

1 A bill to be entitled
2 An act relating to health care services for minors and
3 incapacitated persons; amending s. 39.407, F.S.;
4 specifying requirements for the Department of Children and
5 Family Services with respect to providing psychotropic
6 medication to a child in the custody of the department;
7 requiring that the prescribing physician attempt to obtain
8 express and informed parental consent for providing such
9 medication; authorizing the department to provide
10 psychotropic medication without such consent under certain
11 circumstances; requiring that the child be evaluated by a
12 physician; requiring that the department obtain court
13 authorization for providing such medication within a
14 specified period; providing requirements for a motion by
15 the department seeking court authorization to provide
16 psychotropic medication; specifying circumstances under
17 which medication may be provided in advance of a court
18 order; requiring that a hearing be held on the motion to
19 provide psychotropic medication to a child under certain
20 circumstances; specifying the required burden of proof
21 with respect to evidence presented at the hearing;
22 requiring that the department provide a child's medical
23 records to the court; providing requirements for court
24 review; authorizing the court to order the department to
25 obtain a medical opinion; requiring the department to
26 adopt rules governing the procedures for determining the
27 services needed, obtaining parental consent, and obtaining
28 court authorization for the use of psychotropic

29 medication; conforming a cross reference; amending s.
 30 394.459, F.S., relating to the rights of patients under
 31 the Florida Mental Health Act; revising provisions
 32 requiring that a patient be asked to give express and
 33 informed consent before admission or treatment; requiring
 34 that additional information be provided with respect to
 35 the risks and benefits of treatment, the dosage range of
 36 medication, potential side effects, and the monitoring of
 37 treatment; clarifying provisions governing the manner in
 38 which consent may be revoked; amending s. 743.0645, F.S.;
 39 redefining the term "medical care and treatment" for
 40 purposes of obtaining consent for the medical treatment of
 41 a minor; providing an exception with respect to the
 42 consent provided under s. 39.407, F.S.; providing an
 43 effective date.

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

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 47 Section 1. Present subsections (3) through (14) of section
 48 39.407, Florida Statutes, are redesignated as subsections (4)
 49 through (15), respectively, a new subsection (3) is added to
 50 that section, and present subsection (4) of that section is
 51 amended, to read:

52 39.407 Medical, psychiatric, and psychological examination
 53 and treatment of child; physical or mental examination of parent
 54 or person requesting custody of child.--

55 (3)(a) Except as otherwise provided in subparagraph (b)1.
 56 or paragraph (e), before the department provides psychotropic

57 medications to a child in its custody, the prescribing physician
58 shall attempt to obtain express and informed consent, as defined
59 in s. 394.455(9) and as described in s. 394.459(3)(a), from the
60 child's parent or legal guardian. However, if the parental
61 rights of the parent have been terminated, the parent's location
62 or identity is unknown or cannot reasonably be ascertained, or
63 the parent declines to give express and informed consent, the
64 department may, after consultation with the prescribing
65 physician, seek court authorization to provide the psychotropic
66 medications to the child. Unless parental rights have been
67 terminated and if it is possible to do so, the department shall
68 continue to involve the parent in the decisionmaking process
69 regarding the provision of psychotropic medications. If, at any
70 time, a parent whose parental rights have not been terminated
71 provides express and informed consent to the provision of a
72 psychotropic medication, the requirements of this section that
73 the department seek court authorization do not apply to that
74 medication until such time as the parent no longer consents.

75 (b)1. If a child who is removed from the home under s.
76 39.401 is receiving prescribed psychotropic medication at the
77 time of removal and parental authorization to continue providing
78 the medication cannot be obtained, the department may take
79 possession of the remaining medication and may authorize the
80 continued provision of the medication as prescribed until the
81 shelter hearing if it is determined that the medication is a
82 current prescription for that child and the medication is in its
83 original container.

84 2. If the department authorizes the continued provision of

85 the psychotropic medication to a child when parental
86 authorization cannot be obtained, the department shall notify
87 the parent or legal guardian as soon as possible that the
88 medication is being provided to the child as provided in
89 subparagraph 1. The child's official departmental record must
90 include the reason parental authorization was not initially
91 obtained and an explanation of why the medication is necessary
92 for the child's well-being.

93 3. If the department is advised by a physician licensed
94 under chapter 458 or chapter 459 that the child should continue
95 the psychotropic medication and express and informed parental
96 consent has not been obtained, the department shall request
97 court authorization at the shelter hearing to continue to
98 provide the psychotropic medication and shall provide to the
99 court any information in its possession in support of the
100 request. Any authorization granted at the shelter hearing may
101 extend only until the arraignment hearing on the dependency
102 motion or 28 days following the date of removal, whichever
103 occurs sooner.

