

1 A bill to be entitled
2 An act relating to the provision of psychotropic
3 medication to children in out-of-home placements;
4 repealing s. 39.407(3), F.S., relating to the authority of
5 the Department of Children and Family Services to
6 prescribe psychotropic medication to a child in its
7 custody; creating s. 39.4071, F.S.; providing legislative
8 findings and intent; providing definitions; requiring that
9 a guardian ad litem be appointed by the court to represent
10 a child in the custody of the Department of Children and
11 Family Services who is prescribed a psychotropic
12 medication; prescribing the duties of the guardian ad
13 litem; requiring that the department or lead agency notify
14 the guardian ad litem of any change in the status of the
15 child; requiring that express and informed consent and
16 assent be obtained from a child or the child's parent or
17 guardian; providing requirements for a prescribing
18 physician in obtaining consent and assent; providing for
19 the invalidation of a parent's informed consent; requiring
20 the department to seek informed consent from the legal
21 guardian in certain circumstances; requiring the
22 department to file a motion for the administration of
23 psychotropic medication with the final judgment of
24 termination of parental rights under certain
25 circumstances; requiring that a court authorize the
26 administration of psychotropic medication to a child who
27 is in shelter care or in foster care and for whom parental
28 consent has not been obtained; providing requirements for

29 | the motion to the court; requiring that any party
30 | objecting to the administration of psychotropic medication
31 | file its objection within a specified period; authorizing
32 | the court to obtain a second opinion regarding the
33 | proposed administration; requiring that the court hold a
34 | hearing if any party objects to the proposed
35 | administration; specifying circumstances under which the
36 | department may provide psychotropic medication to a child
37 | before court authorization is obtained; requiring that the
38 | department seek court authorization for continued
39 | administration of the medication; providing for an
40 | expedited hearing on such motion under certain
41 | circumstances; requiring the department to provide notice
42 | to all parties and the court for each emergency use of
43 | psychotropic medication under certain conditions;
44 | requiring that a mental health treatment plan be developed
45 | for each child or youth who is placed into an out-of-home
46 | placement; requiring certain information to be included in
47 | a mental health treatment plan; requiring the department
48 | to develop and administer procedures to require the
49 | caregiver and prescribing physician to report any adverse
50 | side effects; requiring documentation of the adverse side
51 | effects; prohibiting the prescription of psychotropic
52 | medication to certain children who are in out-of-home care
53 | absent certain conditions; requiring review by a licensed
54 | child psychiatrist before psychotropic medication is
55 | administered to certain children who are in out-of-home
56 | care under certain conditions; prohibiting authorization

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57 for a child in the custody of the department to
58 participate in any clinical trial designed to evaluate the
59 use of psychotropic medication in children; amending s.
60 743.0645, F.S.; conforming a cross-reference; providing an
61 effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Subsection (3) of section 39.407, Florida
66 Statutes, is repealed.

67 Section 2. Section 39.4071, Florida Statutes, is created
68 to read:

69 39.4071 Use of psychotropic medication for children in
70 out-of-home placement.-

71 (1) LEGISLATIVE FINDINGS AND INTENT.-

72 (a) The Legislature finds that children in out-of-home
73 placements often have multiple risk factors that predispose them
74 to emotional and behavioral disorders and that they receive
75 mental health services at higher rates and are more likely to be
76 given psychotropic medications than children from comparable
77 backgrounds.

78 (b) The Legislature also finds that the use of
79 psychotropic medications for the treatment of children in out-
80 of-home placements who have emotional and behavioral
81 disturbances has increased over recent years. While this
82 increased use of psychotropic medications is paralleled by an
83 increase in the rate of the coadministration of two or more
84 psychotropic medications or polypharmacy, data on the safety and

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85 efficacy of many of the psychotropic medications used in
86 children and research supporting the practice of polypharmacy in
87 this population is limited.

