

1 review; authorizing the court to order the
2 department to obtain a medical opinion;
3 requiring that the department adopt rules to
4 ensure that children receive appropriate
5 psychotropic medications; specifying the
6 provisions to be included in the rules;
7 conforming a cross-reference; amending s.
8 394.459, F.S., relating to the rights of
9 patients under the Florida Mental Health Act;
10 revising provisions requiring that a patient be
11 asked to give express and informed consent
12 before admission or treatment; requiring that
13 additional information be provided with respect
14 to the risks and benefits of treatment, the
15 dosage range of medication, potential side
16 effects, and the monitoring of treatment;
17 clarifying provisions governing the manner in
18 which consent may be revoked; requiring that
19 facilities develop a system for investigating
20 and responding to certain complaints; amending
21 s. 743.0645, F.S.; redefining the term "medical
22 care and treatment" for purposes of obtaining
23 consent for the medical treatment of a minor;
24 providing an exception with respect to the
25 consent provided under s. 39.407, F.S.;

26 providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Present subsections (3) through (14) of
31 section 39.407, Florida Statutes, are redesignated as

1 subsections (4) through (15), respectively, a new subsection
2 (3) is added to that section, and present subsection (4) of
3 that section is amended, to read:

4 39.407 Medical, psychiatric, and psychological
5 examination and treatment of child; physical or mental
6 examination of parent or person requesting custody of child.--

7 (3)(a)1. Except as otherwise provided in subparagraph
8 (b)1. or paragraph (e), before the department provides
9 psychotropic medications to a child in its custody, the
10 prescribing physician shall attempt to obtain express and
11 informed consent, as defined in s. 394.455(9) and as described
12 in s. 394.459(3)(a), from the child's parent or legal
13 guardian. The department must take steps necessary to
14 facilitate the inclusion of the parent in the child's
15 consultation with the physician. However, if the parental
16 rights of the parent have been terminated, the parent's
17 location or identity is unknown or cannot reasonably be
18 ascertained, or the parent declines to give express and
19 informed consent, the department may, after consultation with
20 the prescribing physician, seek court authorization to provide
21 the psychotropic medications to the child. Unless parental
22 rights have been terminated and if it is possible to do so,
23 the department shall continue to involve the parent in the
24 decisionmaking process regarding the provision of psychotropic
25 medications. If, at any time, a parent whose parental rights
26 have not been terminated provides express and informed consent
27 to the provision of a psychotropic medication, the
28 requirements of this section that the department seek court
29 authorization do not apply to that medication until such time
30 as the parent no longer consents.
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1 2. Any time the department seeks a medical evaluation
2 to determine the need to initiate or continue a psychotropic
3 medication for a child, the department must provide to the
4 evaluating physician all pertinent medical information known
5 to the department concerning that child.

6 (b)1. If a child who is removed from the home under s.
7 39.401 is receiving prescribed psychotropic medication at the
8 time of removal and parental authorization to continue
9 providing the medication cannot be obtained, the department
10 may take possession of the remaining medication and may
11 continue to provide the medication as prescribed until the
12 shelter hearing, if it is determined that the medication is a
13 current prescription for that child and the medication is in
14 its original container.

15 2. If the department continues to provide the
16 psychotropic medication to a child when parental authorization
17 cannot be obtained, the department shall notify the parent or
18 legal guardian as soon as possible that the medication is
19 being provided to the child as provided in subparagraph 1. The
20 child's official departmental record must include the reason
21 parental authorization was not initially obtained and an
22 explanation of why the medication is necessary for the child's
23 well-being.

24 3. If the department is advised by a physician
25 licensed under chapter 458 or chapter 459 that the child
26 should continue the psychotropic medication and parental
27 authorization has not been obtained, the department shall
28 request court authorization at the shelter hearing to continue
29 to provide the psychotropic medication and shall provide to
30 the court any information in its possession in support of the
31 request. Any authorization granted at the shelter hearing may

1 extend only until the arraignment hearing on the petition for
2 adjudication of dependency or 28 days following the date of
3 removal, whichever occurs sooner.

