERSIGHT
(3) COUNCIL FOR HEALTHY FAMILIES
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The purpose of the bill is to regulate the use of psychiatric drugs among children in state foster care. Recent news reports have documented the concerns of children's advocates that thousands of foster children were being given potentially harmful psychiatric drugs—not because they suffered mental illness, but because the drugs had the effect of muting difficult behaviors and sedating troubled children.

House Bill 947 creates a new subsection 39.407(3), F.S., with requirements for a court order for administrating psychotropic medications to children in foster care. The bill requires the prescribing physician to review the child's medical history, in the form of a "medical passport" prepared by the Department of Children and Family Services (DCF), prior to issuance of an order, and requires medical records or other evidence demonstrating the medication is appropriate for the child.

The bill authorizes the court to require further medical consultation, including second opinions, prior to issuance of an order. It provides for periodic court review of the child's progress under the treatment, and conditions for suspension of the treatment. The bill also provides authority of a medical provider to dispense prescribed psychotropic medication to a child in an acute care setting without a court order.

House Bill 947 amends s. 39.01, F.S., with a new subsection (44) providing requirements of a medical passport. It amends ss. 39.0015 and 39.302, F.S., correcting cross-references.

On February 12, 2002, the Committee on Child and Family Safety adopted two amendments that:

- Remove requirement of expert testimony before court order to end treatment.
- Provide that other caretakers of the child also receive an explanation of the medication and treatment by the prescribing physician.

There is no fiscal impact associated with this bill.

The effective date of the bill is July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes [X]	No []	N/A []
5.	Family Empowerment	Yes [X]	No []	N/A []

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Emotional and mental disorders are disproportionately frequent among children who have been abused or neglected. Until recently, DCF caseworkers routinely provided consent for the use of drugs such as Ritalin for ADHD and more powerful anti-psychotic drugs such as Risperdal that may have serious side effects.

A series of stories published throughout 2001 by the Miami Herald documented the concerns of children's advocates that thousands of foster children were being given potentially harmful psychiatric drugs to mute difficult behaviors and sedate troubled children. Some of the children developed serious side effects, such as shaking, lethargy, drooling, and weight gain.

Often there is no clear information available at judicial review for courts to monitor psychotropic medication of foster care children. One Broward dependency judge, John A. Frusciante, became so concerned by the lack of medical records for foster children that he ordered the department to complete medical records for all of the hundreds of children in his division or face a contempt sanction.

In response to these concerns, DCF created a blue-ribbon task force in May 2001, to study the issue and design a model of mental healthcare that might render some drug use unnecessary. The department is now in the process of revising the state's administrative code and operating procedures to address the concerns raised by the group.

Children in Foster Care are at High Risk of Mental Illness

According to Dr. John Landsverk, Children's Hospital, San Diego, in a report to the Surgeon General's Conference on Children's Mental Health in 2000, studies of mental health needs specific to the foster care system over the past two decades have firmly established that children in foster care represent a high-risk population for maladaptive outcomes, including socio-emotional, behavioral, and psychiatric problems warranting mental health treatments.

Half of the children (ages 0 to 17) in foster care have adaptive functioning scores in the problematic range; among children ages 0 to 6, 50-65 percent are in the problematic range in terms of developmental status; among 2 to 17 year olds, 50-60 percent have behavior problems; and among

the 6 to 17 year olds, about 40 percent meet the criteria for any diagnosis with moderate impairment.

In terms of mental health service use, children in foster care use services up to fifteen times more than other children in the Medicaid system. Foster children with behavioral problems are most likely to be seen. Data also show that children with a history of sexual abuse are three times more likely to receive mental health services, while children with a history of neglect are only half as likely to receive treatment. African-American and Hispanic children are least likely to receive services, and they need to display more pathology to be referred for mental health services. Developmental services are accessed significantly less than would be expected based on the high rate of developmental problems observed.

Use of Mental Health Services by Children in Foster Care in Florida

According to the department on March 31, 2001, there were 18,306 children in foster care. This number includes non-relative foster homes, group homes, institutions, independent living and runaway children. In FY 00-01, 6,748 or 36 percent of the children in foster care were served by the mental health system.

Children in Foster Care Children Receiving Mental Health Services by Activity in FY 00-01:*

• Case management	2,232
• Community Support Services	1
• Crisis Services	421
• Outpatient	4,935
• Residential Care	1,257

* Children may receive more than one service.

Despite the large mental health service utilization in the child welfare system, the use of evidence-based treatments is low.

The Proper Use of Psychotropic Medication for Children is a National Concern

Concerns about inappropriate diagnosis—either over- or under-diagnosis—of children's mental health problems, and about the availability of evidence-based, scientifically proven, treatments and services, have sparked a national debate.

Children with emotional, behavioral, and mental disorders that could be treated with medications may not be treated, or may be treated improperly, because their physicians do not know which products might be most effective or what dosage to administer. Clinicians, families, researchers and advocates are concerned about the unknown, long-term effects of medication on children's development.

"Off Label" Use and Questions of Drug Safety and Efficacy for Children:

There are only a small number of psychotropic drugs approved by the Federal Drug Administration (FDA) specifically for the treatment of pediatric psychiatric disorders. These include drugs for:

- Obsessive-compulsive disorder (Zoloft, Luvox and Anafranil)
- ADHD (Ritalin, Cylert and Amphetamines such as Adderall and Dexedrine)
- Tourette's Disorder (Haldol, Orap)

- Mania (Lithium such as Cibalith-S, Eskalith and Lithobid)
- Enuresis (Imipramine)

- Psychoneurosis (Sinequan)
- Various behavior problems (Haldol and Thorazine)

There are published pediatric studies demonstrating the effectiveness of these medications for some disorders for some children. For example, on the basis of hundreds of randomized controlled trials, stimulants such as Ritalin have been shown to be highly effective for 75 percent to 90 percent of children with ADHD.