104 4. Before filing the dependency petition, the department
105 shall ensure that the child is evaluated by a physician licensed
106 under chapter 458 or chapter 459 to determine whether it is
107 appropriate to continue the psychotropic medication. If, as a
108 result of the evaluation, the department seeks court
109 authorization to continue the psychotropic medication, a motion
110 for such continued authorization shall be filed at the same time
111 as the dependency petition within 21 days after the shelter
112 hearing.

113 (c) Except as provided in paragraph (b), the department
114 must file a motion seeking the court's authorization to
115 initially provide or continue to provide psychotropic medication
116 to a child in its legal custody. The motion must be supported by
117 a written report prepared by the department which describes the
118 efforts made to enable the prescribing physician to obtain
119 express and informed consent for providing the medication to the
120 child and other treatments considered or recommended for the
121 child. In addition, the motion must be supported by the
122 prescribing physician's signed medical report providing:

123 1. The name of the child, the name and range of the dosage
124 of the psychotropic medication, and that there is a need to
125 prescribe psychotropic medication to the child based upon a
126 diagnosed condition for which such medication is being
127 prescribed.

128 2. A statement indicating that the psychotropic
129 medication, at its prescribed dosage, is appropriate for
130 treating the child's diagnosed medical condition as well as the
131 behaviors and symptoms the medication, at its prescribed dosage,
132 is expected to address.

133 3. An explanation of the nature and purpose of the
134 treatment; the recognized side effects, risks, and
135 contraindications of the medication; drug interaction
136 precautions; the possible effects of stopping the medication;
137 and how the treatment will be monitored, followed by a statement
138 indicating that this explanation was provided to the child, if
139 age appropriate, and to the child's caregiver.

140 4. Documentation addressing whether the psychotropic

141 medication will replace or supplement any other currently
142 prescribed medications or treatments; the length of time the
143 child is expected to be taking the medication; and any
144 additional medical, mental health, behavioral, counseling, or
145 other services that the prescribing physician recommends.

146 (d)1. If any party objects to the department's motion
147 under paragraph (c), the court shall hold a hearing before
148 authorizing the department to initially provide or to continue
149 providing psychotropic medication to a child in the legal
150 custody of the department. At such hearing and notwithstanding
151 s. 90.803, the medical report described in paragraph (c) is
152 admissible in evidence. The prescribing physician need not
153 attend the hearing or testify unless the court specifically
154 orders such attendance or testimony. If the court finds that the
155 department's motion and the physician's medical report meet the
156 requirements of this subsection and that it is in the child's
157 best interests, the court may order that the department provide
158 or continue to provide the psychotropic medication to the child
159 without additional testimony or evidence. The court shall
160 further inquire of the department as to whether additional
161 medical, mental health, behavioral, counseling, or other
162 services are being provided to the child by the department which
163 the prescribing physician considers to be necessary or
164 beneficial in treating the child's medical condition and that
165 the physician recommends or expects to provide to the child in
166 concert with the medication. The court may order additional
167 medical consultation, including obtaining a second opinion
168 within 5 working days after such order, based upon

169 considerations of the best interests of the child. The court may
170 not order the discontinuation of prescribed psychotropic
171 medication if such order is contrary to the decision of the
172 prescribing physician unless the court first obtains a second
173 opinion from a licensed psychiatrist, if available, or, if not
174 available, a physician licensed under chapter 458 or chapter
175 459, stating that the psychotropic medication should be
176 discontinued.

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

179 (e) If the child's prescribing physician certifies in the
180 signed medical report required in paragraph (c) that delay in
181 providing a prescribed psychotropic medication would more likely
182 than not cause significant harm to the child, the medication may
183 be provided in advance of the issuance of a court order. In such
184 event, the medical report must provide the specific reasons why
185 the child may experience significant harm and the nature and the
186 extent of the potential harm. The department must submit a
187 motion seeking continuation of the medication and the
188 physician's medical report to the court, the child's guardian ad
189 litem, and all other parties within 3 working days after the
190 department commences providing the medication to the child. The
191 department shall seek the order at the next regularly scheduled
192 court hearing required under this chapter, or within 30 days
193 after the date of the prescription, whichever occurs sooner. If
194 any party objects to the department's motion, the court shall
195 hold a hearing within 7 days.

196 (f)1. The department shall fully inform the court of the

197 child's medical and behavioral status as part of the social
198 services report prepared for each judicial review hearing held
199 for a child for whom psychotropic medication has been prescribed
200 or provided under this subsection. As a part of the information
201 provided to the court, the department shall furnish copies of
202 all pertinent medical records concerning the child which have
203 been generated since the previous hearing. On its own motion or
204 on good cause shown by any party, including any guardian ad
205 litem, attorney, or attorney ad litem who has been appointed to
206 represent the child or the child's interests, the court may
207 review the status more frequently than required in this
208 subsection.

