

By the Committee on Children, Families, and Elder Affairs; and
Senator Storms

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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 amending s. 39.407, F.S., requiring the provision of a
5 comprehensive mental health treatment plan; specifying
6 eligibility; prescribing duties for the Department of
7 Children and Family Services; deleting provisions
8 relating to the provision of psychotropic medications
9 to children in out-of-home care; creating s. 39.4071,
10 F.S.; providing legislative findings and intent;
11 providing definitions; requiring that a guardian ad
12 litem be appointed by the court to represent a child
13 in the custody of the Department of Children and
14 Family Services who is prescribed a psychotropic
15 medication; prescribing the duties of the guardian ad
16 litem; requiring that the department or lead agency
17 notify the guardian ad litem of any change in the
18 status of the child; providing for psychiatric
19 evaluation of the child; requiring that express and
20 informed consent and assent be obtained from a child
21 or the child's parent or guardian; providing
22 requirements for a prescribing physician in obtaining
23 consent and assent; providing for the invalidation of
24 a parent's informed consent; requiring the department
25 to seek informed consent from the legal guardian in
26 certain circumstances; requiring the department to
27 file a motion for the administration of psychotropic
28 medication with the final judgment of termination of
29 parental rights under certain circumstances; requiring

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30 that a court authorize the administration of
31 psychotropic medication to a child who is in shelter
32 care or in foster care and for whom parental consent
33 has not been obtained; providing requirements for the
34 motion to the court; requiring that any party
35 objecting to the administration of psychotropic
36 medication file its objection within a specified
37 period; authorizing the court to obtain a second
38 opinion regarding the proposed administration;
39 requiring that the court hold a hearing if any party
40 objects to the proposed administration; specifying
41 circumstances under which the department may provide
42 psychotropic medication to a child before court
43 authorization is obtained; requiring that the
44 department seek court authorization for continued
45 administration of the medication; providing for an
46 expedited hearing on such motion under certain
47 circumstances; requiring the department to provide
48 notice to all parties and the court for each emergency
49 use of psychotropic medication under certain
50 conditions; providing for discontinuation, alteration,
51 and destruction of medication; requiring that a mental
52 health treatment plan be developed for each child or
53 youth who needs mental health services; requiring
54 certain information to be included in a mental health
55 treatment plan; requiring the department to develop
56 and administer procedures to require the caregiver and
57 prescribing physician to report any adverse side
58 effects; requiring documentation of the adverse side

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59 effects; prohibiting the prescription of psychotropic
60 medication to certain children who are in out-of-home
61 care absent certain conditions; requiring review by a
62 licensed child psychiatrist before psychotropic
63 medication is administered to certain children who are
64 in out-of-home care under certain conditions;
65 prohibiting authorization for a child in the custody
66 of the department to participate in any clinical trial
67 designed to evaluate the use of psychotropic
68 medication in children; amending s. 743.0645, F.S.;
69 conforming a cross-reference; providing an effective
70 date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Subsection (3) of section 39.407, Florida
75 Statutes, is amended to read:

76 39.407 Medical, psychiatric, and psychological examination
77 and treatment of child; physical, mental, or substance abuse
78 examination of person with or requesting child custody.—

79 (3) (a) All children placed in out-of-home care shall be
80 provided with a comprehensive behavioral health assessment. The
81 child protective investigator or dependency case manager shall
82 submit a referral for such assessment no later than 7 days after
83 a child is placed in out-of-home care.

84 (b) Any child who has been in out-of-home care for more
85 than 1 year, or who did not receive a comprehensive behavioral
86 health assessment when placed into out-of-home care, is eligible
87 to receive a comprehensive behavioral health assessment. Such

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88 assessments evaluate behaviors that give rise to the concern
89 that the child has unmet mental health needs. Any party to the
90 dependency proceeding, or the court on its own motion, may
91 request that an assessment be performed.

92 (c) The child protective investigator or dependency case
93 manager shall be responsible for ensuring that all
94 recommendations in the comprehensive behavioral health
95 assessment are incorporated into the child's case plan and that
96 the recommended services are provided in a timely manner. If, at
97 a case planning conference, there is a determination made that a
98 specific recommendation should not be included in a child's case
99 plan, the court must be provided with a written explanation as
100 to why the recommendation is not being followed.

101 (d) Nothing in this provision shall be construed to prevent
102 a child from receiving any other form of psychological
103 assessment when needed.

104 (e) If it is determined that a child is in need of mental
105 health services, the comprehensive behavioral health assessment
106 must be provided to the physician involved in developing the
107 child's mental health treatment plan, pursuant to s. 39.4071(9).

