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1 A bill to be entitled

2 An act relating to the care and treatment of children;
3 amending s. 39.407, F.S.; authorizing the Department of
4 Children and Family Services to have a health screening
5 performed on certain children; providing components of a
6 health screening; providing requirements and procedures
7 for obtaining authorization for medical care and
8 treatment; providing for mental and physical examinations,
9 educational assessments, and additional services;
10 providing requirements for authorization to prescribe or
11 administer psychotropic medication; providing parental
12 right to consent or refuse to consent to medical care and
13 treatment; providing financial responsibility for the cost
14 of care and treatment; creating s. 39.4073, F.S.;
15 requiring the department to prepare and maintain a child
16 resource record and providing contents thereof; providing
17 for the sharing of certain information and for inspection
18 of a child resource record by certain persons; providing
19 for confidentiality of records in accordance with ch. 39,
20 F.S., and specified federal provisions; requiring
21 rulemaking; providing for application; creating s.
22 39.4077, F.S.; authorizing physical or mental examination
23 of a parent or person requesting custody of a child under
24 certain circumstances; amending s. 409.145, F.S.;
25 requiring the department to complete a medical evaluation
26 of certain children; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 39.407, Florida Statutes, is amended to
 31 read:

32 39.407 Medical, psychiatric, and psychological examination
 33 and treatment of child; ~~physical or mental examination of parent~~
 34 ~~or person requesting custody of child.--~~

35 (1) HEALTH SCREENING.--

36 (a) When any child is removed from the home and maintained
 37 in an out-of-home placement, the department is authorized to
 38 have a health ~~medical~~ screening performed on the child without
 39 authorization from the court and without consent from a parent
 40 or legal custodian. The health screening shall include medical,
 41 behavioral, vision, hearing, and dental assessments. Such
 42 ~~medical screening shall be performed by~~ A licensed health care
 43 professional ~~and shall perform the health screening~~ be to
 44 examine the child for injury, illness, ~~and~~ communicable
 45 diseases, and nutritional status and to determine the need for
 46 immunization, laboratory tests, and referrals for dental,
 47 optometric, and educational needs. Any child who is Medicaid
 48 eligible shall have the health screening performed in accordance
 49 with the Early Periodic Screening, Diagnosis, and Treatment
 50 (EPSDT) program.

51 (b) The department shall by rule establish the
 52 invasiveness of the ~~medical~~ procedures authorized to be
 53 performed under this subsection. ~~In no case does~~ This subsection
 54 does not authorize the department to consent to medical care and
 55 treatment for such children.

56 (2) AUTHORIZATION FOR MEDICAL CARE AND TREATMENT.--When
 57 the health ~~department has performed the medical~~ screening
 58 authorized by subsection (1) is performed, or when it is
 59 otherwise determined by a licensed health care professional that

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60 a child who is in an out-of-home placement or who has been
61 adjudicated dependent, ~~but who has not been committed to the~~
62 ~~department~~, is in need of medical care and treatment, including
63 the need for immunization, authorization ~~consent~~ for medical
64 care and treatment as defined in s. 743.0645(1) for the child
65 shall be obtained in the following manner:

66 (a)1. Express and informed consent must ~~to medical~~
67 ~~treatment~~ shall be obtained from a parent or legal custodian of
68 the child; ~~or~~

69 2. ~~A court order for such treatment shall be obtained.~~

70 (b) If consent under paragraph (a) cannot be obtained
71 because the parent or legal custodian is unknown, unavailable,
72 or unwilling to or refuses to consent, the department must
73 obtain court authorization for medical care and treatment; or ~~if~~
74 ~~a parent or legal custodian of the child is unavailable and his~~
75 ~~or her whereabouts cannot be reasonably ascertained, and it is~~
76 ~~after normal working hours so that a court order cannot~~
77 ~~reasonably be obtained, an authorized agent of the department~~
78 ~~shall have the authority to consent to necessary medical~~
79 ~~treatment, including immunization, for the child. The authority~~
80 ~~of the department to consent to medical treatment in this~~
81 ~~circumstance shall be limited to the time reasonably necessary~~
82 ~~to obtain court authorization.~~