According to Dr. F. Daniel Armstrong, who runs the University of Miami's Mailman Center for Child Development, new drug therapies are helping children combat even serious mental illness, such as schizophrenia and depression. Troubled children have been able to make dramatic turnarounds and do things they never could before—go to school, be with friends and get along with their family.

But according to a report at the Surgeon General's Conference on Children's Mental Health: in 2000, three-fourths of all medications used by children are prescribed "off label," and have not been approved by the FDA for use by children. Risperdal and Prozac, for example, are not approved for use under age 18. Ritalin is not approved for children under age 6.

The report states that more research is needed to ensure proper pediatric labeling of medications, indicating how they can be safely and effectively used with children.

Recommendations for the Use of Psychotropic Medication to Treat Children's Mental Health Needs

Professionals strongly recommend that when medication is used with children it should be part of a comprehensive, individualized treatment plan that is monitored closely and regularly by child-trained professionals, recognized under state licensing and certification requirements.

For example, according to the American Academy of Pediatrics, use of medication should not be considered the complete treatment program for children with ADHD and should be prescribed only after thorough evaluation.

The American Academy of Child and Adolescent Psychiatry suggests that medications are appropriate when there are clear target symptoms, and that parents should be involved in decision-making, and be provided with complete information about side effects, benefits, and alternatives.

Unclear Legal Authority for Use of Psychotropic Medication for Children in Foster Care

According to the DCF, under the current statutes the department lacks clear authority to consent to extraordinary medical treatment, including not only the administration of psychotropic medications, but also general anesthesia or surgery.

Subsection 39.01(33), F.S., defines "legal custody" to vest in the custodian of the person, the department, the right and duty to provide the child with ordinary medical, dental, psychiatric, and psychological care.

Subsection 743.0645(3), F.S., states that the department may consent to certain medical care and treatment when the parent cannot be contacted, but by definition, specifically excludes surgery, general anesthesia, provision of psychotropic medications or other extraordinary procedures. (ss. 743.0645(1)(b) and (3), F.S.)

The department can consent to "medical treatment" for a dependent child when the child is committed to the custody of the department, pursuant to s. 39.407(13), F.S. However, there is no definition of “medical treatment” within ch. 39, F.S.

Section 743.0645, F.S., provides a definition of "medical treatment" for what the department may consent to without court order. According to the department, it is the only statute that defines “medical care and treatment” with respect to minors committed to the department under ch. 39, F.S.

C. EFFECT OF PROPOSED CHANGES:

This bill provides requirements for issuance of a court order authorizing dispensing of psychotropic medication to a child in shelter status or foster care. It requires the prescribing physician to review the child's medical history, in the form of a "medical passport" prepared by DCF, prior to issuance of such order, and requires medical records or other evidence demonstrating that the medication is appropriate for the child. The bill defines and prescribes minimum contents of the medical passport. It authorizes the court to require further medical consultation, including second opinions, prior to issuance of such order. The bill also provides for periodic court review of the child's progress under the treatment, and provides conditions for suspension of the treatment. The bill provides authority of a medical provider to dispense prescribed psychotropic medication to a child in an acute care setting without the court order otherwise required.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.0015(3)(b), F.S., relating to definitions for school district child abuse prevention training, to correct cross references changed by the bill.

Section 2. Amends s. 39.01(44), F.S., to provide a definition of “Medical Passport” as a written health history of a child in foster care kept in the child’s resource record and updated at each health care provider visit.

Section 3. Amends s. 39.302(1), F.S., relating to protective investigations of child abuse in institutions to correct cross references changed by the bill.

Section 4. Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of a child, creating a new subsection (3) providing for psychotropic medication and renumbering subsequent subsections.

(3)(a) Requires that the department have a court order to administer psychotropic medications to children.

- Subparagraph 1. requires that for a court order authorizing the dispensing of psychotropic medications, the prescribing physician must have reviewed the child’s Medical Passport and that it must contain certain information set forth in proposed ss. 39.407(3)(a)1.a.-e, that include all known treatments and medications of the child.
- Subparagraphs 2.-5. set forth evidence that the court must examine prior to issuance of the order, including: evidence the medication and dosage is appropriate; that the child or caretaker has received an explanation of the treatment and side effects; evidence that alternative treatments have been considered; and related treatment and service plans.

(3)(b), Requires that the court review the status of each child receiving psychotropic medications at least every six months, and allows the review to occur during the regularly scheduled Judicial Review.

(3)(c), Allows the court at any time upon competent expert testimony to suspend the treatment and require the department to provide alternative treatment or produce evidence with the requirements in s. 39.407(3)(a), F.S.

(3)(d) Allows the court to require additional information than that set forth in s. 39.407(3)(a), F.S., including second opinions, and additional information in cases where the prescribed medication has not been specifically approved for administration to children by the federal Food and Drug Administration.

Section 5. Provides that the enacting date of the bill is July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on Child and Family Security adopted two amendments offered by Representative Ryan.

Amendment 1 removes the requirement that expert testimony be provided to the court before ordering treatment ended, to remove fiscal impact.

Amendment 2 adds provision that other caretakers of the child also receive an explanation of the medication and treatment by the prescribing physician.

VII. SIGNATURES:

COMMITTEE ON CHILD & FAMILY SECURITY:

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