108 ~~(3)(a)1. Except as otherwise provided in subparagraph (b)1.~~
109 ~~or paragraph (c), before the department provides psychotropic~~
110 ~~medications to a child in its custody, the prescribing physician~~
111 ~~shall attempt to obtain express and informed consent, as defined~~
112 ~~in s. 394.455(9) and as described in s. 394.459(3)(a), from the~~
113 ~~child's parent or legal guardian. The department must take steps~~
114 ~~necessary to facilitate the inclusion of the parent in the~~
115 ~~child's consultation with the physician. However, if the~~
116 ~~parental rights of the parent have been terminated, the parent's~~

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117 ~~location or identity is unknown or cannot reasonably be~~
118 ~~ascertained, or the parent declines to give express and informed~~
119 ~~consent, the department may, after consultation with the~~
120 ~~prescribing physician, seek court authorization to provide the~~
121 ~~psychotropic medications to the child. Unless parental rights~~
122 ~~have been terminated and if it is possible to do so, the~~
123 ~~department shall continue to involve the parent in the~~
124 ~~decisionmaking process regarding the provision of psychotropic~~
125 ~~medications. If, at any time, a parent whose parental rights~~
126 ~~have not been terminated provides express and informed consent~~
127 ~~to the provision of a psychotropic medication, the requirements~~
128 ~~of this section that the department seek court authorization do~~
129 ~~not apply to that medication until such time as the parent no~~
130 ~~longer consents.~~

131 ~~2. Any time the department seeks a medical evaluation to~~
132 ~~determine the need to initiate or continue a psychotropic~~
133 ~~medication for a child, the department must provide to the~~
134 ~~evaluating physician all pertinent medical information known to~~
135 ~~the department concerning that child.~~

136 ~~(b)1. If a child who is removed from the home under s.~~
137 ~~39.401 is receiving prescribed psychotropic medication at the~~
138 ~~time of removal and parental authorization to continue providing~~
139 ~~the medication cannot be obtained, the department may take~~
140 ~~possession of the remaining medication and may continue to~~
141 ~~provide the medication as prescribed until the shelter hearing,~~
142 ~~if it is determined that the medication is a current~~
143 ~~prescription for that child and the medication is in its~~
144 ~~original container.~~

145 ~~2. If the department continues to provide the psychotropic~~

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146 medication to a child when parental authorization cannot be
147 obtained, the department shall notify the parent or legal
148 guardian as soon as possible that the medication is being
149 provided to the child as provided in subparagraph 1. The child's
150 official departmental record must include the reason parental
151 authorization was not initially obtained and an explanation of
152 why the medication is necessary for the child's well-being.

153 3. If the department is advised by a physician licensed
154 under chapter 458 or chapter 459 that the child should continue
155 the psychotropic medication and parental authorization has not
156 been obtained, the department shall request court authorization
157 at the shelter hearing to continue to provide the psychotropic
158 medication and shall provide to the court any information in its
159 possession in support of the request. Any authorization granted
160 at the shelter hearing may extend only until the arraignment
161 hearing on the petition for adjudication of dependency or 28
162 days following the date of removal, whichever occurs sooner.

163 4. Before filing the dependency petition, the department
164 shall ensure that the child is evaluated by a physician licensed
165 under chapter 458 or chapter 459 to determine whether it is
166 appropriate to continue the psychotropic medication. If, as a
167 result of the evaluation, the department seeks court
168 authorization to continue the psychotropic medication, a motion
169 for such continued authorization shall be filed at the same time
170 as the dependency petition, within 21 days after the shelter
171 hearing.

172 (c) Except as provided in paragraphs (b) and (e), the
173 department must file a motion seeking the court's authorization
174 to initially provide or continue to provide psychotropic

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175 ~~medication to a child in its legal custody. The motion must be~~
176 ~~supported by a written report prepared by the department which~~
177 ~~describes the efforts made to enable the prescribing physician~~
178 ~~to obtain express and informed consent for providing the~~
179 ~~medication to the child and other treatments considered or~~
180 ~~recommended for the child. In addition, the motion must be~~
181 ~~supported by the prescribing physician's signed medical report~~
182 ~~providing:~~

183 ~~1. The name of the child, the name and range of the dosage~~
184 ~~of the psychotropic medication, and that there is a need to~~
185 ~~prescribe psychotropic medication to the child based upon a~~
186 ~~diagnosed condition for which such medication is being~~
187 ~~prescribed.~~

188 ~~2. A statement indicating that the physician has reviewed~~
189 ~~all medical information concerning the child which has been~~
190 ~~provided.~~

191 ~~3. A statement indicating that the psychotropic medication,~~
192 ~~at its prescribed dosage, is appropriate for treating the~~
193 ~~child's diagnosed medical condition, as well as the behaviors~~
194 ~~and symptoms the medication, at its prescribed dosage, is~~
195 ~~expected to address.~~

196 ~~4. An explanation of the nature and purpose of the~~
197 ~~treatment; the recognized side effects, risks, and~~
198 ~~contraindications of the medication; drug-interaction~~
199 ~~precautions; the possible effects of stopping the medication;~~
200 ~~and how the treatment will be monitored, followed by a statement~~
201 ~~indicating that this explanation was provided to the child if~~
202 ~~age appropriate and to the child's caregiver.~~

203 ~~5. Documentation addressing whether the psychotropic~~

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204 ~~medication will replace or supplement any other currently~~
205 ~~prescribed medications or treatments; the length of time the~~
206 ~~child is expected to be taking the medication; and any~~
207 ~~additional medical, mental health, behavioral, counseling, or~~
208 ~~other services that the prescribing physician recommends.~~