83 (c) If the need for medical care and treatment constitutes
84 an emergency situation as set forth in s. 743.064 or is related
85 to suspected abuse, abandonment, or neglect of the child by a
86 parent, caregiver, or legal custodian, the department may
87 authorize the medical care and treatment without a court order
88 and without the consent of the parent, legal custodian, or
89 guardian. The department's authorization for medical care and

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90 treatment under this paragraph is limited to the time reasonably
 91 necessary to obtain subsequent court authorization. If a parent
 92 or legal custodian of the child is available but refuses to
 93 consent to the necessary treatment, including immunization, a
 94 court order shall be required unless the situation meets the
 95 definition of an emergency in s. 743.064 or the treatment needed
 96 is related to suspected abuse, abandonment, or neglect of the
 97 child by a parent, caregiver, or legal custodian. In such case,
 98 the department shall have the authority to consent to necessary
 99 medical treatment. This authority is limited to the time
 100 reasonably necessary to obtain court authorization.

101
 102 ~~In no case shall the department consent to sterilization,~~
 103 ~~abortion, or termination of life support.~~

104 (3)(a) MENTAL AND PHYSICAL EXAMINATION, EDUCATIONAL NEEDS
 105 ASSESSMENT, AND ADDITIONAL SERVICES.--A judge may order a child
 106 in an out-of-home placement to:

107 (a) Be examined by a licensed health care professional.

108 (b) Be treated by a licensed health care professional
 109 based on evidence that the child should receive treatment.

110 (c)(b) ~~The judge may also order such child to~~ Be evaluated
 111 by a psychiatrist or a psychologist or, if a developmental
 112 disability is suspected or alleged, by the developmental
 113 disability diagnostic and evaluation team of the department. If
 114 it is necessary to place a child in a residential facility for
 115 such evaluation, the criteria and procedure established in s.
 116 394.463(2) or chapter 393 shall be used, whichever is
 117 applicable.

118 (d)(c) ~~The judge may also order such child to~~ Be evaluated
 119 by a district school board educational needs assessment team.

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120 The educational needs assessment provided by the district school
 121 board educational needs assessment team shall include, but not
 122 be limited to, reports of intelligence and achievement tests,
 123 screening for learning disabilities and other handicaps, and
 124 screening for the need for alternative education as defined in
 125 s. 1001.42.

126 ~~(e)(4) A judge may order a child in an out-of-home~~
 127 ~~placement to be treated by a licensed health care professional~~
 128 ~~based on evidence that the child should receive treatment. The~~
 129 ~~judge may also order such child to~~ Receive mental health or
 130 developmental disabilities services from a psychiatrist,
 131 psychologist, or other appropriate service provider. Except as
 132 provided in subsection ~~(4)(5)~~, if it is necessary to place the
 133 child in a residential facility for such services, the
 134 procedures and criteria established in s. 394.467 or chapter 393
 135 shall be used, whichever is applicable. A child may be provided
 136 developmental disabilities or mental health services in
 137 emergency situations, pursuant to the procedures and criteria
 138 contained in s. 394.463(1) or chapter 393, whichever is
 139 applicable.

140 (f) Be provided services or treatment by a duly accredited
 141 practitioner who relies solely on spiritual means for healing in
 142 accordance with the tenets and practices of a church or
 143 religious organization when required by the child's health and
 144 when requested by a child who is at least 12 years of age.

145 ~~(4)(5)~~ PLACEMENT IN A RESIDENTIAL TREATMENT
 146 CENTER.--Children who are in the legal custody of the department
 147 may be placed by the department, without prior approval of the
 148 court, in a residential treatment center licensed under s.
 149 394.875 or a hospital licensed under chapter 395 for residential

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150 mental health treatment only pursuant to this section or may be
 151 placed by the court in accordance with an order of involuntary
 152 examination or involuntary placement entered pursuant to s.
 153 394.463 or s. 394.467. All children placed in a residential
 154 treatment program under this subsection must have a guardian ad
 155 litem appointed.