4 4. Before filing the dependency petition, the
5 department shall ensure that the child is evaluated by a
6 physician licensed under chapter 458 or chapter 459 to
7 determine whether it is appropriate to continue the
8 psychotropic medication. If, as a result of the evaluation,
9 the department seeks court authorization to continue the
10 psychotropic medication, a motion for such continued
11 authorization shall be filed at the same time as the
12 dependency petition, within 21 days after the shelter hearing.

13 (c) Except as provided in paragraphs (b) and (e), the
14 department must file a motion seeking the court's
15 authorization to initially provide or continue to provide
16 psychotropic medication to a child in its legal custody. The
17 motion must be supported by a written report prepared by the
18 department which describes the efforts made to enable the
19 prescribing physician to obtain express and informed consent
20 for providing the medication to the child and other treatments
21 considered or recommended for the child. In addition, the
22 motion must be supported by the prescribing physician's signed
23 medical report providing:

24 1. The name of the child, the name and range of the
25 dosage of the psychotropic medication, and that there is a
26 need to prescribe psychotropic medication to the child based
27 upon a diagnosed condition for which such medication is being
28 prescribed.

29 2. A statement indicating that the physician has
30 reviewed all medical information concerning the child which
31 has been provided.

1 3. A statement indicating that the psychotropic
2 medication, at its prescribed dosage, is appropriate for
3 treating the child's diagnosed medical condition, as well as
4 the behaviors and symptoms the medication, at its prescribed
5 dosage, is expected to address.

6 4. An explanation of the nature and purpose of the
7 treatment; the recognized side effects, risks, and
8 contraindications of the medication; drug-interaction
9 precautions; the possible effects of stopping the medication;
10 and how the treatment will be monitored, followed by a
11 statement indicating that this explanation was provided to the
12 child if age appropriate and to the child's caregiver.

13 5. Documentation addressing whether the psychotropic
14 medication will replace or supplement any other currently
15 prescribed medications or treatments; the length of time the
16 child is expected to be taking the medication; and any
17 additional medical, mental health, behavioral, counseling, or
18 other services that the prescribing physician recommends.

19 (d)1. If any party objects to the department's motion
20 under paragraph (c), the court shall hold a hearing before
21 authorizing the department to initially provide or to continue
22 providing psychotropic medication to a child in the legal
23 custody of the department. At such hearing and notwithstanding
24 s. 90.803, the medical report described in paragraph (c) is
25 admissible in evidence. The prescribing physician need not
26 attend the hearing or testify unless the court specifically
27 orders such attendance or testimony. If the court finds that
28 the department's motion and the physician's medical report
29 meet the requirements of this subsection and that it is in the
30 child's best interests, the court may order that the
31 department provide or continue to provide the psychotropic

1 medication to the child without additional testimony or
2 evidence. The court shall further inquire of the department as
3 to whether additional medical, mental health, behavioral,
4 counseling, or other services are being provided to the child
5 by the department which the prescribing physician considers to
6 be necessary or beneficial in treating the child's medical
7 condition and that the physician recommends or expects to
8 provide to the child in concert with the medication. The court
9 may order additional medical consultation, including obtaining
10 a second opinion within 5 working days after such order, based
11 upon consideration of the best interests of the child. The
12 court may not order the discontinuation of prescribed
13 psychotropic medication if such order is contrary to the
14 decision of the prescribing physician unless the court first
15 obtains a second opinion from a licensed psychiatrist, if
16 available, or, if not available, a physician licensed under
17 chapter 458 or chapter 459, stating that the psychotropic
18 medication should be discontinued. If, however, the
19 prescribing physician is a child or adolescent psychiatrist,
20 the court may not order the discontinuation of prescribed
21 psychotropic medication unless the second opinion is also from
22 a child or adolescent psychiatrist.

23 2. The burden of proof at any hearing held under this
24 paragraph shall be by a preponderance of the evidence.

25 (e)1. If the child's prescribing physician certifies
26 in the signed medical report required in paragraph (c) that
27 delay in providing a prescribed psychotropic medication would
28 more likely than not cause significant harm to the child, the
29 medication may be provided in advance of the issuance of a
30 court order. In such event, the medical report must provide
31 the specific reasons why the child may experience significant

1 harm and the nature and the extent of the potential harm. The
2 department must submit a motion seeking continuation of the
3 medication and the physician's medical report to the court,
4 the child's guardian ad litem, and all other parties within 3
5 working days after the department commences providing the
6 medication to the child. The department shall seek the order
7 at the next regularly scheduled court hearing required under
8 this chapter, or within 30 days after the date of the
9 prescription, whichever occurs sooner. If any party objects to
10 the department's motion, the court shall hold a hearing within
11 7 days.

12 2. Psychotropic medications may be administered in
13 advance of a court order in hospitals, crisis stabilization
14 units, and in statewide inpatient psychiatric programs. Within
15 3 working days after the medication is begun, the department
16 must seek court authorization as described in paragraph (c).

17 (f)1. The department shall fully inform the court of
18 the child's medical and behavioral status as part of the
19 social services report prepared for each judicial review
20 hearing held for a child for whom psychotropic medication has
21 been prescribed or provided under this subsection. As a part
22 of the information provided to the court, the department shall
23 furnish copies of all pertinent medical records concerning the
24 child which have been generated since the previous hearing. On
25 its own motion or on good cause shown by any party, including
26 any guardian ad litem, attorney, or attorney ad litem who has
27 been appointed to represent the child or the child's
28 interests, the court may review the status more frequently
29 than required in this subsection.

30 2. The court may, in the best interests of the child,
31 order the department to obtain a medical opinion addressing

1 whether the continued use of the medication under the
2 circumstances is safe and medically appropriate.

3 (g) The department shall adopt rules to ensure that
4 children receive timely access to clinically appropriate
5 psychotropic medications. These rules must include, but need
6 not be limited to, the process for determining which
7 adjunctive services are needed, the uniform process for
8 facilitating the prescribing physician's ability to obtain the
9 express and informed consent of a child's parent or guardian,
10 the procedures for obtaining court authorization for the
11 provision of a psychotropic medication, the frequency of
12 medical monitoring and reporting on the status of the child to
13 the court, how the child's parents will be involved in the
14 treatment-planning process if their parental rights have not
15 been terminated, and how caretakers are to be provided
16 information contained in the physician's signed medical
17 report. The rules must also include uniform forms to be used
18 in requesting court authorization for the use of a
19 psychotropic medication and provide for the integration of
20 each child's treatment plan and case plan. The department must
21 begin the formal rulemaking process within 90 days after the
22 effective date of this act.

23 (5)(4) A judge may order a child in an out-of-home
24 placement to be treated by a licensed health care professional
25 based on evidence that the child should receive treatment.
26 The judge may also order such child to receive mental health
27 or developmental disabilities services from a psychiatrist,
28 psychologist, or other appropriate service provider. Except
29 as provided in subsection (6)(5), if it is necessary to place
30 the child in a residential facility for such services, the
31 procedures and criteria established in s. 394.467 or chapter

1 393 shall be used, whichever is applicable. A child may be
2 provided developmental disabilities or mental health services
3 in emergency situations, pursuant to the procedures and
4 criteria contained in s. 394.463(1) or chapter 393, whichever
5 is applicable.

6 Section 2. Paragraph (a) of subsection (3) and
7 paragraph (b) of subsection (4) of section 394.459, Florida
8 Statutes, are amended to read:

9 394.459 Rights of patients.--

10 (3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--

11 (a)1. Each patient entering treatment shall be asked
12 to give express and informed consent for admission or ~~and~~
13 treatment. If the patient has been adjudicated incapacitated
14 or found to be incompetent to consent to treatment, express
15 and informed consent to treatment shall be sought instead from
16 the patient's guardian or guardian advocate. If the patient
17 is a minor, express and informed consent for admission or ~~and~~
18 treatment shall also be requested from the patient's guardian.
19 Express and informed consent for admission or ~~and~~ treatment of
20 a patient under 18 years of age shall be required from the
21 patient's guardian, unless the minor is seeking outpatient
22 crisis intervention services under s. 394.4784. Express and
23 informed consent for admission or ~~and~~ treatment given by a
24 patient who is under 18 years of age shall not be a condition
25 of admission when the patient's guardian gives express and
26 informed consent for the patient's admission pursuant to s.
27 394.463 or s. 394.467.