209 ~~(d)1. The department must notify all parties of the~~
210 ~~proposed action taken under paragraph (c) in writing or by~~
211 ~~whatever other method best ensures that all parties receive~~
212 ~~notification of the proposed action within 48 hours after the~~
213 ~~motion is filed. If any party objects to the department's~~
214 ~~motion, that party shall file the objection within 2 working~~
215 ~~days after being notified of the department's motion. If any~~
216 ~~party files an objection to the authorization of the proposed~~
217 ~~psychotropic medication, the court shall hold a hearing as soon~~
218 ~~as possible before authorizing the department to initially~~
219 ~~provide or to continue providing psychotropic medication to a~~
220 ~~child in the legal custody of the department. At such hearing~~
221 ~~and notwithstanding s. 90.803, the medical report described in~~
222 ~~paragraph (c) is admissible in evidence. The prescribing~~
223 ~~physician need not attend the hearing or testify unless the~~
224 ~~court specifically orders such attendance or testimony, or a~~
225 ~~party subpoenas the physician to attend the hearing or provide~~
226 ~~testimony. If, after considering any testimony received, the~~
227 ~~court finds that the department's motion and the physician's~~
228 ~~medical report meet the requirements of this subsection and that~~
229 ~~it is in the child's best interests, the court may order that~~
230 ~~the department provide or continue to provide the psychotropic~~
231 ~~medication to the child without additional testimony or~~
232 ~~evidence. At any hearing held under this paragraph, the court~~

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233 ~~shall further inquire of the department as to whether additional~~
234 ~~medical, mental health, behavioral, counseling, or other~~
235 ~~services are being provided to the child by the department which~~
236 ~~the prescribing physician considers to be necessary or~~
237 ~~beneficial in treating the child's medical condition and which~~
238 ~~the physician recommends or expects to provide to the child in~~
239 ~~concert with the medication. The court may order additional~~
240 ~~medical consultation, including consultation with the MedConsult~~
241 ~~line at the University of Florida, if available, or require the~~
242 ~~department to obtain a second opinion within a reasonable~~
243 ~~timeframe as established by the court, not to exceed 21 calendar~~
244 ~~days, after such order based upon consideration of the best~~
245 ~~interests of the child. The department must make a referral for~~
246 ~~an appointment for a second opinion with a physician within 1~~
247 ~~working day. The court may not order the discontinuation of~~
248 ~~prescribed psychotropic medication if such order is contrary to~~
249 ~~the decision of the prescribing physician unless the court first~~
250 ~~obtains an opinion from a licensed psychiatrist, if available,~~
251 ~~or, if not available, a physician licensed under chapter 458 or~~
252 ~~chapter 459, stating that more likely than not, discontinuing~~
253 ~~the medication would not cause significant harm to the child.~~
254 ~~If, however, the prescribing psychiatrist specializes in mental~~
255 ~~health care for children and adolescents, the court may not~~
256 ~~order the discontinuation of prescribed psychotropic medication~~
257 ~~unless the required opinion is also from a psychiatrist who~~
258 ~~specializes in mental health care for children and adolescents.~~
259 ~~The court may also order the discontinuation of prescribed~~
260 ~~psychotropic medication if a child's treating physician,~~
261 ~~licensed under chapter 458 or chapter 459, states that~~

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262 ~~continuing the prescribed psychotropic medication would cause~~
263 ~~significant harm to the child due to a diagnosed nonpsychiatric~~
264 ~~medical condition.~~

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

267 ~~(c)1. If the child's prescribing physician certifies in the~~
268 ~~signed medical report required in paragraph (c) that delay in~~
269 ~~providing a prescribed psychotropic medication would more likely~~
270 ~~than not cause significant harm to the child, the medication may~~
271 ~~be provided in advance of the issuance of a court order. In such~~
272 ~~event, the medical report must provide the specific reasons why~~
273 ~~the child may experience significant harm and the nature and the~~
274 ~~extent of the potential harm. The department must submit a~~
275 ~~motion seeking continuation of the medication and the~~
276 ~~physician's medical report to the court, the child's guardian ad~~
277 ~~litem, and all other parties within 3 working days after the~~
278 ~~department commences providing the medication to the child. The~~
279 ~~department shall seek the order at the next regularly scheduled~~
280 ~~court hearing required under this chapter, or within 30 days~~
281 ~~after the date of the prescription, whichever occurs sooner. If~~
282 ~~any party objects to the department's motion, the court shall~~
283 ~~hold a hearing within 7 days.~~

284 ~~2. Psychotropic medications may be administered in advance~~
285 ~~of a court order in hospitals, crisis stabilization units, and~~
286 ~~in statewide inpatient psychiatric programs. Within 3 working~~
287 ~~days after the medication is begun, the department must seek~~
288 ~~court authorization as described in paragraph (c).~~

289 ~~(f)1. The department shall fully inform the court of the~~
290 ~~child's medical and behavioral status as part of the social~~

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291 ~~services report prepared for each judicial review hearing held~~
292 ~~for a child for whom psychotropic medication has been prescribed~~
293 ~~or provided under this subsection. As a part of the information~~
294 ~~provided to the court, the department shall furnish copies of~~
295 ~~all pertinent medical records concerning the child which have~~
296 ~~been generated since the previous hearing. On its own motion or~~
297 ~~on good cause shown by any party, including any guardian ad~~
298 ~~litem, attorney, or attorney ad litem who has been appointed to~~
299 ~~represent the child or the child's interests, the court may~~
300 ~~review the status more frequently than required in this~~
301 ~~subsection.~~

302 ~~2. The court may, in the best interests of the child, order~~
303 ~~the department to obtain a medical opinion addressing whether~~
304 ~~the continued use of the medication under the circumstances is~~
305 ~~safe and medically appropriate.~~

306 ~~(g) The department shall adopt rules to ensure that~~
307 ~~children receive timely access to clinically appropriate~~
308 ~~psychotropic medications. These rules must include, but need not~~
309 ~~be limited to, the process for determining which adjunctive~~
310 ~~services are needed, the uniform process for facilitating the~~
311 ~~prescribing physician's ability to obtain the express and~~
312 ~~informed consent of a child's parent or guardian, the procedures~~
313 ~~for obtaining court authorization for the provision of a~~
314 ~~psychotropic medication, the frequency of medical monitoring and~~
315 ~~reporting on the status of the child to the court, how the~~
316 ~~child's parents will be involved in the treatment planning~~
317 ~~process if their parental rights have not been terminated, and~~
318 ~~how caretakers are to be provided information contained in the~~
319 ~~physician's signed medical report. The rules must also include~~

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320 ~~uniform forms to be used in requesting court authorization for~~
321 ~~the use of a psychotropic medication and provide for the~~
322 ~~integration of each child's treatment plan and case plan. The~~
323 ~~department must begin the formal rulemaking process within 90~~
324 ~~days after the effective date of this act.~~

325 Section 2. Section 39.4071, Florida Statutes, is created to
326 read:

327 39.4071 Use of psychotropic medication for children in out
328 of-home placement.-

329 (1) LEGISLATIVE FINDINGS AND INTENT.-

330 (a) The Legislature finds that children in out-of-home
331 placements often have multiple risk factors that predispose them
332 to emotional and behavioral disorders and that they receive
333 mental health services at higher rates and are more likely to be
334 given psychotropic medications than children from comparable
335 backgrounds.

336 (b) The Legislature also finds that the use of psychotropic
337 medications for the treatment of children in out-of-home
338 placements who have emotional and behavioral disturbances has
339 increased over recent years. While this increased use of
340 psychotropic medications is paralleled by an increase in the
341 rate of the coadministration of two or more psychotropic
342 medications, data on the safety and efficacy of many of the
343 psychotropic medications used in children and research
344 supporting the coadministration of two or more psychotropic
345 medications in this population is limited.

346 (c) The Legislature further finds that significant
347 challenges are encountered in providing quality mental health
348 care to children in out-of-home placements. Not uncommonly,

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349 children in out-of-home placements are subjected to multiple
350 placements and many service providers, with communication
351 between providers often poor, resulting in fragmented medical
352 and mental health care. The dependable, ongoing therapeutic and
353 caregiving relationships these children need are hampered by the
354 high turnover among child welfare caseworkers and care
355 providers. Furthermore, children in out-of-home placements,
356 unlike children from intact families, often have no consistent
357 interested party who is available to coordinate treatment and
358 monitoring plans or to provide longitudinal oversight of care.

359 (d) The Legislature recognizes the important role the
360 Guardian ad Litem Program has played in Florida's dependency
361 system for the past thirty years serving the state's most
362 vulnerable children through the use of trained volunteers, case
363 coordinators, child advocates and attorneys. The program's
364 singular focus is on the child and its mission is to advocate
365 for the best interest of the child. It is often the guardian ad
366 litem who is the constant in a child's life, maintaining
367 consistent contact with the child, the child's caseworkers, and
368 others involved with the child, including family, doctors,
369 teachers, and service providers. Studies have shown that a child
370 assigned a guardian ad litem will, on average, experience fewer
371 placement changes than a child without a guardian ad litem. It
372 is therefore the intent of the Legislature that children in out-
373 of-home placements who may benefit from psychotropic medications
374 receive those medications safely as part of a comprehensive
375 mental health treatment plan requiring the appointment of a
376 guardian ad litem whose responsibility is to monitor the plan
377 for compliance and suitability as to the child's best interest.

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

379 (a) "Obtaining assent" means a process by which a provider
380 of medical services helps a child achieve a developmentally
381 appropriate awareness of the nature of his or her condition,
382 informs the child of what can be expected through tests and
383 treatment, makes a clinical assessment of the child's
384 understanding of the situation and the factors influencing how
385 he or she is responding, and solicits an expression of the
386 child's willingness to adhere to the proposed care. The mere
387 absence of an objection by the child may not be construed as
388 assent.

389 (b) "Comprehensive behavioral health assessment" means an
390 in-depth and detailed assessment of the child's emotional,
391 social, behavioral, and developmental functioning within the
392 family home, school, and community. A comprehensive behavioral
393 health assessment must include direct observation of the child
394 in the home, school, and community, as well as in the clinical
395 setting, and must adhere to the requirements contained in the
396 Florida Medicaid Community Behavioral Health Services Coverage
397 and Limitations Handbook.

398 (c) "Express and informed consent" means a process by which
399 a provider of medical services obtains voluntary consent from a
400 parent whose rights have not been terminated or a legal guardian
401 of the child who has received full, accurate, and sufficient
402 information and an explanation about the child's medical
403 condition, medication, and treatment in order to enable the
404 parent or guardian to make a knowledgeable decision without any
405 element of fraud, deceit, duress, or other form of coercion.

406 (d) "Mental health treatment plan" means a plan which lists

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407 the particular mental health needs of the child and the services
408 that will be provided to address those needs. If the plan
409 includes prescribing psychotropic medication to a child in out-
410 of-home placement, the plan must also include the information
411 required by subsection (9).

412 (e) "Psychotropic medication" means a prescription
413 medication that is used for the treatment of mental disorders
414 and includes, without limitation, antihypnotics, antipsychotics,
415 antidepressants, anxiety agents, sedatives, psychomotor
416 stimulants, and mood stabilizers.

417 (3) APPOINTMENT OF GUARDIAN AD LITEM.—

418 (a) If not already appointed, a guardian ad litem shall be
419 appointed by the court at the earliest possible time to
420 represent the best interests of a child in out-of-home placement
421 who is prescribed a psychotropic medication or is being
422 evaluated for the initiation of psychotropic medication.
423 Pursuant to s. 39.820, the appointed guardian ad litem is a
424 party to any judicial proceeding as a representative of the
425 child and serves until discharged by the court.

426 (b) Under the provisions of this section, the guardian ad
427 litem shall participate in the development of the mental health
428 treatment plan, monitor whether all requirements of the mental
429 health treatment plan are being provided to the child, including
430 counseling, behavior analysis, or other services, medications,
431 and treatment modalities; and notice the court of the child's
432 objections, if any, to the mental health treatment plan. The
433 guardian shall prepare and submit to the court a written report
434 every 45 days or as directed by the court, advising the court
435 and the parties as to the status of the care, health, and

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436 medical treatment of the child pursuant to the mental health
437 treatment plan and any change in the status of the child. The
438 guardian ad litem will immediately notify parties as soon as any
439 medical emergency of the child becomes known. The guardian ad
440 litem shall ensure that the prescribing physician has been
441 provided with all pertinent medical information concerning the
442 child.

443 (c) The department and the community-based care lead agency
444 shall notify the court and the guardian ad litem, and, if
445 applicable, the child's attorney, in writing within 24 hours
446 after any change in the status of the child, including, but not
447 limited to, a change in placement, a change in school, a change
448 in medical condition or medication, or a change in prescribing
449 physician, other service providers, counseling, or treatment
450 scheduling.

451 (4) PSYCHIATRIC EVALUATION OF CHILD.—Whenever the
452 department believes that a child in its legal custody may need
453 psychiatric treatment, an evaluation must be conducted by a
454 physician licensed under chapter 458 or chapter 459.

455 (5) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the
456 time of removal from his or her home a child is being provided
457 or at any time is being evaluated for the initiation of
458 prescribed psychotropic medication under this section, express
459 and informed consent and assent shall be sought by the
460 prescribing physician.

461 (a) The prescribing physician shall obtain assent from the
462 child, unless the prescribing physician determines that it is
463 not appropriate to obtain assent from the child. In making this
464 assessment, the prescribing physician shall consider the

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465 capacity of the child to make an independent decision based on
466 his or her age, maturity, and psychological and emotional state.
467 If the physician determines that it is not appropriate to obtain
468 assent from the child, the physician must document the decision
469 in the mental health treatment plan. In the event the physician
470 determines it is appropriate to obtain assent from the child and
471 the child refuses to give assent, the physician must document
472 the child's refusal in the mental health treatment plan.

473 1. Assent from a child shall be sought in a manner that is
474 understandable to the child using a developmentally appropriate
475 assent form. The child shall be provided with sufficient
476 information, such as the nature and purpose of the medication,
477 how it will be administered, the probable risks and benefits,
478 alternative treatments and the risks and benefits thereof, and
479 the risks and benefits of refusing or discontinuing the
480 medication, and when it may be appropriately discontinued.
481 Assent may be oral or written and must be documented by the
482 prescribing physician.

483 2. Oral assent is appropriate for a child who is younger
484 than 7 years of age. Assent from a child who is 7 to 13 years of
485 age may be sought orally or in a simple form that is written at
486 the second-grade or third-grade reading level. A child who is 14
487 years of age or older may understand the language presented in
488 the consent form for parents or legal guardians. If so, the
489 child may sign the consent form along with the parent or legal
490 guardian. Forms for parents and older children shall be written
491 at the sixth grade to eighth-grade reading level.

492 3. In each case where assent is obtained, a copy of the
493 assent documents must be provided to the parent or legal

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494 guardian and the guardian ad litem, with the original assent
495 documents becoming a part of the child's mental health treatment
496 plan and filed with the court.

497 (b) Express and informed consent for the administration of
498 psychotropic medication may be given only by a parent whose
499 rights have not been terminated or a legal guardian of the child
500 who has received full, accurate, and sufficient information and
501 an explanation about the child's medical condition, medication,
502 and treatment in order to enable the parent or guardian to make
503 a knowledgeable decision. A sufficient explanation includes, but
504 need not be limited to, the following information, which must be
505 provided and explained in plain language by the prescribing
506 physician to the parent or legal guardian: the child's
507 diagnosis, the symptoms to be addressed by the medication, the
508 name of the medication and its dosage ranges, the reason for
509 prescribing it, and its purpose or intended results; benefits,
510 side effects, risks, and contraindications, including effects of
511 not starting or stopping the medication; method for
512 administering the medication and how it will monitored;
513 potential drug interactions; alternative treatments to
514 psychotropic medication; a plan to reduce or eliminate ongoing
515 medication when medically appropriate; the counseling,
516 behavioral analysis, or other services used to complement the
517 use of medication, when applicable; and that the parent or legal
518 guardian may revoke the consent at any time.

519 1. Express and informed consent may be oral or written and
520 must be documented by the prescribing physician. If the
521 department or the physician is unable to obtain consent from the
522 parent or legal guardian, the reasons must be documented.

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523 2. When express and informed consent is obtained, a copy of
524 the consent documents must be provided to the parent or legal
525 guardian and the guardian ad litem, with the original consent
526 documents becoming a part of the child's mental health treatment
527 plan and filed with the court.

528 (c) The informed consent of any parent whose whereabouts
529 are unknown for 60 days, who is adjudicated incapacitated, who
530 does not have regular and frequent contact with the child, who
531 later revokes assent, or whose parental rights are terminated
532 after giving consent, is invalid. If the informed consent of a
533 parent becomes invalid, the department may seek informed consent
534 from any other parent or legal guardian. If the informed consent
535 provided by a parent whose parental rights have been terminated
536 is invalid and no other parent or legal guardian gives informed
537 consent, the department shall file a motion for the
538 administration of psychotropic medication along with the motion
539 for final judgment of termination of parental rights.

540 (d) If consent is revoked or becomes invalid the department
541 shall immediately notify all parties and, if applicable, the
542 child's attorney. Medication shall be continued until such time
543 as the court rules on the motion.

544 (e) Under no circumstance may a medication be discontinued
545 without explicit instruction from a physician as to how to
546 safely discontinue the medication.

547 (6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN
548 SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT
549 BEEN OBTAINED.—

550 (a) Motion for court authorization for administration of
551 psychotropic medications.—

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552 1. Any time a physician who has evaluated the child
553 prescribes psychotropic medication as part of the mental health
554 treatment plan and the child's parents or legal guardians have
555 not provided express and informed consent as provided by law or
556 such consent is invalid as set forth in paragraph (5)(c), the
557 department or its agent shall file a motion with the court
558 within 3 working days to authorize the administration of the
559 psychotropic medication before the administration of the
560 medication, except as provided in subsection (7). In each case
561 in which a motion is required, the motion must include:

562 a. A written report by the department describing the
563 efforts made to enable the prescribing physician to obtain
564 express and informed consent for providing the medication to the
565 child and describing other treatments attempted, considered, and
566 recommended for the child; and

567 b. The prescribing physician's completed and signed mental
568 health treatment plan.

569 2. The department must file a copy of the motion with the
570 court and, within 48 hours after filing the motion with the
571 court, notify all parties in writing, or by whatever other
572 method best ensures that all parties receive notification, of
573 its proposed administration of psychotropic medication to the
574 child.

575 3. If any party objects to the proposed administration of
576 the psychotropic medication to the child, that party must file
577 its objection within 2 working days after being notified of the
578 department's motion. A party may request an extension of time to
579 object for good cause shown, provided that such extension would
580 be in the best interests of the child. Any extension shall be

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581 for a specific number of days not to exceed the time absolutely
582 necessary.

583 4. Lack of assent from the child shall be deemed a timely
584 objection from the child.

585 (b) Court action on motion for administration of
586 psychotropic medication.—

587 1. If no party timely files an objection to the
588 department's motion and the motion is legally sufficient, the
589 court may enter its order authorizing the proposed
590 administration of the psychotropic medication without a hearing.
591 Based on its determination of the best interests of the child,
592 the court may order additional medical consultation, including
593 consultation with the MedConsult line at the University of
594 Florida, if available, or require the department to obtain a
595 second opinion within a reasonable time established by the
596 court, not to exceed 21 calendar days. If the court orders an
597 additional medical consultation or second medical opinion, the
598 department shall file a written report including the results of
599 this additional consultation or a copy of the second medical
600 opinion with the court within the time required by the court,
601 and shall serve a copy of the report on all parties.

602 2. If any party timely files its objection to the proposed
603 administration of the psychotropic medication to the child, the
604 court shall hold a hearing as soon as possible on the
605 department's motion.

606 a. The signed mental health treatment plan of the
607 prescribing physician is admissible in evidence at the hearing.