156 (a) As used in this subsection, the term:

157 1. "Residential treatment" means placement for
 158 observation, diagnosis, or treatment of an emotional disturbance
 159 in a residential treatment center licensed under s. 394.875 or a
 160 hospital licensed under chapter 395.

161 2. "Least restrictive alternative" means the treatment and
 162 conditions of treatment that, separately and in combination, are
 163 no more intrusive or restrictive of freedom than reasonably
 164 necessary to achieve a substantial therapeutic benefit or to
 165 protect the child or adolescent or others from physical injury.

166 3. "Suitable for residential treatment" or "suitability"
 167 means a determination concerning a child or adolescent with an
 168 emotional disturbance as defined in s. 394.492(5) or a serious
 169 emotional disturbance as defined in s. 394.492(6) that each of
 170 the following criteria is met:

171 a. The child requires residential treatment.

172 b. The child is in need of a residential treatment program
 173 and is expected to benefit from mental health treatment.

174 c. An appropriate, less restrictive alternative to
 175 residential treatment is unavailable.

176 (b) Whenever the department believes that a child in its
 177 legal custody is emotionally disturbed and may need residential
 178 treatment, an examination and suitability assessment must be
 179 conducted by a qualified evaluator who is appointed by the

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180 Agency for Health Care Administration. This suitability
 181 assessment must be completed before the placement of the child
 182 in a residential treatment center for emotionally disturbed
 183 children and adolescents or a hospital. The qualified evaluator
 184 must be a psychiatrist or a psychologist licensed in Florida who
 185 has at least 3 years of experience in the diagnosis and
 186 treatment of serious emotional disturbances in children and
 187 adolescents and who has no actual or perceived conflict of
 188 interest with any inpatient facility or residential treatment
 189 center or program.

190 (c) Before a child is admitted under this subsection, the
 191 child shall be assessed for suitability for residential
 192 treatment by a qualified evaluator who has conducted a personal
 193 examination and assessment of the child and has made written
 194 findings that:

195 1. The child appears to have an emotional disturbance
 196 serious enough to require residential treatment and is
 197 reasonably likely to benefit from the treatment.

198 2. The child has been provided with a clinically
 199 appropriate explanation of the nature and purpose of the
 200 treatment.

201 3. All available modalities of treatment less restrictive
 202 than residential treatment have been considered, and a less
 203 restrictive alternative that would offer comparable benefits to
 204 the child is unavailable.

205
 206 A copy of the written findings of the evaluation and suitability
 207 assessment must be provided to the department and to the
 208 guardian ad litem, who shall have the opportunity to discuss the
 209 findings with the evaluator.

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210 (d) Immediately upon placing a child in a residential
211 treatment program under this section, the department must notify
212 the guardian ad litem and the court having jurisdiction over the
213 child and must provide the guardian ad litem and the court with
214 a copy of the assessment by the qualified evaluator.

215 (e) Within 10 days after the admission of a child to a
216 residential treatment program, the director of the residential
217 treatment program or the director's designee must ensure that an
218 individualized plan of treatment has been prepared by the
219 program and has been explained to the child, to the department,
220 and to the guardian ad litem, and submitted to the department.
221 The child must be involved in the preparation of the plan to the
222 maximum feasible extent consistent with his or her ability to
223 understand and participate, and the guardian ad litem and the
224 child's foster parents must be involved to the maximum extent
225 consistent with the child's treatment needs. The plan must
226 include a preliminary plan for residential treatment and
227 aftercare upon completion of residential treatment. The plan
228 must include specific behavioral and emotional goals against
229 which the success of the residential treatment may be measured.
230 A copy of the plan must be provided to the child, to the
231 guardian ad litem, and to the department.

232 (f) Within 30 days after admission, the residential
233 treatment program must review the appropriateness and
234 suitability of the child's placement in the program. The
235 residential treatment program must determine whether the child
236 is receiving benefit toward the treatment goals and whether the
237 child could be treated in a less restrictive treatment program.
238 The residential treatment program shall prepare a written report
239 of its findings and submit the report to the guardian ad litem

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240 and to the department. The department must submit the report to
241 the court. The report must include a discharge plan for the
242 child. The residential treatment program must continue to
243 evaluate the child's treatment progress every 30 days thereafter
244 and must include its findings in a written report submitted to
245 the department. The department may not reimburse a facility
246 until the facility has submitted every written report that is
247 due.

248 (g)1. The department must submit, at the beginning of each
249 month, to the court having jurisdiction over the child, a
250 written report regarding the child's progress toward achieving
251 the goals specified in the individualized plan of treatment.

252 2. The court must conduct a hearing to review the status
253 of the child's residential treatment plan no later than 3 months
254 after the child's admission to the residential treatment
255 program. An independent review of the child's progress toward
256 achieving the goals and objectives of the treatment plan must be
257 completed by a qualified evaluator and submitted to the court
258 before its 3-month review.

259 3. For any child in residential treatment at the time a
260 judicial review is held pursuant to s. 39.701, the child's
261 continued placement in residential treatment must be a subject
262 of the judicial review.

263 4. If at any time the court determines that the child is
264 not suitable for continued residential treatment, the court
265 shall order the department to place the child in the least
266 restrictive setting that is best suited to meet his or her
267 needs.

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268 (h) After the initial 3-month review, the court must
 269 conduct a review of the child's residential treatment plan every
 270 90 days.

271 (i) The department must adopt rules for implementing
 272 timeframes for the completion of suitability assessments by
 273 qualified evaluators and a procedure that includes timeframes
 274 for completing the 3-month independent review by the qualified
 275 evaluators of the child's progress toward achieving the goals
 276 and objectives of the treatment plan which review must be
 277 submitted to the court. The Agency for Health Care
 278 Administration must adopt rules for the registration of
 279 qualified evaluators, the procedure for selecting the evaluators
 280 to conduct the reviews required under this section, and a
 281 reasonable, cost-efficient fee schedule for qualified
 282 evaluators.

283 (5) PRESCRIPTION OR ADMINISTRATION OF PSYCHOTROPIC
 284 MEDICATION.--

285 (a) Authorization for the initiation or continuation of,
 286 or change in, the prescription or administration of psychotropic
 287 medication under this chapter shall be obtained in the following
 288 manner:

- 289 1. The department must obtain express consent from the
 290 parent or legal custodian of the child;
- 291 2. If a parent or legal custodian is unknown, unavailable,
 292 or unwilling to or refuses to provide express consent, the
 293 department must obtain court approval for the authorization; or
- 294 3. If the rights of the parents have been terminated and
 295 the department has become the legal custodian of the child, the
 296 department must obtain court approval for authorization.

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297 (b) The department must obtain subsequent express written
 298 and informed consent from the parent or legal custodian, or
 299 authority from the court, within 30 days after the child is
 300 removed from the home to determine the appropriateness and the
 301 need to continue the medication if the authority for the
 302 prescription or administration of the psychotropic medication
 303 was obtained under subparagraph (a)2. or subparagraph (a)3.

304 (c)1. At any hearing or review on the issue of whether the
 305 court should enter an order approving authorization for the
 306 prescription or administration of psychotropic medication, the
 307 court shall review the judicial review social services report.
 308 The party seeking authorization shall advise the court of the
 309 following factors:

310 a. The child's expressed preference regarding treatment,
 311 if the child is age appropriate.

312 b. Whether the treatment is essential to the care of the
 313 child.

314 c. Whether the treatment is experimental.

315 d. Based on accepted clinical medical studies, the
 316 probability of adverse side effects, including whether the
 317 treatment presents an unreasonable risk of serious, hazardous,
 318 or irreversible side effects upon children in similar age
 319 groups.

320 e. The prognosis and probable risks with and without
 321 treatment.

322 f. Whether comparable or alternative therapies are
 323 available to diagnose, monitor, or treat the condition of the
 324 child.

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325 2. The prescribing physician is not required to testify at
 326 or attend the hearing or the review unless the court
 327 specifically orders such testimony or attendance.

