HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 909 Medical Screening of Children
SPONSOR(S): Barreiro
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Davis	Collins
2) Juvenile Justice Committee			
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

The bill revises provisions regarding medical screenings performed on children who are removed from their home and maintained in out of home placement. The bill prohibits the Department of Children and Families (DCF) and the Department of Juvenile Justice (DJJ) from administering or authorizing psychiatric or psychological tests or psychotropic medications for a child in DCF or DJJ custody. Exceptions to this provision include: where written and informed consent of the child's parent or legal guardian; or the issuance of a court order.

Approximately 14,000 or 88 percent of the children in DCF custody are Medicaid eligible -- while approximately 4,000 youths in the custody of DJJ are potentially Medicaid eligible.

The bill prohibits DCF from initiating proceedings to terminate parental rights based solely on the parents' refusal to give their child psychotropic medications.

The bill revises provisions relating to medical screenings performed on children who are placed in shelter care. The bill revises provisions relating to medical screenings performed on children who are taken into detention.

See Fiscal Comments section of the analysis for a description of the impact on the Department of Juvenile Justice and the Agency for Health Care Administration.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families: This bill increases the empowerment of families as the Department of Children and Families and the Department of Juvenile Justice must attempt to obtain express and informed parental consent for providing such medication.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Department of Children and Families (DCF)

Current statute authorizes the department to perform a medical screening on a child that has been removed from the home. The screening is to examine the child for injury, illness, and communicable diseases and to determine the need for immunization. The screening must be performed by a licensed health care professional. The department is required by operating procedure to obtain a Comprehensive Behavioral Health Assessment (CBHA) within 30 days of a child entering shelter care.

The department is required to obtain consent for medical treatment from the parent or legal custodian or obtain a court order. In the event that the parent or legal custodian is not available and it is after normal working hours, the department has the authority to consent to necessary medical treatment. This authority is limited to the time that is required to obtain a court order. The department currently is not required to obtain parental consent or a court order to perform any type of behavioral health assessment, including a CBHA, or other psychological, behavioral, or psychiatric evaluations.

"Medical care and treatment" is defined by s. 743.645, F.S., as being "ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, power of attorney, or informed consent as provided by law is required." Rule 65C-12 and 13, F.A.C., contains the same definition of medical care and treatment, and Rule 65C-12.003, F.A.C., specifies the procedure for obtaining consent when a child is removed from the home. Rule 65C-12, F.A.C., states that when it is determined that the child is in need of mental health or substance abuse services, the child protective investigator or service counselor will work with the family to include the needed services in the case plan or will petition the court to order the services as a condition of supervision. This section does not specifically address the inclusion of a requirement for administering psychotropic medications in the case plan.

Currently, a child cannot be taken into the department's custody solely due to the child's parent(s) refusing to provide them psychotropic medications and this refusal does not constitute grounds for termination of parental rights. For this refusal to constitute a finding of abuse or neglect, a physician would have to determine that the parent's actions resulted in medical neglect of the child.

DCF policy and practice related to the provision of psychotropic medications is governed by General Counsel Opinion No. 2001-04 and 2001-04(a) issued in May of 2001. This opinion states that if the parent is available, consent to administer psychotropic medication must be sought from the parent. If the parent is unavailable or unwilling to consent, a court order must be entered prior to the administration of the medication. In addition, clarification of the opinion by the General Counsel indicates that if the child is receiving psychotropic medication pursuant to a court order, then that information should be addressed in Judicial Review and continued authorization should be made part of the court order.

Department of Juvenile Justice (DJJ)

A recent survey of all DJJ commitment facilities reflects that 5,464 of the youth in custody have a DSM-IV diagnosis. Of those youth, 1,716 or 31.4 percent are prescribed psychotropic medication.

All youth entering the physical custody of the department who do not have a current physical assessment on file, must receive a comprehensive physical assessment performed by a physician (MD), osteopathic physician (DO), advanced registered nurse practitioner (ARNP), or physician assistant (PA), no later than 21 days from the date of admission. A "current" comprehensive physical assessment is one that has been performed within one year for youth with Medical Grades of 2, 3, 4 or 5 and within two years for youth with a Medical Grade of 1. The comprehensive physical assessments of youth with a Medical Grade of 1 are to be reviewed and documented as a focused medical evaluation in the progress notes of the Individual Health Care Record one year from the first comprehensive physical assessment. A full comprehensive physical assessment is to be conducted every two years for youth with a Medical Grade of 1.

All youth entering DJJ custody are required to have the Authority for Evaluation and Treatment (AET) signed by the youth's parent/legal guardian. If the parent/legal guardian cannot be located, the department will seek a court order. The court may order the child to be treated by a physician. The court may also order the child to receive mental health, substance abuse, or retardation services from a psychiatrist, psychologist, or other appropriate service provider.

The AET cannot be used as authorization to begin prescription medication(s) that:

- are prescribed after the youth has entered the physical custody of the department;
- changes the dosage of the prescription of current medication the youth is prescribed at the time of entering the custody of the department;
- takes place after the youth has entered the physical custody of the department; and
- discontinues a current prescription medication(s) the youth is prescribed at the time of entering the custody of the department, after the youth has entered the physical custody of the department.