88 (c) The Legislature further finds that significant
89 challenges are encountered in providing quality mental health
90 care to children in out-of-home placements. Not uncommonly,
91 children in out-of-home placements are subjected to multiple
92 placements and many service providers, with communication
93 between providers often poor, resulting in fragmented medical
94 and mental health care. The dependable, ongoing therapeutic and
95 caregiving relationships these children need are hampered by the
96 high turnover among child welfare caseworkers and care
97 providers. Furthermore, children in out-of-home placements,
98 unlike children from intact families, often have no consistent
99 interested party who is available to coordinate treatment and
100 monitoring plans or to provide longitudinal oversight of care.

101 (d) It is therefore the intent of the Legislature that
102 children in out-of-home placements who may benefit from
103 psychotropic medications receive those medications safely as
104 part of a comprehensive mental health treatment plan overseen by
105 a court-appointed guardian ad litem.

106 (2) DEFINITIONS.—As used in this section, the term:

107 (a) "Assent" means a process by which a provider of
108 medical services helps a child achieve a developmentally
109 appropriate awareness of the nature of his or her condition,
110 informs the child of what can be expected through tests and
111 treatment, makes a clinical assessment of the child's
112 understanding of the situation and the factors influencing how

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113 he or she is responding, and solicits an expression of the
114 child's willingness to accept the proposed care. The mere
115 absence of an objection by the child may not be construed as
116 assent.

117 (b) "Comprehensive behavioral health assessment" means an
118 in-depth and detailed assessment of the child's emotional,
119 social, behavioral, and developmental functioning within the
120 family home, school, and community. A comprehensive behavioral
121 health assessment must include direct observation of the child
122 in the home, school, and community, as well as in the clinical
123 setting, and must adhere to the requirements contained in the
124 Florida Medicaid Community Behavioral Health Services Coverage
125 and Limitations Handbook.

126 (c) "Express and informed consent" means voluntary consent
127 from a parent whose rights have not been terminated or a legal
128 guardian of the child who has received full, accurate, and
129 sufficient information and an explanation about the child's
130 medical condition, medication, and treatment in order to enable
131 the parent or guardian to make a knowledgeable decision without
132 being subjected to any deceit or coercion.

133 (d) "Mental health treatment plan" means a report that is
134 prepared by a physician prescribing psychotropic medication to a
135 child in out-of-home placement and that includes the information
136 required by this section.

137 (e) "Psychotropic medication" means any chemical substance
138 prescribed with the intent to treat psychiatric disorders, and
139 those substances that, though prescribed with the intent to
140 treat other medical conditions, have the effect of altering

141 brain chemistry or involve any of the medications in the
 142 following categories:
 143 1. Antipsychotics;
 144 2. Antidepressants;
 145 3. Sedative hypnotics;
 146 4. Lithium;
 147 5. Stimulants;
 148 6. Nonstimulant medications for treating attention deficit
 149 hyperactivity disorder;
 150 7. Anti-dementia medications and cognitive enhancers;
 151 8. Anticonvulsants and alpha-2 agonists; and
 152 9. Any other medication used to stabilize or improve mood,
 153 mental status, behavior, or mental illness.
 154 (3) APPOINTMENT OF GUARDIAN AD LITEM.—
 155 (a) A guardian ad litem shall be appointed by the court at
 156 the earliest possible time to represent the best interests of a
 157 child in the custody of the department who is prescribed a
 158 psychotropic medication. Pursuant to s. 39.820, the appointed
 159 guardian ad litem is a party to any judicial proceeding as a
 160 representative of the child and serves until discharged by the
 161 court.
 162 (b) It is the duty of the guardian ad litem to oversee the
 163 care, health, and medical treatment of the child; to advise the
 164 court regarding any change in the status of the child; and to
 165 respond to any medical emergency of the child.
 166 (c) The department and the community-based care lead
 167 agency shall notify the guardian ad litem within 24 hours after
 168 any change in the status of the child, including, but not

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169 limited to, a change in placement, a change in school, or a
170 change in medical condition or medication.

171 (4) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the
172 time of removal from his or her home, a child is being provided
173 or is being evaluated for the initiation of prescribed
174 psychotropic medication under this section, express and informed
175 consent and assent shall be sought by the prescribing physician.