608 b. The court shall ask the department whether additional
609 medical, mental health, behavior analysis, counseling, or other

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610 services are being provided to the child which the prescribing
611 physician considers to be necessary or beneficial in treating
612 the child's medical condition and which the physician recommends
613 or expects to be provided to the child along with the
614 medication.

615 3. The court may order additional medical consultation or a
616 second medical opinion, as provided in this paragraph.

617 4. After considering the department's motion and any
618 testimony received, the court may enter its order authorizing
619 the department to provide or continue to provide the proposed
620 psychotropic medication to the child. The court must find a
621 compelling governmental interest that the proposed psychotropic
622 medication is in the child's best interest. In so determining
623 the court shall consider, at a minimum, the following factors:

624 a. The severity and likelihood of risks associated with the
625 treatment.

626 b. The magnitude and likelihood of benefits expected from
627 the treatment.

628 c. The child's prognosis without the proposed psychotropic
629 medication

630 d. The availability and effectiveness of alternative
631 treatments.

632 e. The wishes of the child concerning treatment
633 alternatives.

634 f. The recommendation of the current custodian.

635 g. The recommendation of the guardian ad litem.

636 (7) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN
637 OUT-OF-HOME CARE BEFORE COURT AUTHORIZATION HAS BEEN OBTAINED.-

638 The department may provide continued administration of

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639 psychotropic medication to a child before authorization by the
640 court has been obtained only as provided in this subsection.

641 (a) If a child is removed from the home and taken into
642 custody under s. 39.401, the department may continue to
643 administer a current prescription of psychotropic medication to
644 the child; however, the department shall request court
645 authorization for the continued administration of the medication
646 at the shelter hearing. This request shall be included in the
647 shelter petition.

648 1. The department shall provide all information in its
649 possession to the court in support of its request at the shelter
650 hearing. The court may authorize the continued administration of
651 the psychotropic medication only until the arraignment hearing
652 on the petition for adjudication, or for 28 days following the
653 date of the child's removal, whichever occurs first.

654 2. If the department believes, based on the required
655 physician's evaluation, that it is appropriate to continue the
656 psychotropic medication beyond the time authorized by the court
657 at the shelter hearing, the department shall file a motion
658 seeking continued court authorization at the same time that it
659 files the dependency petition, but within 21 days after the
660 shelter hearing.

661 (b) If the department believes, based on the certification
662 of the prescribing physician, that delay in providing the
663 prescribed psychotropic medication to the child would, more
664 likely than not, cause significant harm to the child, the
665 department shall administer the medication to the child
666 immediately. The department must submit a motion to the court
667 seeking continuation of the medication within 3 working days

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668 after the department begins providing the medication to the
669 child.

670 1. The motion seeking authorization for the continued
671 administration of the psychotropic medication to the child must
672 include all information required in this section. The required
673 medical report must also include the specific reasons why the
674 child may experience significant harm, and the nature and the
675 extent of the potential harm, resulting from a delay in
676 authorizing the prescribed medication.

677 2. The department shall serve the motion on all parties
678 within 3 working days after the department begins providing the
679 medication to the child.

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

685 (c) The department may authorize, in advance of a court
686 order, the administration of psychotropic medications to a child
687 in its custody in a hospital, crisis stabilization unit, or in
688 statewide inpatient psychiatric program. If the department does
689 so, it must file a motion to seek court authorization for the
690 continued administration of the medication within 3 working days
691 as required in this section.

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

696 (8) DISCONTINUATION, ALTERATION OF MEDICATION; DESTRUCTION

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697 OF MEDICATION.—No party may alter the provision of prescribed
698 psychotropic medication to a child in any way except upon order
699 of the court or advice of a physician.

700 (a) On the motion of any party or its own motion, the court
701 may order the discontinuation of a medication already
702 prescribed. Such discontinuation must be performed in
703 consultation with a physician in such a manner as to minimize
704 risk to the child.

705 (b) The child's repeated refusal to take or continue to
706 take a medication shall be treated as a motion to discontinue
707 the medication and shall be set for hearing as soon as possible
708 but no later than within 7 days after knowledge of such repeated
709 refusal.

710 (c) Upon any discontinuation of a medication, the
711 department shall document the date and reason for the
712 discontinuation and shall notify all parties. The guardian ad
713 litem must be notified within 24 hours as previously provided
714 herein.

715 (d) The department shall ensure the destruction of any
716 medication no longer being taken by the prescribed child.

717 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the
718 determination that a child needs mental health services, a
719 mental health treatment plan must be developed which lists the
720 particular mental health needs of the child and the services
721 that will be provided to address those needs. When possible, the
722 plan shall be developed in a face-to-face conference with the
723 child, the child's parents, case manager, physician, therapist,
724 custodian, guardian ad litem, and any other interested party.
725 The mental health treatment plan shall be incorporated into the

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726 case plan as tasks for the department and may be amended under
727 s. 39.6013.

