

1
2 An act relating to mental health care services
3 for minors and incapacitated persons; amending
4 s. 39.402, F.S.; requiring a child's parent or
5 legal guardian to provide certain information
6 to the Department of Children and Family
7 Services; amending s. 39.407, F.S.; specifying
8 requirements for the department with respect to
9 providing psychotropic medication to a child in
10 the custody of the department; requiring that
11 the prescribing physician attempt to obtain
12 express and informed parental consent for
13 providing such medication; authorizing the
14 department to provide psychotropic medication
15 without such consent under certain
16 circumstances; requiring the department to
17 provide medical information to a physician
18 under certain circumstances; requiring that the
19 child be evaluated by a physician; requiring
20 that the department obtain court authorization
21 for providing such medication within a
22 specified period; providing requirements for a
23 motion by the department seeking court
24 authorization to provide psychotropic
25 medication; specifying circumstances under
26 which medication may be provided in advance of
27 a court order; requiring that notice be
28 provided to all parties if the department
29 proposes to provide psychotropic medication to
30 the child; requiring that a hearing be held if
31 any party objects; providing requirements for

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

1 directing the department to conduct an
2 assessment; requiring a report; creating s.
3 1006.0625, F.S.; defining the term
4 "psychotropic medication"; prohibiting a public
5 school from denying a student access to
6 programs or services under certain conditions;
7 authorizing public school teachers and school
8 district personnel to share certain information
9 with a student's parent; prohibiting public
10 school teachers and school district personnel
11 from compelling certain actions by a parent;
12 authorizing the refusal of psychological
13 screening; providing for medical decisionmaking
14 authority; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (11) of section 39.402, Florida
19 Statutes, is amended to read:

20 39.402 Placement in a shelter.--

21 (11)(a) If a child is placed in a shelter pursuant to
22 a court order following a shelter hearing, the court shall
23 require in the shelter hearing order that the parents of the
24 child, or the guardian of the child's estate, if possessed of
25 assets which under law may be disbursed for the care, support,
26 and maintenance of the child, to pay, to the department or
27 institution having custody of the child, fees as established
28 by the department. When the order affects the guardianship
29 estate, a certified copy of the order shall be delivered to
30 the judge having jurisdiction of the guardianship estate. The
31 shelter order shall also require the parents to provide to the

1 department and any other state agency or party designated by
2 the court, within 28 days after entry of the shelter order,
3 the financial information necessary to accurately calculate
4 child support pursuant to s. 61.30.

5 (b) The parent or legal guardian shall provide all
6 known medical information to the department.

7 Section 2. Present subsections (3) through (14) of
8 section 39.407, Florida Statutes, are redesignated as
9 subsections (4) through (15), respectively, a new subsection
10 (3) is added to that section, and present subsection (4) of
11 that section is amended, to read:

12 39.407 Medical, psychiatric, and psychological
13 examination and treatment of child; physical or mental
14 examination of parent or person requesting custody of child.--

15 (3)(a)1. Except as otherwise provided in subparagraph
16 (b)1. or paragraph (e), before the department provides
17 psychotropic medications to a child in its custody, the
18 prescribing physician shall attempt to obtain express and
19 informed consent, as defined in s. 394.455(9) and as described
20 in s. 394.459(3)(a), from the child's parent or legal
21 guardian. The department must take steps necessary to
22 facilitate the inclusion of the parent in the child's
23 consultation with the physician. However, if the parental
24 rights of the parent have been terminated, the parent's
25 location or identity is unknown or cannot reasonably be
26 ascertained, or the parent declines to give express and
27 informed consent, the department may, after consultation with
28 the prescribing physician, seek court authorization to provide
29 the psychotropic medications to the child. Unless parental
30 rights have been terminated and if it is possible to do so,
31 the department shall continue to involve the parent in the

1 decisionmaking process regarding the provision of psychotropic
2 medications. If, at any time, a parent whose parental rights
3 have not been terminated provides express and informed consent
4 to the provision of a psychotropic medication, the
5 requirements of this section that the department seek court
6 authorization do not apply to that medication until such time
7 as the parent no longer consents.

8 2. Any time the department seeks a medical evaluation
9 to determine the need to initiate or continue a psychotropic
10 medication for a child, the department must provide to the
11 evaluating physician all pertinent medical information known
12 to the department concerning that child.

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

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

31

1 3. If the department is advised by a physician
2 licensed under chapter 458 or chapter 459 that the child
3 should continue the psychotropic medication and parental
4 authorization has not been obtained, the department shall
5 request court authorization at the shelter hearing to continue
6 to provide the psychotropic medication and shall provide to
7 the court any information in its possession in support of the
8 request. Any authorization granted at the shelter hearing may
9 extend only until the arraignment hearing on the petition for
10 adjudication of dependency or 28 days following the date of
11 removal, whichever occurs sooner.

12 4. Before filing the dependency petition, the
13 department shall ensure that the child is evaluated by a
14 physician licensed under chapter 458 or chapter 459 to
15 determine whether it is appropriate to continue the
16 psychotropic medication. If, as a result of the evaluation,
17 the department seeks court authorization to continue the
18 psychotropic medication, a motion for such continued
19 authorization shall be filed at the same time as the
20 dependency petition, within 21 days after the shelter hearing.

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

1 1. The name of the child, the name and range of the
2 dosage of the psychotropic medication, and that there is a
3 need to prescribe psychotropic medication to the child based
4 upon a diagnosed condition for which such medication is being
5 prescribed.