176 (a) The prescribing physician shall obtain assent from the
177 child, unless the prescribing physician determines that it is
178 not appropriate to obtain assent from the child. In making this
179 assessment, the prescribing physician shall consider the
180 capacity of the child to make an independent decision based on
181 his or her age, maturity, and psychological and emotional state.
182 If the physician determines that it is not appropriate to obtain
183 assent from the child, the physician must document the decision
184 in the mental health treatment plan.

185 1. Assent from a child shall be sought in a manner that is
186 understandable to the child using an age-appropriate assent
187 form. The child shall be provided with sufficient information,
188 such as the nature and purpose of the medication, the probable
189 risks and benefits, alternative treatments and the risks and
190 benefits thereof, and the risks and benefits of refusing or
191 discontinuing the medication. Assent may be oral or written and
192 must be documented by the prescribing physician.

193 2. Oral assent is appropriate for a child who is younger
194 than 7 years of age. Assent from a child who is 7 to 13 years of
195 age may be sought orally or in a simple form that is written at
196 the second-grade or third-grade reading level. A child who is 14

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197 years of age or older may understand the language presented in
198 the consent form for parents or guardians. If so, the child may
199 sign the consent form along with the parent or guardian. Forms
200 for parents and older children shall be written at the sixth-
201 grade to eighth-grade reading level.

202 3. In each case where assent is obtained, a copy of the
203 assent documents must be provided to the parent or legal
204 guardian and the original assent documents shall become part of
205 the child's mental health treatment plan.

206 (b) Express and informed consent for the administration of
207 psychotropic medication may be given only by a parent whose
208 rights have not been terminated or a legal guardian of the child
209 who has received full, accurate, and sufficient information and
210 an explanation about the child's medical condition, medication,
211 and treatment in order to enable the parent or guardian to make
212 a knowledgeable decision. A sufficient explanation includes, but
213 need not be limited to, the following information, which is
214 provided and explained in plain language by the prescribing
215 physician to the parent or guardian: the medication, the reason
216 for prescribing it, and its purpose or intended results; side
217 effects, risks, and contraindications, including effects of
218 stopping the medication; method for administering the medication
219 and dosage range when applicable; potential drug interactions;
220 alternative treatments; and the behavioral health or other
221 services used to complement the use of medication, when
222 applicable.

223 1. Express and informed consent may be oral or written and
224 must be documented by the prescribing physician. If the

225 department or the physician is unable to obtain consent from the
 226 parent or guardian, the reasons must be documented.

227 2. When express and informed consent is obtained, a copy
 228 of the consent documents must be provided to the parent or legal
 229 guardian and the original consent documents shall become part of
 230 the child's mental health treatment plan.

231 (c) The informed consent of any parent whose whereabouts
 232 are unknown for 60 days, who is adjudicated incompetent, who
 233 does not have regular and frequent contact with the child, or
 234 whose parental rights are terminated after giving consent, is
 235 invalid. If the informed consent of a parent becomes invalid,
 236 the department shall seek informed consent from the legal
 237 guardian. If the informed consent was provided by a parent whose
 238 parental rights have been terminated, the department shall file
 239 a motion for the administration of psychotropic medication along
 240 with the motion for final judgment of termination of parental
 241 rights.

242 (5) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD
 243 IN SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT
 244 BEEN OBTAINED.—

245 (a) Motion for court authorization for administration of
 246 psychotropic medications.—

247 1. If the department believes that a child in its physical
 248 or legal custody requires the administration of a psychotropic
 249 medication and the child's parents or legal guardians have not
 250 provided express and informed consent as provided by law, the
 251 department or its agent shall file a motion with the court to
 252 authorize the administration of the psychotropic medication

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253 before the administration of the medication, except as provided
254 in subsection (6). In each case in which a motion is required,
255 the motion must include:

256 a. A written report by the department describing the
257 efforts made to enable the prescribing physician to obtain
258 express and informed consent for providing the medication to the
259 child and describing other treatments considered or recommended
260 for the child; and

261 b. The prescribing physician's completed and signed mental
262 health treatment plan.