209 2. The court may, in the best interests of the child,
210 order the department to obtain a medical opinion that the
211 continued use of the medication under the circumstances is safe
212 and medically appropriate.

213 (g) The department shall adopt rules to ensure that
214 children receive timely access to clinically appropriate
215 psychotropic medications. These rules must describe the process
216 for determining which adjunctive services are needed, the
217 uniform process for facilitating the prescribing physician's
218 ability to obtain the express and informed consent of a child's
219 parent or guardian, the procedures for obtaining court
220 authorization for the provision of a psychotropic medication,
221 and the frequency of medical monitoring and reporting on the
222 status of the child to the court. The rules must also include
223 uniform forms to be used in requesting court authorization for
224 the use of a psychotropic medication and provide for the

225 integration of each child's treatment plan and case plan. The
 226 department must begin the formal rulemaking process within 90
 227 days after the effective date of this act.

228 (5)(4) A judge may order a child in an out-of-home
 229 placement to be treated by a licensed health care professional
 230 based on evidence that the child should receive treatment. The
 231 judge may also order such child to receive mental health or
 232 developmental disabilities services from a psychiatrist,
 233 psychologist, or other appropriate service provider. Except as
 234 provided in subsection (6) ~~(5)~~, if it is necessary to place the
 235 child in a residential facility for such services, the
 236 procedures and criteria established in s. 394.467 or chapter 393
 237 shall be used, whichever is applicable. A child may be provided
 238 developmental disabilities or mental health services in
 239 emergency situations, pursuant to the procedures and criteria
 240 contained in s. 394.463(1) or chapter 393, whichever is
 241 applicable.

242 Section 2. Paragraph (a) of subsection (3) of section
 243 394.459, Florida Statutes, is amended to read:

244 394.459 Rights of patients.--

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

246 (a)1. Each patient entering treatment shall be asked to
 247 give express and informed consent for admission or ~~and~~
 248 treatment. If the patient has been adjudicated incapacitated or
 249 found to be incompetent to consent to treatment, express and
 250 informed consent to treatment shall be sought instead from the
 251 patient's guardian or guardian advocate. If the patient is a
 252 minor, express and informed consent for admission or ~~and~~

253 treatment shall also be requested from the patient's guardian.
 254 Express and informed consent for admission or ~~and~~ treatment of a
 255 patient under 18 years of age shall be required from the
 256 patient's guardian, unless the minor is seeking outpatient
 257 crisis intervention services under s. 394.4784. Express and
 258 informed consent for admission or ~~and~~ treatment given by a
 259 patient who is under 18 years of age shall not be a condition of
 260 admission when the patient's guardian gives express and informed
 261 consent for the patient's admission pursuant to s. 394.463 or s.
 262 394.467.

263 2. Before ~~Prior to~~ giving express and informed consent,
 264 the following information shall be provided and explained in
 265 plain language ~~disclosed~~ to the patient, or to the patient's
 266 guardian if the patient is 18 years of age or older and has been
 267 adjudicated incapacitated, or to the patient's guardian advocate
 268 if the patient has been found to be incompetent to consent to
 269 treatment, or to both the patient and the guardian if the
 270 patient is a minor: the reason for admission or treatment; ~~the~~
 271 proposed treatment; ~~the~~ purpose of the treatment to be
 272 provided; ~~the~~ common risks, benefits, and side effects thereof;
 273 the specific dosage range for the medication, when applicable;
 274 alternative treatment modalities; ~~the~~ approximate length of
 275 care; ~~the~~ potential effects of stopping treatment; how treatment
 276 will be monitored; ~~and that any consent given for treatment by~~
 277 ~~a patient~~ may be revoked orally or in writing before ~~prior to~~ or
 278 during the treatment period by the patient or by a person who is
 279 legally authorized to make health care decisions on behalf of
 280 the patient, ~~the guardian advocate, or the guardian.~~

HB 883

2005

281 Section 3. Paragraph (b) of subsection (1) of section
282 743.0645, Florida Statutes, is amended to read:

283 743.0645 Other persons who may consent to medical care or
284 treatment of a minor.--

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

286 (b) "Medical care and treatment" includes ordinary and
287 necessary medical and dental examination and treatment,
288 including blood testing, preventive care including ordinary
289 immunizations, tuberculin testing, and well-child care, but does
290 not include surgery, general anesthesia, provision of
291 psychotropic medications, or other extraordinary procedures for
292 which a separate court order, power of attorney, or informed
293 consent as provided by law is required, except as provided in s.
294 39.407(3).

295 Section 4. This act shall take effect July 1, 2005.