328 3. The court shall inquire about additional medical,
 329 counseling, or other services that the prescribing physician
 330 believes are necessary or would be beneficial for the child's
 331 medical condition. The court may require further medical
 332 consultation, including obtaining a second opinion within 5
 333 working days after an order, based upon considerations of the
 334 best interests of the child, and the court may not order the
 335 discontinuation of prescribed psychotropic medication contrary
 336 to the decision of the prescribing physician without first
 337 obtaining a second opinion from a licensed psychiatrist, if
 338 available, or, if not available, a physician licensed under
 339 chapter 458 or chapter 459 that the psychotropic medication
 340 should be discontinued.

341 4. The prescribing physician's report is admissible in
 342 evidence.

343 (6) EMERGENCY CARE.--When a child is in an out-of-home
 344 placement, a licensed health care professional shall be
 345 immediately called if there are indications of physical injury
 346 or illness, or the child shall be taken to the nearest available
 347 hospital for emergency care.

348 (7) PARENTAL RIGHT TO CONSENT OR REFUSE TO CONSENT;
 349 FINANCIAL RESPONSIBILITY.--

350 (a) Unless a parent's rights have been terminated and
 351 except as otherwise provided herein, nothing in this section
 352 shall be deemed to eliminate the right of a parent, legal
 353 custodian, or the child to consent or refuse to consent to
 354 examination or any medical care and treatment, including

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355 extraordinary medical care and treatment, for the child. A
 356 parent or legal custodian of a child may not be required or
 357 coerced through threat of loss of custody or parental rights to
 358 consent to any medical care or treatment.

359 (b) Unless a parent's rights have been terminated, a
 360 parent or legal custodian of a child who is in the custody or
 361 care of the department is financially responsible for the cost
 362 of medical care and treatment provided to the child regardless
 363 of the parent's or legal custodian's consent or refusal to
 364 consent to such care and treatment. After a hearing, the court
 365 may order the parent or legal custodian, if found able to do so,
 366 to reimburse the department or other provider of health services
 367 for medical care and treatment provided.

368 ~~(8) Except as otherwise provided herein, nothing in this~~
 369 ~~section shall be deemed to alter the provisions of s. 743.064.~~

370 ~~(9) A court shall not be precluded from ordering services~~
 371 ~~or treatment to be provided to the child by a duly accredited~~
 372 ~~practitioner who relies solely on spiritual means for healing in~~
 373 ~~accordance with the tenets and practices of a church or~~
 374 ~~religious organization, when required by the child's health and~~
 375 ~~when requested by the child.~~

376 ~~(10) Nothing in this section shall be construed to~~
 377 ~~authorize the permanent sterilization of the child unless such~~
 378 ~~sterilization is the result of or incidental to medically~~
 379 ~~necessary treatment to protect or preserve the life of the~~
 380 ~~child.~~

381 ~~(8)(11)~~ RESTRICTION.--For the purpose of obtaining an
 382 evaluation or examination, or receiving treatment as authorized
 383 pursuant to this section, no child alleged to be or found to be
 384 dependent shall be placed in a detention home or other program

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385 used primarily for the care and custody of children alleged or
 386 found to have committed delinquent acts.

387 ~~(12) The parents or legal custodian of a child in an out-~~
 388 ~~of-home placement remain financially responsible for the cost of~~
 389 ~~medical treatment provided to the child even if either one or~~
 390 ~~both of the parents or if the legal custodian did not consent to~~
 391 ~~the medical treatment. After a hearing, the court may order the~~
 392 ~~parents or legal custodian, if found able to do so, to reimburse~~
 393 ~~the department or other provider of medical services for~~
 394 ~~treatment provided.~~

395 ~~(13) Nothing in this section alters the authority of the~~
 396 ~~department to consent to medical treatment for a dependent child~~
 397 ~~when the child has been committed to the department and the~~
 398 ~~department has become the legal custodian of the child.~~

399 ~~(14) At any time after the filing of a shelter petition or~~
 400 ~~petition for dependency, when the mental or physical condition,~~
 401 ~~including the blood group, of a parent, caregiver, legal~~
 402 ~~custodian, or other person requesting custody of a child is in~~
 403 ~~controversy, the court may order the person to submit to a~~
 404 ~~physical or mental examination by a qualified professional. The~~
 405 ~~order may be made only upon good cause shown and pursuant to~~
 406 ~~notice and procedures as set forth by the Florida Rules of~~
 407 ~~Juvenile Procedure.~~

408 Section 2. Section 39.4073, Florida Statutes, is created
 409 to read:

410 39.4073 Child resource record.--

411 (1) In accordance with 42 U.S.C. s. 675, the department
 412 shall prepare and maintain a comprehensive, accurate, and
 413 updated health and education record for each child who is placed

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414 in a shelter home, foster care, or other residential placement
415 or who is otherwise in the custody or care of the department.

416 (2) The health and education record shall be referred to
417 as the child resource record, shall be part of the official
418 state record as contained in the automated information system,
419 and shall include: the child's name; family and social history;
420 medical history with the respective dates and purposes of
421 medical care and treatment; results of and information regarding
422 all medical, psychiatric, and psychological evaluations,
423 examinations, and screenings; educational records and needs
424 assessments; visits, hospitalizations, operations, and
425 procedures with reasons therefor; dates and locations of
426 treatment; names and telephone numbers of all physicians and
427 other health care professionals who have treated the child; the
428 child's known allergies and negative reactions to medication;
429 all medications previously and currently prescribed, including
430 dates of administration, rescription, and discontinuation,
431 the dosage and frequency, and subsequent rescription; any
432 written informed consents as required by law and reasons for not
433 obtaining the consents or for refusals to consent; name and
434 phone number of a department agent who is currently responsible
435 for the child; name and phone number of the parent, legal
436 custodian, relative caregiver, or foster parent, if applicable;
437 and the local after-hours telephone number for the department
438 for emergencies.

439 (3) The department shall provide written documentation as
440 to the reasons any of the information required in subsection (2)
441 is not available and accessible in the child resource record and
442 the steps the department is taking to obtain the information.

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443 (4) Portions of the child resource record that relate to
444 securing appropriate medical and educational services shall
445 follow the child to each placement, where it shall remain in the
446 care of the parent or legal custodian, shelter, foster parent,
447 foster care provider, or other caretaker. Such portions of a
448 child resource record must accompany the child to every health
449 care encounter in order that the information is shared with the
450 provider and updated as appropriate.

451 (5) A child resource record shall be open for inspection
452 by the parent or legal custodian or other person who has the
453 power to consent as authorized by law.

454 (6) In accordance with the confidentiality or privacy
455 provisions set forth in this chapter and in the Health Insurance
456 Portability and Accountability Act of 1996, records governed by
457 this section are confidential and may only be used or disclosed
458 in accordance with s. 39.202.

459 (7) The department shall adopt rules pursuant to ss.
460 120.536(1) and 120.54 to implement this section.

461 (8) This section shall apply only to cases initiated on or
462 after July 1, 2004.

463 Section 3. Section 39.4077, Florida Statutes, is created
464 to read:

465 39.4077 Physical or mental examination of parent or person
466 requesting custody of child.--At any time after the filing of a
467 shelter petition or petition for dependency, when the mental or
468 physical condition, including the blood group, of a parent,
469 caregiver, legal custodian, or other person requesting custody
470 of a child is in controversy, the court may order the person to
471 submit to a physical or mental examination by a qualified
472 professional. The order may be made only upon good cause shown

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473 and pursuant to notice and procedures as set forth by the
474 Florida Rules of Juvenile Procedure.

475 Section 4. Subsection (6) of section 409.145, Florida
476 Statutes, is amended to read:

477 409.145 Care of children.--

478 (6) Whenever any child is placed under the protection,
479 care, and guidance of the department or a duly licensed public
480 or private agency, or as soon thereafter as is practicable, the
481 department or agency, as the case may be, shall complete a full
482 medical evaluation of the child and shall endeavor to obtain
483 such information concerning the family medical history of the
484 child and the natural parents as is available or readily
485 obtainable. This information shall be kept on file by the
486 department or agency for possible future use as provided in ss.
487 63.082 and 63.162 or as may be otherwise provided by law.

488 Section 5. This act shall take effect July 1, 2004.