263 2. The department must file a copy of the motion with the
264 court and, within 48 hours after filing the motion with the
265 court, notify all parties in writing, or by whatever other
266 method best ensures that all parties receive notification, of
267 its proposed administration of psychotropic medication to the
268 child.

269 3. If any party objects to the proposed administration of
270 the psychotropic medication to the child, that party must file
271 its objection within 2 working days after being notified of the
272 department's motion.

273 (b) Court action on motion for administration of
274 psychotropic medication.—

275 1. If no party timely files an objection to the
276 department's motion, the court may enter its order authorizing
277 the proposed administration of the psychotropic medication
278 without a hearing. Based on its determination of the best
279 interests of the child, the court may order additional medical
280 consultation or require the department to obtain a second

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281 opinion within a reasonable time, but not more than 21 calendar
282 days. If the court orders an additional medical consultation or
283 second medical opinion, the department shall file a written
284 report including the results of this additional consultation or
285 a copy of the second medical opinion with the court within the
286 time required by the court, and shall serve a copy of the report
287 as required by this section.

288 2. If any party timely files its objection to the proposed
289 administration of the psychotropic medication to the child, the
290 court shall hold a hearing as soon as possible on the
291 department's motion.

292 a. The medical report of the prescribing physician is
293 admissible in evidence at the hearing.

294 b. The court shall ask the department whether additional
295 medical, mental health, behavioral, counseling, or other
296 services are being provided to the child which the prescribing
297 physician considers to be necessary or beneficial in treating
298 the child's medical condition and which the physician recommends
299 or expects to be provided to the child along with the
300 medication.

301 3. The court may order additional medical consultation or
302 a second medical opinion, as provided in subparagraph 1.

303 4. After considering the department's motion and any
304 testimony received, the court may order that the department
305 provide or continue to provide the proposed psychotropic
306 medication to the child upon a determination that it is in the
307 child's best interest to do so.

308 (6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD

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309 IN OUT-OF-HOME CARE BEFORE COURT AUTHORIZATION HAS BEEN
310 OBTAINED.—The department may provide continued administration of
311 psychotropic medication to a child before authorization by the
312 court has been obtained only as provided in this subsection.

313 (a) If a child is removed from the home and taken into
314 custody under s. 39.401, the department may continue to
315 administer a current prescription of psychotropic medication to
316 the child; however, the department shall request court
317 authorization for the continued administration of the medication
318 at the shelter hearing. This request shall be included in the
319 shelter petition.

320 1. The department shall provide all information in its
321 possession to the court in support of its request at the shelter
322 hearing. The court may authorize the continued administration of
323 the psychotropic medication only until the arraignment hearing
324 on the petition for adjudication, or for 28 days following the
325 date of the child's removal, whichever occurs first.

326 2. If the department believes, based on the required
327 physician's evaluation, that it is appropriate to continue the
328 psychotropic medication beyond the time authorized by the court
329 at the shelter hearing, the department shall file a motion
330 seeking continued court authorization at the same time that it
331 files the dependency petition, but within 21 days after the
332 shelter hearing.

333 (b) If the department believes, based on the certification
334 of the prescribing physician, that delay in providing the
335 prescribed psychotropic medication to the child would, more
336 likely than not, cause significant harm to the child, the

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337 department must submit a motion to the court seeking
338 continuation of the medication within 3 working days after the
339 department begins providing the medication to the child.

340 1. The motion seeking authorization for the continued
341 administration of the psychotropic medication to the child must
342 include all information required in this section. The required
343 medical report must also include the specific reasons why the
344 child may experience significant harm, and the nature and the
345 extent of the potential harm, resulting from a delay in
346 authorizing the prescribed medication.

347 2. The department shall serve the motion on all parties
348 within 3 working days after the department begins providing the
349 medication to the child.

350 3. The court shall hear the department's motion at the
351 next regularly scheduled court hearing required by law, or
352 within 30 days after the date of the prescription, whichever
353 occurs first. However, if any party files an objection to the
354 motion, the court shall hold a hearing within 7 days.