28 2. ~~Before~~ ~~Prior to~~ giving express and informed
29 consent, the following information shall be provided and
30 explained in plain language ~~disclosed~~ to the patient, or to
31 the patient's guardian if the patient is 18 years of age or

1 | older and has been adjudicated incapacitated, or to the
2 | patient's guardian advocate if the patient has been found to
3 | be incompetent to consent to treatment, or to both the patient
4 | and the guardian if the patient is a minor: the reason for
5 | admission or treatment; ~~the proposed treatment~~; ~~the purpose~~
6 | of the treatment to be provided; ~~the common risks, benefits,~~
7 | and side effects thereof; the specific dosage range for the
8 | medication, when applicable; ~~alternative treatment~~
9 | modalities; ~~the approximate length of care; the potential~~
10 | effects of stopping treatment; how treatment will be
11 | monitored; ~~and that any consent given for treatment by a~~
12 | ~~patient~~ may be revoked orally or in writing before ~~prior to~~ or
13 | during the treatment period by the patient or by a person who
14 | is legally authorized to make health care decisions on behalf
15 | of the patient, the guardian advocate, or the guardian.

16 | (4) QUALITY OF TREATMENT.--

17 | (b) ~~Receiving and treatment~~ Facilities shall develop
18 | and maintain, in a form accessible to and readily
19 | understandable by patients and consistent with rules adopted
20 | by the department, the following:

21 | 1. Criteria, procedures, and required staff training
22 | for any use of close or elevated levels of supervision, of
23 | restraint, seclusion, or isolation, or of emergency treatment
24 | orders, and for the use of bodily control and physical
25 | management techniques.

26 | 2. Procedures for documenting, monitoring, and
27 | requiring clinical review of all uses of the procedures
28 | described in subparagraph 1. and for documenting and requiring
29 | review of any incidents resulting in injury to patients.

30 | 3. A system for investigating, tracking, managing, and
31 | responding to the review of complaints by persons receiving

1 ~~services or individuals acting on their behalf patients or~~
2 ~~their families or guardians.~~

3 Section 3. Paragraph (b) of subsection (1) of section
4 743.0645, Florida Statutes, is amended to read:

5 743.0645 Other persons who may consent to medical care
6 or treatment of a minor.--

7 (1) As used in this section, the term:

8 (b) "Medical care and treatment" includes ordinary and
9 necessary medical and dental examination and treatment,
10 including blood testing, preventive care including ordinary
11 immunizations, tuberculin testing, and well-child care, but
12 does not include surgery, general anesthesia, provision of
13 psychotropic medications, or other extraordinary procedures
14 for which a separate court order, power of attorney, or
15 informed consent as provided by law is required, except as
16 provided in s. 39.407(3).

17 Section 4. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1090
4 Requires the department to provide known pertinent medical
5 information to the evaluating physician when seeking an
6 evaluation to consider providing psychotropic medications to a
7 child in its custody.
8 Requires the signed physician's medical report to include a
9 statement indicating that the physician has reviewed all
10 medical information on the child that has been provided.
11 Prohibits the court from ordering the discontinuation of a
12 medication being prescribed for the child by a child or
13 adolescent psychiatrist unless a second opinion advising the
14 court that medication should be discontinued is also from a
15 child or adolescent psychiatrist.
16 Authorizes the administration of psychotropic medications in
17 advance of a court order in hospitals, crisis stabilization
18 units, and in statewide inpatient psychiatric programs while
19 requiring the department to seek court authorization within
20 three working days after the medication is started.
21 Requires that rules developed by the department address the
22 process of how the child's parents will be involved in the
23 treatment planning process if parental rights have not been
24 terminated and how caretakers are to be provided information
25 contained in the physician's report.
26 Requires facilities to develop a system that is consistent
27 with rules adopted by the department for investigating,
28 tracking, managing, and responding to complaints by persons
29 receiving services or individuals acting on their behalf.
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