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HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 947

RELATING TO: Dependent Child/Psychotropic Meds.

SPONSOR(S): Council for Healthy Communities and Representative Ryan

TIED BILL(S): none

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

(1) CHILD & FAMILY SECURITY YEAS 8 NAYS 0
(2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
(3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
(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. It addresses concerns that foster children have been given potentially harmful psychiatric drugs—not because they suffered mental illness, but to sedate them and mute difficult behaviors.

Current law requires a court order before administration of psychotropic medication to children in the legal custody of the Department of Children and Family Services (DCF). Committee Substitute for House Bill 947 amends s. 39.407, F.S., to provide a framework for the court order and review. The bill requires a prescribing physician to provide the court with an affidavit that specific conditions regarding the medication's appropriateness for the child are met, including: need for the medication, review of the child's "medical passport" (a medical history), explanation of the treatment and medication to the child and caregivers, and consideration of alternatives.

The bill adopts DCF's current administrative definition of the "medical passport" as a written health history of a child in custody, which is used to document health care and is to be kept with the child's caregiver in the child's resource record, and updated at each health care provider visit.

The bill provides for periodic court review of the child's progress under treatment, and provides conditions for the court to suspend the treatment.

The bill allows exceptions under which a physician may administer psychotropic medication to a child in DCF custody without a court order.

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

On February 26, 2002, the Council for Healthy Communities reported the bill favorably as a committee substitute that incorporated a substitute amendment to the strike-all amendment traveling with the bill.

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 []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

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

B. PRESENT SITUATION:

General Background

Emotional and mental disorders are disproportionately frequent among children who have been abused or neglected. Those same children frequently end up in the foster care system because of that abuse or neglect. Until recently, Department of Children and Families (DCF) caseworkers routinely provided consent for the use of drugs such as Ritalin for attention-deficit hyperactivity disorder (ADHD), and for the use of 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 County dependency judge, John A. Frusciante, became so concerned by the lack of medical records for foster children that he ordered DCF 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. DCF 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 a 2000 report by Dr. John Landsverk of Children's Hospital, San Diego, to the Surgeon General's Conference on Children's Mental Health, studies of mental health needs specific to the foster care system have firmly established that children in foster care are a high-risk population for socio-emotional, behavioral, and psychiatric problems warranting mental health treatments.

Half of children aged zero to seventeen in foster care have adaptive functioning scores in the "problematic" range. Among children ages zero to six, 50-65 percent are in the "problematic" range

in terms of developmental status. Among two- to seventeen-year olds, 50-60 percent have behavior problems. Finally, among six- to seventeen-year olds, roughly 40 percent meet the criteria for any diagnosis with moderate impairment.

Children in foster care use mental health 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 diagnoses—by 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)

Published pediatric studies demonstrate the effectiveness of these medications for some disorders and 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 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 illnesses, 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.

However, according to the Surgeon General's Conference on Children's Mental Health, three-fourths of all medications used by children are prescribed "off label," in that they 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

DCF believes that it lacks clear authority under current law to consent to extraordinary medical treatment, including not only the administration of psychotropic medications, but also general anesthesia or surgery.

In defining "legal custody," s. 39.01(33), F.S., vests the custodian of a child—who, in the case of a foster child is DCF—the right and duty to provide that child with ordinary medical, dental, psychiatric, and psychological care.

Section 39.407(13), F.S., provides that DCF can consent to "medical treatment" for a dependent child when that child is committed to DCF's custody.

Section 743.0645, F.S., provides that DCF may, without a court order, consent to certain medical care and treatment, but cannot authorize "surgery, general anesthesia, provision of psychotropic medications or other extraordinary procedures"[1] without a court order.

C. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 947 amends s. 39.407, F.S., to provide a framework by which a court may order the dispensing of psychotropic medication to a child who is in the legal custody of the Department of Children and Families (DCF). The bill requires a prescribing physician to provide the court with an affidavit regarding the medication's appropriateness for the child.