728 (a) If the mental health treatment plan involves the
729 provision of psychotropic medication, the plan must include:

730 1. The name of the child, a statement indicating that there
731 is a need to prescribe psychotropic medication to the child
732 based upon a diagnosed, organically caused condition for which
733 such medication is being prescribed, a statement indicating the
734 compelling governmental interest in prescribing the psychotropic
735 medication, and the name and range of the dosage of the
736 psychotropic medication.

737 2. A statement indicating that the physician has reviewed
738 all medical information concerning the child which has been
739 provided by the department or community-based care lead agency
740 and briefly listing all such information received.

741 3. A medication profile, including all medications the
742 child is prescribed or will be prescribed, any previously
743 prescribed medications where known, and whether those
744 medications are being added, continued, or discontinued upon
745 implementation of the mental health treatment plan.

746 4. A statement indicating that the psychotropic medication,
747 at its prescribed dosage, is appropriate for treating the
748 child's diagnosed medical condition, as well as the behaviors
749 and symptoms that the medication, at its prescribed dosage, is
750 expected to address.

751 5. An explanation of the nature and purpose of the
752 treatment; the recognized side effects, risks, and
753 contraindications of the medication, including procedures for
754 reporting adverse effects; drug-interaction precautions; the

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755 possible effects of stopping or not initiating the medication;
756 and how the treatment will be monitored, followed by a statement
757 indicating that this explanation was provided to the child if
758 developmentally appropriate and to the child's caregiver.

759 6. Documentation addressing whether the psychotropic
760 medication will replace or supplement any other currently
761 prescribed medications or treatments; the length of time the
762 child is expected to be taking the medication; a plan for the
763 discontinuation of any medication when medically appropriate;
764 and any additional medical, mental health, behavioral,
765 counseling, or other services that the prescribing physician
766 recommends as part of a comprehensive treatment plan.

767 (b) The department shall develop and administer procedures
768 to require the caregiver and prescribing physician to report any
769 adverse side effects of the medication to the department or its
770 designee and the guardian ad litem. Any adverse side effects
771 must be documented in the mental health treatment plan and
772 medical records for the child.

773 (8) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION
774 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME
775 CARE.—Absent a finding of a compelling governmental interest, a
776 psychotropic medication may not be authorized by the court for
777 any child from birth through 10 years of age who is in out-of-
778 home placement. Based on a finding of a compelling governmental
779 interest but before a psychotropic medication is authorized by
780 the court for any child from birth through 10 years of age who
781 is in an out-of-home placement, a review of the administration
782 must be obtained from a child psychiatrist who is licensed under
783 chapter 458 or chapter 459. The results of this review must be

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784 provided to the child and the parent or legal guardian before
785 final express and informed consent is given.

786 (9) CLINICAL TRIALS.—At no time shall a child in the
787 custody of the department be allowed to participate in a
788 clinical trial that is designed to develop new psychotropic
789 medications or evaluate their application to children.

790 (10) JUDICIAL REVIEW HEARINGS.—The department shall fully
791 inform the court of the child's medical and behavioral status as
792 part of the social services report prepared for each judicial
793 review hearing held for a child for whom psychotropic medication
794 has been prescribed or provided under this subsection. As a part
795 of the information provided to the court, the department shall
796 furnish copies of all pertinent medical records concerning the
797 child which have been generated since the previous hearing. On
798 its own motion or on good cause shown by any party, including
799 any guardian ad litem, attorney, or attorney ad litem who has
800 been appointed to represent the child or the child's interests,
801 the court may review the status more frequently than required in
802 this subsection.

803 (11) ADOPTION OF RULES.—The department may adopt rules to
804 ensure that children receive timely access to mental health
805 services, including, but not limited to, clinically appropriate
806 psychotropic medications. These rules must include, but need not
807 be limited to, the process for determining which adjunctive
808 services are needed, the uniform process for facilitating the
809 prescribing physician's ability to obtain the express and
810 informed consent of a child's parent or guardian, the procedures
811 for obtaining court authorization for the provision of a
812 psychotropic medication, the frequency of medical monitoring and

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813 reporting on the status of the child to the court, how the
814 child's parents will be involved in the treatment-planning
815 process if their parental rights have not been terminated, and
816 how caretakers are to be provided information contained in the
817 physician's signed mental health treatment plan. The rules must
818 also include uniform forms or standardized information to be
819 used on a statewide basis in requesting court authorization for
820 the use of a psychotropic medication and provide for the
821 integration of each child's mental health treatment plan and
822 case plan. The department must begin the formal rulemaking
823 process within 90 days after the effective date of this act.

824 Section 3. Paragraph (b) of subsection (1) of section
825 743.0645, Florida Statutes, is amended to read:

826 743.0645 Other persons who may consent to medical care or
827 treatment of a minor.-

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

829 (b) "Medical care and treatment" includes ordinary and
830 necessary medical and dental examination and treatment,
831 including blood testing, preventive care including ordinary
832 immunizations, tuberculin testing, and well-child care, but does
833 not include surgery, general anesthesia, provision of
834 psychotropic medications, or other extraordinary procedures for
835 which a separate court order, power of attorney, or informed
836 consent as provided by law is required, except as provided in s.
837 39.4071 s. ~~39.407(3)~~.

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