6 2. A statement indicating that the physician has
7 reviewed all medical information concerning the child which
8 has been provided.

9 3. A statement indicating that the psychotropic
10 medication, at its prescribed dosage, is appropriate for
11 treating the child's diagnosed medical condition, as well as
12 the behaviors and symptoms the medication, at its prescribed
13 dosage, is expected to address.

14 4. An explanation of the nature and purpose of the
15 treatment; the recognized side effects, risks, and
16 contraindications of the medication; drug-interaction
17 precautions; the possible effects of stopping the medication;
18 and how the treatment will be monitored, followed by a
19 statement indicating that this explanation was provided to the
20 child if age appropriate and to the child's caregiver.

21 5. Documentation addressing whether the psychotropic
22 medication will replace or supplement any other currently
23 prescribed medications or treatments; the length of time the
24 child is expected to be taking the medication; and any
25 additional medical, mental health, behavioral, counseling, or
26 other services that the prescribing physician recommends.

27 (d)1. The department must notify all parties of the
28 proposed action taken under paragraph (c) in writing or by
29 whatever other method best ensures that all parties receive
30 notification of the proposed action within 48 hours after the
31 motion is filed. If any party objects to the department's

1 motion, that party shall file the objection within 2 working
2 days after being notified of the department's motion. If any
3 party files an objection to the authorization of the proposed
4 psychotropic medication, the court shall hold a hearing as
5 soon as possible before authorizing the department to
6 initially provide or to continue providing psychotropic
7 medication to a child in the legal custody of the department.
8 At such hearing and notwithstanding s. 90.803, the medical
9 report described in paragraph (c) is admissible in evidence.
10 The prescribing physician need not attend the hearing or
11 testify unless the court specifically orders such attendance
12 or testimony, or a party subpoenas the physician to attend the
13 hearing or provide testimony. If, after considering any
14 testimony received, the court finds that the department's
15 motion and the physician's medical report meet the
16 requirements of this subsection and that it is in the child's
17 best interests, the court may order that the department
18 provide or continue to provide the psychotropic medication to
19 the child without additional testimony or evidence. At any
20 hearing held under this paragraph, the court shall further
21 inquire of the department as to whether additional medical,
22 mental health, behavioral, counseling, or other services are
23 being provided to the child by the department which the
24 prescribing physician considers to be necessary or beneficial
25 in treating the child's medical condition and which the
26 physician recommends or expects to provide to the child in
27 concert with the medication. The court may order additional
28 medical consultation, including consultation with the
29 MedConsult line at the University of Florida, if available, or
30 require the department to obtain a second opinion within a
31 reasonable timeframe as established by the court, not to

1 exceed 21 calendar days, after such order based upon
2 consideration of the best interests of the child. The
3 department must make a referral for an appointment for a
4 second opinion with a physician within 1 working day. The
5 court may not order the discontinuation of prescribed
6 psychotropic medication if such order is contrary to the
7 decision of the prescribing physician unless the court first
8 obtains an opinion from a licensed psychiatrist, if available,
9 or, if not available, a physician licensed under chapter 458
10 or chapter 459, stating that more likely than not,
11 discontinuing the medication would not cause significant harm
12 to the child. If, however, the prescribing psychiatrist
13 specializes in mental health care for children and
14 adolescents, the court may not order the discontinuation of
15 prescribed psychotropic medication unless the required opinion
16 is also from a psychiatrist who specializes in mental health
17 care for children and adolescents. The court may also order
18 the discontinuation of prescribed psychotropic medication if a
19 child's treating physician, licensed under chapter 458 or
20 chapter 459, states that continuing the prescribed
21 psychotropic medication would cause significant harm to the
22 child due to a diagnosed nonpsychiatric medical condition.

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 3. 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 4. 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 5. The Department of Children and Family
18 Services shall assess and document the positive and negative
19 fiscal impact of the provisions of this act on the department,
20 taking into consideration costs incurred prior to July 1,
21 2005. The department shall submit a report with its findings
22 to the President of the Senate and the Speaker of the House of
23 Representatives by February 1, 2006.

24 Section 6. Section 1006.0625, Florida Statutes, is
25 created to read:

26 1006.0625 Administration of psychotropic medication;
27 prohibition; conditions.--

28 (1) As used in this section, the term "psychotropic
29 medication" means a prescription medication that is used for
30 the treatment of mental disorders and includes, without
31 limitation, antihypnotics, antipsychotics, antidepressants,

1 anxiety agents, sedatives, psychomotor stimulants, and mood
2 stabilizers.

3 (2) A public school may not deny any student access to
4 programs or services because the parent of the student has
5 refused to place the student on psychotropic medication.

6 (3) A public school teacher and school district
7 personnel may share school-based observations of a student's
8 academic, functional, and behavioral performance with the
9 student's parent and offer program options and other
10 assistance that is available to the parent and the student
11 based on the observations. However, a public school teacher
12 and school district personnel may not compel or attempt to
13 compel any specific actions by the parent or require that a
14 student take medication. A parent may refuse psychological
15 screening of the student.

16
17 Any medical decision made to address a student's needs is a
18 matter between the student, the student's parent, and a
19 competent health care professional chosen by the parent.

20 Section 7. This act shall take effect July 1, 2005.

21
22
23
24
25
26
27
28
29
30
31