355 (c) The department may authorize, in advance of a court
356 order, the administration of psychotropic medications to a child
357 in its custody in a hospital, crisis stabilization unit, or in
358 statewide inpatient psychiatric program. If the department does
359 so, it must seek court authorization for the continued
360 administration of the medication as required in this section.

361 (d) If a child receives a one-time dose of a psychotropic
362 medication during a crisis, the department shall provide
363 immediate notice to all parties and to the court of each such
364 emergency use.

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365 (7) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—

366 (a) Within 7 days after a child or youth is placed into an
367 approved out-of-home placement, the child protective
368 investigator or dependency case manager shall submit a referral
369 for a comprehensive behavioral health assessment, which shall be
370 used to develop a mental health treatment plan for the child.

371 The mental health treatment plan must include:

372 1. The name of the child, a statement indicating that
373 there is a need to prescribe psychotropic medication to the
374 child based upon a diagnosed, organically caused condition for
375 which such medication is being prescribed, a statement
376 indicating the compelling governmental interest in prescribing
377 the psychotropic medication, and the name and range of the
378 dosage of the psychotropic medication.

379 2. A statement indicating that the physician has reviewed
380 all medical information concerning the child which has been
381 provided.

382 3. A statement indicating that the psychotropic
383 medication, at its prescribed dosage, is appropriate for
384 treating the child's diagnosed medical condition, as well as the
385 behaviors and symptoms that the medication, at its prescribed
386 dosage, is expected to address.

387 4. An explanation of the nature and purpose of the
388 treatment; the recognized side effects, risks, and
389 contraindications of the medication, including procedures for
390 reporting adverse effects; drug-interaction precautions; the
391 possible effects of stopping the medication; and how the
392 treatment will be monitored, followed by a statement indicating

393 that this explanation was provided to the child if age
 394 appropriate and to the child's caregiver.

395 5. Documentation addressing whether the psychotropic
 396 medication will replace or supplement any other currently
 397 prescribed medications or treatments; the length of time the
 398 child is expected to be taking the medication; a plan for the
 399 discontinuation of any medication when medically appropriate;
 400 and any additional medical, mental health, behavioral,
 401 counseling, or other services that the prescribing physician
 402 recommends as part of a comprehensive treatment plan.

403 (b) The department shall develop and administer procedures
 404 to require the caregiver and prescribing physician to report any
 405 adverse side effects of the medication to the department or its
 406 designee. Any adverse side effects must be documented in the
 407 treatment plan for the child.

408 (8) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION
 409 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME
 410 CARE.-Absent a finding of a compelling governmental interest, a
 411 psychotropic medication may not be prescribed for any child from
 412 birth to 10 years of age who is in out-of-home placement. Based
 413 on a finding of a compelling governmental interest but before a
 414 psychotropic medication is prescribed for any child from birth
 415 through 10 years of age who is in an out-of-home placement, a
 416 review of the administration must be obtained from a child
 417 psychiatrist who is licensed under chapter 458 or chapter 459.
 418 This review must occur before express and informed consent or
 419 assent is sought from the child or his or her parent or
 420 guardian.

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421 (9) CLINICAL TRIALS.-At no time shall a child in the
 422 custody of the department be allowed to participate in a
 423 clinical trial that is designed to develop new psychotropic
 424 medications or evaluate their application to children.

425 Section 3. Paragraph (b) of subsection (1) of section
 426 743.0645, Florida Statutes, is amended to read:

427 743.0645 Other persons who may consent to medical care or
 428 treatment of a minor.-

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

430 (b) "Medical care and treatment" includes ordinary and
 431 necessary medical and dental examination and treatment,
 432 including blood testing, preventive care including ordinary
 433 immunizations, tuberculin testing, and well-child care, but does
 434 not include surgery, general anesthesia, provision of
 435 psychotropic medications, or other extraordinary procedures for
 436 which a separate court order, power of attorney, or informed
 437 consent as provided by law is required, except as provided in s.
 438 39.4071 ~~s. 39.407(3)~~.

439 Section 4. This act shall take effect July 1, 2010.