For the prescribing of all psychotropic prescription medication(s) (which the youth was not currently prescribed at the time of entry into the physical custody of the department), a copy of the 3rd page of the standard form, "Clinical Psychotropic Progress Note" (CPPN) shall be sent via certified mail to the parent/guardian at the address on record, after completion by the prescriber. Information included on page 3 of the CPPN is psychotropic medication ordered, dosage and frequency, diagnosis/target symptoms, diagnosis/clinical justification, common side effects, usual dosage range, and special instructions to the facility staff. The prescribing practitioner signs and dates this form. This form is accompanied by a cover letter, "Acknowledgment of Receipt of CPPN to confirm any oral consent to the treatment and to request written consent." The contact person and telephone number are provided to the parent.

The AET authorizes the department on behalf of the parent/guardian to allow a licensed health care provider to give the youth additional tests that he or she thinks are necessary as a result of a physical examination. In regards to any mental health or emotional illnesses the child has or develops while in the custody of DJJ, the department may facilitate mental health assessments and treatment options with licensed mental health care providers or mental health facilities, including diagnostic assessment, psychological testing, and individual, group and family therapy and/or counseling.

Effect

The bill requires medical screening prior to any child entering the care or custody of the Department of Children and Family Services or the Department of Juvenile Justice and a comprehensive medical examination prior to the administering of any psychotropic drugs. Approximately 14,000 or 88 percent of the children in DCF custody are Medicaid eligible -- while approximately 4,000 youths in the custody of DJJ are potentially Medicaid eligible.

Department of Children and Families (DCF)

The addition of s. 39.407(2)(c), F.S., changes current DCF practice concerning obtaining behavioral health assessments, but does not substantially change current practice as governed by the General Counsel Opinion on Administration of Psychotropic Medications.

According to DCF, the requirement added to s. 39.407(2)(c), F.S., which prohibits the department from administering or authorizing a psychiatric or psychological test will result in unnecessary delays in the child receiving the appropriate behavioral health services required. This requirement will also create an unnecessary and monumental burden on both the department and the court system. The requirement that the department provide information on all known side effects and options for alternative treatments neither identifies how the department is to obtain this information nor, once it is obtained, to whom it is to be provided. This information is currently included in the requirement for specific express and informed consent, contained in s. 394.495(3), F.S., to be provided by the prescribing physician.

According to DCF, due to the proposed delay in testing and assessment that would result from the bill, the best alternative treatments will not be readily identified prior to a psychiatric evaluation. The bill requirement will actually result in the child not being provided timely access to the behavioral health services that they need, including psychotropic medications. Section 39.407(4), F.S., will require a separate and additional physical examination by a nonpsychiatric medical specialist on all children that are to be evaluated for psychotropic medications. The requirement for a separate physical examination, with the purpose of ruling out all physical diseases and disorders, has the potential to cause delays in the prescription and administration of psychotropic medications. Best practice currently requires that the prescribing physician review all medical information concerning the child and the physician will order any additional tests necessary to rule out any physical health causes for the behaviors and symptoms that are being treated. The cost impact of the requirement is uncertain, while a comprehensive physical examination is covered under Medicaid, not all children in out-of-home care are Medicaid eligible. In a recent data run, the children identified in HomeSafenet as being served by the department, 88 percent were identified by Medicaid as being Medicaid eligible. This includes children being served in their home and in out-of-home care.

According to DCF, the additions to ss. 39.601(1)(g) and 39.703(3), F.S., and the amendments to ss. 39.601(4) and 39.806(1) are unnecessary. Children are not sheltered, found to be dependent, or committed to the department upon termination of parental rights based solely upon parental refusal to provide psychotropic medications. It is possible that a court could find such refusal constitutes medical neglect because it is possible for such refusal to put a child at risk of harm. Therefore, the bill's blanket prohibition against shelter, adjudication of dependency, or termination of parental rights based upon a parent's refusal to provide psychotropic medication, creates limits upon the definitions of abuse and neglect that have the potential to result in serious harm to children.

Department of Juvenile Justice (DJJ)

The bill requires DJJ to use a competent, non-psychiatric medical specialist to complete a comprehensive physical examination on all youth before they are given psychotropic medication. The first concern is defining competent, non-psychiatric medical specialist as the term is too broad and could allow unqualified, unlicensed personnel to perform comprehensive medical evaluations. Facilities that employ a psychiatrist, psychiatric advanced registered nurse practitioner, or psychiatric nurse would not be allowed to complete this physical examination. Therefore, the facility will be required to expend additional funds to contract with another medical professional.

The comprehensive physical examination is to include all possibilities of physical disease or disorder, and must have ruled them out as causes of the child's behavior or symptoms to be addressed with psychotropic medication. According to DJJ, this is too broad of a scope of examination, as it would be potentially difficult to determine where the testing should start and stop. The majority of DJJ facilities must utilize outside medical laboratories to test all specimens collected. The bill could lead to a delay in the referral to a psychiatrist for further evaluation.