The bill adopts DCF's current administrative definition of the "medical passport" as "a written health history of a child in [DCF custody], which is used to document health care and is to be kept with the child's caregiver in the child's resource record, and updated at each health care provider visit[.]"[2]

The bill provides for periodic court review of the child's progress under such treatment, and provides conditions for the court to suspend the treatment. The bill authorizes the court to require further medical consultation, including second opinions.

The bill allows exceptions under which a physician may administer psychotropic medication to a child in DCF custody without a court order

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) Requires that the department have a court order to administer psychotropic medications to children in out-of-home placement or legal custody of the department, except as provided below.

(a) Provides that court orders for psychotropic medication are not required when:
- The child is already taking the medication when removed from the home, until reviewed by the court within 60 days.
- The physician indicates delay in dispensing medication could be detrimental to the child, until review by the court within 60 days.
- In an acute care setting.

[1] Section 743.0645(1)(b), F.S.
[2] 65C-12.001(18), F.A.C.

(b) Requires that a petition for authority to dispense or continue psychotropic medication to a child in out-of-home placement or legal custody of the department have an affidavit attached from the prescribing physician that includes:

- The need for the medication.
- That the physician reviewed the child's medical passport containing the medical history of the child, prior to prescribing the medication and that the passport is complete.
- That there is evidence the medication and dosage are appropriate.
- That the treatment and medication has been explained to the child and caregivers.
- That alternate methods of treatment were considered.
- Whether the medication will replace or supplement other medication and treatment.

(c) Requires the affidavit is permissible as evidence at a hearing to initiate or continue medication, and that the physician is not required to be present.

(d) Requires the court to review the status of the child's progress on psychotropic medication at least every six months or more frequently on its own motion or good cause.

(e) Allows the court to order the department to demonstrate compliance or provide a medical opinion regarding the safety and appropriateness of the medication, if the court determines requirements for continued medication are not being met.

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:

None.

2. Expenditures:

The Department of Children and Families (DCF) expects this bill to require expenditure of "additional litigation expenses to pay for medical testimony on behalf of DCF; however, the fiscal impact is impossible to estimate."[3]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

[3] Department of Children and Families Staff Analysis and Economic Impact (HB 947), January 25, 2002, p. 3.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

It is unclear to what "acute care setting" this bill refers in which health care providers are allowed to dispense psychotropic medication without a court order.

This bill defines "medical passport" but does not make clear who generates this document, or how.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on Child & Family Security adopted two amendments to this bill. Amendment 1 removes a requirement that expert testimony be provided to the court before it may suspend administration of psychotropic medication. Amendment 2 provides that caretakers of a child, other than his or her primary caretaker, must also receive an explanation of the purpose and risks of the medication from the prescribing physician.

The Committee then reported this bill favorably, as amended.

On February 21, 2002, the Committee on Judicial Oversight adopted one amendment to this bill. In reorganizing the bill, this strike-all amendment makes clear that the initial decision whether or not to

administer psychotropic medication is with the prescribing physician, in cooperation with the child's primary caretaker, and that the role of the court is merely supervisory. This strike-all amendment clarifies that required statements from a prescribing physician need only be attached as an affidavit to a petition for the administration of psychotropic medication, not included in any resulting order. Such an affidavit is admissible at any hearing, whether to commence or continue psychotropic medication, without requiring a personal appearance by the prescribing physician.

This strike-all amendment also clarifies the exceptions under which a physician may administer psychotropic medication to a child in DCF custody without a court order, and eliminates inconsistencies and possible conflicts between those exceptions. In addition, this strike-all amendment supersedes, but also incorporates, the substance of the prior two amendments. Finally, this strike-all amendment makes extensive grammar and style changes.

The Committee then reported this bill favorably, as amended.

On February 26, 2002, the Council for Healthy Communities took up a substitute amendment to the strike-all amendment traveling with the bill, that removed requirements for the medical passport, and reported the bill favorably as a committee substitute that incorporates the traveling amendments.

VII. SIGNATURES:

COMMITTEE ON CHILD & FAMILY SECURITY:

Prepared by:	Staff Director:
Glenn Mitchell	Robert Brown-Barrios

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
David L. Jaroslav, J.D.	Nathan L. Bond, J.D.

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:	Council Director:
Glenn Mitchell	David De la Paz