Another potential problem could arise if a youth goes into a psychological crisis, as the facility may be required to complete the comprehensive physical examination with all required testing prior to having the youth examined by a license psychiatrist for possible medication management. Not all residential programs have access to crisis stabilization unit services because of location or the nature of the clients served.

The bill requires the department to obtain written and informed consent of the child's parent or legal guardian, or if the parent cannot be located, authorization by the court. The department already obtains informed consent of the child's parent or guardian prior to the administration of a new prescription or changes in an existing prescription for psychotropic medication. The bill will cause a delay in trying to obtain written consent or court order prior to using any psychotropic medication. This delay would be in contradiction to language in the bill that states, "the department shall ensure that children under its care receive timely access to clinically appropriate psychotropic medication."

According to DJJ, the bill does not address youth who arrive at a facility who are already taking prescribed psychotropic medications. As written, these youth would also require extensive medical evaluation and written consent to continue these medications.

This bill calls for children to receive access to clinically appropriate psychotropic medications that have no known contradictions for use in children. The department shall provide all known side effects of such medications and shall provide options for alternative treatments. However, not all medications have been thoroughly tested for use on children. Therefore, the use of these medications would be considered contradictory for use on children. Currently, DJJ policy requires the facility to send the parent/guardian a Clinical Psychotropic Progress Note that includes common side effects of psychotropic medications prescribed to the child.

Agency for Health Care Administration

The requirements of this bill could delay access to assessment, and subsequently, to certain treatment services. It substantially changes current DCF and DJJ practice concerning the need to obtain consent for behavioral health assessments. However, it does not substantially change current practice governing consent for psychotropic medication, with the exception that currently DJJ may receive telephonic consent with a witness if written consent is not readily available.

The legislation prevents DCF from finding neglect in certain instances in which a family does not follow through with providing psychotropic medications to children, even when such neglect could or does endanger the child, such as if the child is psychotic and lack of medication places him or herself or others in danger due to untreated mental illness. Also, the bill mandates requirements for medical and laboratory screenings and for comprehensive physical examinations by a competent, nonpsychiatric medical specialist (undefined in the bill). This may possibly conflict with legislation and rules of the Florida Administrative Code promulgated by the Department of Health as to who is a medical specialist qualified to administer the medical and laboratory screenings and comprehensive physical examinations provided in this bill.

The language of the bill is unclear as to who is required to provide such examination since it does not define a "competent, nonpsychiatric medical specialist."

C. SECTION DIRECTORY:

Section 1. Amends s. 39.407, F.S., revising provisions relating to medical screening.

Section 2. Amends s. 39.601, F.S., relating to case plan requirements.

Section 3. Amends s. 39.703, F.S., prohibiting the department from initiating proceedings to terminate parental rights based solely on the parents' refusal to give their child psychotropic medications.

Section 4. Amends s. 39.806, F.S., providing that the refusal of parents to give their child psychotropic medications may not be considered grounds for termination of parental rights.

Section 5. Amends s. 984.19, F.S., revising provisions relating to medical screenings performed on children who are placed in shelter care.

Section 6. Amends s. 985.224, F.S., revising provisions relating to medical screenings performed on children who are taken into detention.

Section 7. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

According to DJJ, the fiscal impact of this bill cannot be determined at this time. Approximately 58% of all DJJ residential commitment beds are Medicaid allowable. Medicaid would cover youth who are not covered by private insurance, or whose parents are unable to pay for this testing.

According to the Agency for Health Care Administration, the screenings and physical examinations are already available under Medicaid to these children from their primary care licensed medical professional.

It is not anticipated this bill would have a fiscal impact on the agency since these medical and screening services are already covered services for this population.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to both DJJ and DCF. Current DJJ policies and manuals govern procedures regarding parental notification and permission for treatment, comprehensive physical assessment and Mental Health Services. This bill does not sufficiently define competent, non-psychiatric medical specialist and the testing requirements for a comprehensive physical examination.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Department of Juvenile Justice

Nutritional deficiencies need to be further defined. The department agrees that ruling out heavy-metal toxicity, hypoglycemia and illegal drug dependence are fairly routine tests and should be performed. Depending on the types of testing required added cost will affect the program.

According to DJJ, psychiatric and psychological testing are broad terms. The types of testing need to be defined. All youth placed in the physical custody of the department receive mental health and substance abuse screening, if indicated, the youth are referred for further comprehensive substance abuse and/or mental health evaluations conducted by, or under the supervision of a qualified professional. These evaluations are necessary to alert the staff to any signs of mental/emotional disturbance or distress and to refer the youth on for further evaluation and/or treatment.

Agency for Health Care Administration

The bill prevents DCF from finding neglect in certain instances in which a family does not follow through with providing psychotropic medications to children, even when such neglect could or does endanger the child, such as if the child is psychotic and lack of medication places him or herself or others in danger due to untreated mental illness. Also the bill mandates requirements for medical and laboratory screenings and for comprehensive physical examinations by a competent, nonpsychiatric medical specialist (undefined in the bill). This may possibly conflict with legislation and rules of the Florida Administrative Code promulgated by the Department of Health as to who is a medical specialist qualified to administer the medical and laboratory screenings and comprehensive physical examinations provided in this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES