

HB 1405

2012

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

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

HB 1405

2012

57 | to develop and administer procedures to require the
58 | caregiver and prescribing physician to report any
59 | adverse side effects; requiring documentation of the
60 | adverse side effects; prohibiting the prescription of
61 | psychotropic medication to certain children who are in
62 | out-of-home care absent certain conditions; requiring
63 | review by a licensed child psychiatrist before
64 | psychotropic medication is administered to certain
65 | children who are in out-of-home care under certain
66 | conditions; prohibiting authorization for a child in
67 | the custody of the department to participate in any
68 | clinical trial designed to evaluate the use of
69 | psychotropic medication in children; requiring that
70 | the department inform the court of a child's medical
71 | and behavioral status at each judicial hearing;
72 | requiring that the department adopt rules; amending
73 | ss. 409.912 and 743.0645, F.S.; conforming cross-
74 | references; providing an effective date.

75 |
76 | Be It Enacted by the Legislature of the State of Florida:

77 |
78 | Section 1. Subsection (3) of section 39.407, Florida
79 | Statutes, is amended to read:

80 | 39.407 Medical, psychiatric, and psychological examination
81 | and treatment of child; physical, mental, or substance abuse
82 | examination of person with or requesting child custody.—

83 | (3) (a) All children placed in out-of-home care shall be
84 | provided with a comprehensive behavioral health assessment. The

HB 1405

2012

85 child protective investigator or dependency case manager shall
86 submit a referral for such assessment no later than 7 days after
87 a child is placed in out-of-home care.

88 (b) Any child who has been in out-of-home care for more
89 than 1 year, or who did not receive a comprehensive behavioral
90 health assessment when placed into out-of-home care, is eligible
91 to receive a comprehensive behavioral health assessment. Such
92 assessments evaluate behaviors that give rise to the concern
93 that the child has unmet mental health needs. Any party to the
94 dependency proceeding, or the court on its own motion, may
95 request that an assessment be performed.

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

105 (d) This provision does not prevent a child from receiving
106 any other form of psychological assessment when needed.

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

111 ~~(3)(a)1. Except as otherwise provided in subparagraph~~
112 ~~(b)1. or paragraph (c), before the department provides~~

HB 1405

2012

113 ~~psychotropic medications to a child in its custody, the~~
114 ~~prescribing physician shall attempt to obtain express and~~
115 ~~informed consent, as defined in s. 394.455(9) and as described~~
116 ~~in s. 394.459(3)(a), from the child's parent or legal guardian.~~
117 ~~The department must take steps necessary to facilitate the~~
118 ~~inclusion of the parent in the child's consultation with the~~
119 ~~physician. However, if the parental rights of the parent have~~
120 ~~been terminated, the parent's location or identity is unknown or~~
121 ~~cannot reasonably be ascertained, or the parent declines to give~~
122 ~~express and informed consent, the department may, after~~
123 ~~consultation with the prescribing physician, seek court~~
124 ~~authorization to provide the psychotropic medications to the~~
125 ~~child. Unless parental rights have been terminated and if it is~~
126 ~~possible to do so, the department shall continue to involve the~~
127 ~~parent in the decisionmaking process regarding the provision of~~
128 ~~psychotropic medications. If, at any time, a parent whose~~
129 ~~parental rights have not been terminated provides express and~~
130 ~~informed consent to the provision of a psychotropic medication,~~
131 ~~the requirements of this section that the department seek court~~
132 ~~authorization do not apply to that medication until such time as~~
133 ~~the parent no longer consents.~~

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

139 ~~(b)1. If a child who is removed from the home under s.~~
140 ~~39.401 is receiving prescribed psychotropic medication at the~~

HB 1405

2012

141 ~~time of removal and parental authorization to continue providing~~
142 ~~the medication cannot be obtained, the department may take~~
143 ~~possession of the remaining medication and may continue to~~
144 ~~provide the medication as prescribed until the shelter hearing,~~
145 ~~if it is determined that the medication is a current~~
146 ~~prescription for that child and the medication is in its~~
147 ~~original container.~~

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

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

166 ~~4. Before filing the dependency petition, the department~~
167 ~~shall ensure that the child is evaluated by a physician licensed~~
168 ~~under chapter 458 or chapter 459 to determine whether it is~~

HB 1405

2012

169 ~~appropriate to continue the psychotropic medication. If, as a~~
170 ~~result of the evaluation, the department seeks court~~
171 ~~authorization to continue the psychotropic medication, a motion~~
172 ~~for such continued authorization shall be filed at the same time~~
173 ~~as the dependency petition, within 21 days after the shelter~~
174 ~~hearing.~~

175 ~~(c) Except as provided in paragraphs (b) and (c), the~~
176 ~~department must file a motion seeking the court's authorization~~
177 ~~to initially provide or continue to provide psychotropic~~
178 ~~medication to a child in its legal custody. The motion must be~~
179 ~~supported by a written report prepared by the department which~~
180 ~~describes the efforts made to enable the prescribing physician~~
181 ~~to obtain express and informed consent for providing the~~
182 ~~medication to the child and other treatments considered or~~
183 ~~recommended for the child. In addition, the motion must be~~
184 ~~supported by the prescribing physician's signed medical report~~
185 ~~providing:~~

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

191 ~~2. A statement indicating that the physician has reviewed~~
192 ~~all medical information concerning the child which has been~~
193 ~~provided.~~

194 ~~3. A statement indicating that the psychotropic~~
195 ~~medication, at its prescribed dosage, is appropriate for~~
196 ~~treating the child's diagnosed medical condition, as well as the~~

HB 1405

2012

197 ~~behaviors and symptoms the medication, at its prescribed dosage,~~
198 ~~is expected to address.~~

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

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

212 ~~(d)1. The department must notify all parties of the~~
213 ~~proposed action taken under paragraph (c) in writing or by~~
214 ~~whatever other method best ensures that all parties receive~~
215 ~~notification of the proposed action within 48 hours after the~~
216 ~~motion is filed. If any party objects to the department's~~
217 ~~motion, that party shall file the objection within 2 working~~
218 ~~days after being notified of the department's motion. If any~~
219 ~~party files an objection to the authorization of the proposed~~
220 ~~psychotropic medication, the court shall hold a hearing as soon~~
221 ~~as possible before authorizing the department to initially~~
222 ~~provide or to continue providing psychotropic medication to a~~
223 ~~child in the legal custody of the department. At such hearing~~
224 ~~and notwithstanding s. 90.803, the medical report described in~~

HB 1405

2012

225 ~~paragraph (c) is admissible in evidence. The prescribing~~
226 ~~physician need not attend the hearing or testify unless the~~
227 ~~court specifically orders such attendance or testimony, or a~~
228 ~~party subpoenas the physician to attend the hearing or provide~~
229 ~~testimony. If, after considering any testimony received, the~~
230 ~~court finds that the department's motion and the physician's~~
231 ~~medical report meet the requirements of this subsection and that~~
232 ~~it is in the child's best interests, the court may order that~~
233 ~~the department provide or continue to provide the psychotropic~~
234 ~~medication to the child without additional testimony or~~
235 ~~evidence. At any hearing held under this paragraph, the court~~
236 ~~shall further inquire of the department as to whether additional~~
237 ~~medical, mental health, behavioral, counseling, or other~~
238 ~~services are being provided to the child by the department which~~
239 ~~the prescribing physician considers to be necessary or~~
240 ~~beneficial in treating the child's medical condition and which~~
241 ~~the physician recommends or expects to provide to the child in~~
242 ~~concert with the medication. The court may order additional~~
243 ~~medical consultation, including consultation with the MedConsult~~
244 ~~line at the University of Florida, if available, or require the~~
245 ~~department to obtain a second opinion within a reasonable~~
246 ~~timeframe as established by the court, not to exceed 21 calendar~~
247 ~~days, after such order based upon consideration of the best~~
248 ~~interests of the child. The department must make a referral for~~
249 ~~an appointment for a second opinion with a physician within 1~~
250 ~~working day. The court may not order the discontinuation of~~
251 ~~prescribed psychotropic medication if such order is contrary to~~
252 ~~the decision of the prescribing physician unless the court first~~

HB 1405

2012

253 ~~obtains an opinion from a licensed psychiatrist, if available,~~
254 ~~or, if not available, a physician licensed under chapter 458 or~~
255 ~~chapter 459, stating that more likely than not, discontinuing~~
256 ~~the medication would not cause significant harm to the child.~~
257 ~~If, however, the prescribing psychiatrist specializes in mental~~
258 ~~health care for children and adolescents, the court may not~~
259 ~~order the discontinuation of prescribed psychotropic medication~~
260 ~~unless the required opinion is also from a psychiatrist who~~
261 ~~specializes in mental health care for children and adolescents.~~
262 ~~The court may also order the discontinuation of prescribed~~
263 ~~psychotropic medication if a child's treating physician,~~
264 ~~licensed under chapter 458 or chapter 459, states that~~
265 ~~continuing the prescribed psychotropic medication would cause~~
266 ~~significant harm to the child due to a diagnosed nonpsychiatric~~
267 ~~medical condition.~~

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

270 ~~(c)1. If the child's prescribing physician certifies in~~
271 ~~the signed medical report required in paragraph (c) that delay~~
272 ~~in providing a prescribed psychotropic medication would more~~
273 ~~likely than not cause significant harm to the child, the~~
274 ~~medication may be provided in advance of the issuance of a court~~
275 ~~order. In such event, the medical report must provide the~~
276 ~~specific reasons why the child may experience significant harm~~
277 ~~and the nature and the extent of the potential harm. The~~
278 ~~department must submit a motion seeking continuation of the~~
279 ~~medication and the physician's medical report to the court, the~~
280 ~~child's guardian ad litem, and all other parties within 3~~

HB 1405

2012

281 ~~working days after the department commences providing the~~
282 ~~medication to the child. The department shall seek the order at~~
283 ~~the next regularly scheduled court hearing required under this~~
284 ~~chapter, or within 30 days after the date of the prescription,~~
285 ~~whichever occurs sooner. If any party objects to the~~
286 ~~department's motion, the court shall hold a hearing within 7~~
287 ~~days.~~

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

293 ~~(f)1. The department shall fully inform the court of the~~
294 ~~child's medical and behavioral status as part of the social~~
295 ~~services report prepared for each judicial review hearing held~~
296 ~~for a child for whom psychotropic medication has been prescribed~~
297 ~~or provided under this subsection. As a part of the information~~
298 ~~provided to the court, the department shall furnish copies of~~
299 ~~all pertinent medical records concerning the child which have~~
300 ~~been generated since the previous hearing. On its own motion or~~
301 ~~on good cause shown by any party, including any guardian ad~~
302 ~~litem, attorney, or attorney ad litem who has been appointed to~~
303 ~~represent the child or the child's interests, the court may~~
304 ~~review the status more frequently than required in this~~
305 ~~subsection.~~

306 ~~2. The court may, in the best interests of the child,~~
307 ~~order the department to obtain a medical opinion addressing~~
308 ~~whether the continued use of the medication under the~~

HB 1405

2012

309 ~~circumstances is safe and medically appropriate.~~

310 ~~(g) The department shall adopt rules to ensure that~~
311 ~~children receive timely access to clinically appropriate~~
312 ~~psychotropic medications. These rules must include, but need not~~
313 ~~be limited to, the process for determining which adjunctive~~
314 ~~services are needed, the uniform process for facilitating the~~
315 ~~prescribing physician's ability to obtain the express and~~
316 ~~informed consent of a child's parent or guardian, the procedures~~
317 ~~for obtaining court authorization for the provision of a~~
318 ~~psychotropic medication, the frequency of medical monitoring and~~
319 ~~reporting on the status of the child to the court, how the~~
320 ~~child's parents will be involved in the treatment planning~~
321 ~~process if their parental rights have not been terminated, and~~
322 ~~how caretakers are to be provided information contained in the~~
323 ~~physician's signed medical report. The rules must also include~~
324 ~~uniform forms to be used in requesting court authorization for~~
325 ~~the use of a psychotropic medication and provide for the~~
326 ~~integration of each child's treatment plan and case plan. The~~
327 ~~department must begin the formal rulemaking process within 90~~
328 ~~days after the effective date of this act.~~

329 Section 2. Section 39.4071, Florida Statutes, is created
330 to read:

331 39.4071 Use of psychotropic medication for children in out
332 of-home placement.—

333 (1) LEGISLATIVE FINDINGS AND INTENT.—

334 (a) The Legislature finds that children in out-of-home
335 placements often have multiple risk factors that predispose them
336 to emotional and behavioral disorders and that they receive

HB 1405

2012

337 mental health services at higher rates and are more likely to be
338 given psychotropic medications than children from comparable
339 backgrounds.

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

350 (c) The Legislature further finds that significant
351 challenges are encountered in providing quality mental health
352 care to children in out-of-home placements. Not uncommonly,
353 children in out-of-home placements are subjected to multiple
354 placements and many service providers, with communication
355 between providers often poor, resulting in fragmented medical
356 and mental health care. The dependable, ongoing therapeutic and
357 caregiving relationships these children need are hampered by the
358 high turnover among child welfare caseworkers and care
359 providers. Furthermore, children in out-of-home placements,
360 unlike children from intact families, often have no consistent
361 interested party who is available to coordinate treatment and
362 monitoring plans or to provide longitudinal oversight of care.

363 (d) The Legislature recognizes the important role the
364 Guardian ad Litem Program has played in this state's dependency

HB 1405

2012

365 system for the past 30 years serving the state's most vulnerable
366 children through the use of trained volunteers, case
367 coordinators, child advocates, and attorneys. The program's
368 singular focus is on the child and its mission is to advocate
369 for the best interest of the child. It is often the guardian ad
370 litem who is the constant in a child's life, maintaining
371 consistent contact with the child, the child's caseworkers, and
372 others involved with the child, including family, doctors,
373 teachers, and service providers. Studies have shown that a child
374 assigned a guardian ad litem will, on average, experience fewer
375 placement changes than a child without a guardian ad litem. It
376 is therefore the intent of the Legislature that children in out-
377 of-home placements who may benefit from psychotropic medications
378 receive those medications safely as part of a comprehensive
379 mental health treatment plan requiring the appointment of a
380 guardian ad litem whose responsibility is to monitor the plan
381 for compliance and suitability as to the child's best interest.

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

383 (a) "Behavior analysis" means services rendered by a
384 provider who is certified by the Behavior Analysis Certification
385 Board in accordance with chapter 393.

386 (b) "Obtaining assent" means a process by which a provider
387 of medical services helps a child achieve a developmentally
388 appropriate awareness of the nature of his or her condition,
389 informs the child of what can be expected through tests and
390 treatment, makes a clinical assessment of the child's
391 understanding of the situation and the factors influencing how
392 he or she is responding, and solicits an expression of the

HB 1405

2012

393 child's willingness to adhere to the proposed care. The mere
394 absence of an objection by the child may not be construed as
395 assent.

396 (c) "Comprehensive behavioral health assessment" means an
397 in-depth and detailed assessment of the child's emotional,
398 social, behavioral, and developmental functioning within the
399 home, school, and community. A comprehensive behavioral health
400 assessment must include direct observation of the child in the
401 home, school, and community, as well as in the clinical setting,
402 and must adhere to the requirements contained in the Florida
403 Medicaid Community Behavioral Health Services Coverage and
404 Limitations Handbook.

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

413 (e) "Mental health treatment plan" means a plan that lists
414 the particular mental health needs of the child and the services
415 that will be provided to address those needs. If the plan
416 includes prescribing psychotropic medication to a child in out-
417 of-home placement, the plan must also include the information
418 required by subsection (9).

419 (f) "Psychotropic medication" means a prescription
420 medication that is used for the treatment of mental disorders

HB 1405

2012

421 and includes, without limitation, hypnotics, antipsychotics,
422 antidepressants, antianxiety agents, sedatives, stimulants, and
423 mood stabilizers.

424 (3) APPOINTMENT OF GUARDIAN AD LITEM.—

425 (a) If not already appointed, a guardian ad litem shall be
426 appointed by the court at the earliest possible time to
427 represent the best interests of a child in out-of-home placement
428 who is prescribed a psychotropic medication or is being
429 evaluated for the initiation of psychotropic medication.

430 Pursuant to s. 39.820, the appointed guardian ad litem is a
431 party to any judicial proceeding as a representative of the
432 child and serves until discharged by the court.

433 (b) Under the provisions of this section, the guardian ad
434 litem shall participate in the development of the mental health
435 treatment plan, monitor whether all requirements of the mental
436 health treatment plan are being provided to the child, including
437 counseling, behavior analysis, or other services, medications,
438 and treatment modalities; and notice the court of the child's
439 objections, if any, to the mental health treatment plan. The
440 guardian ad litem shall prepare and submit to the court a
441 written report every 45 days or as directed by the court,
442 advising the court and the parties as to the status of the care,
443 health, and medical treatment of the child pursuant to the
444 mental health treatment plan and any change in the status of the
445 child. The guardian ad litem shall immediately notify parties as
446 soon as any medical emergency of the child becomes known. The
447 guardian ad litem shall ensure that the prescribing physician
448 has been provided with all pertinent medical information

HB 1405

2012

449 concerning the child.

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

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

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

468 (a) The prescribing physician shall obtain assent from the
469 child, unless the prescribing physician determines that it is
470 not appropriate to obtain assent from the child. In making this
471 assessment, the prescribing physician shall consider the
472 capacity of the child to make an independent decision based on
473 his or her age, maturity, and psychological and emotional state.
474 If the physician determines that it is not appropriate to obtain
475 assent from the child, the physician must document the decision
476 in the mental health treatment plan. If the physician determines

HB 1405

2012

477 it is appropriate to obtain assent from the child and the child
478 refuses to give assent, the physician must document the child's
479 refusal in the mental health treatment plan.

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

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

499 3. In each case where assent is obtained, a copy of the
500 assent documents must be provided to the parent or legal
501 guardian and the guardian ad litem, with the original assent
502 documents becoming a part of the child's mental health treatment
503 plan and filed with the court.

504 (b) Express and informed consent for the administration of

HB 1405

2012

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

526 1. Express and informed consent may be oral or written and
527 must be documented by the prescribing physician. If the
528 department or the physician is unable to obtain consent from the
529 parent or legal guardian, the reasons must be documented.

530 2. When express and informed consent is obtained, a copy
531 of the consent documents must be provided to the parent or legal
532 guardian and the guardian ad litem, with the original consent

HB 1405

2012

533 documents becoming a part of the child's mental health treatment
534 plan and filed with the court.

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

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

551 (e) Under no circumstance may a medication be discontinued
552 without explicit instruction from a physician as to how to
553 safely discontinue the medication.

554 (6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD
555 IN SHELTER CARE OR IN FOSTER CARE WHEN INFORMED CONSENT HAS NOT
556 BEEN OBTAINED.—

557 (a) Motion for court authorization for administration of
558 psychotropic medications.—

559 1. Any time a physician who has evaluated the child
560 prescribes psychotropic medication as part of the mental health

HB 1405

2012

561 treatment plan and the child's parents or legal guardians have
562 not provided express and informed consent as provided by law or
563 such consent is invalid as set forth in paragraph (5)(c), the
564 department or its agent shall file a motion with the court
565 within 3 working days to authorize the administration of the
566 psychotropic medication before the administration of the
567 medication, except as provided in subsection (7). In each case
568 in which a motion is required, the motion must include:

569 a. A written report by the department describing the
570 efforts made to enable the prescribing physician to obtain
571 express and informed consent for providing the medication to the
572 child and describing other treatments attempted, considered, and
573 recommended for the child; and

574 b. The prescribing physician's completed and signed mental
575 health treatment plan.

576 2. The department must file a copy of the motion with the
577 court and, within 48 hours after filing the motion with the
578 court, notify all parties in writing, or by whatever other
579 method best ensures that all parties receive notification, of
580 its proposed administration of psychotropic medication to the
581 child.

582 3. If any party objects to the proposed administration of
583 the psychotropic medication to the child, that party must file
584 its objection within 2 working days after being notified of the
585 department's motion. A party may request an extension of time to
586 object for good cause shown, if such extension would be in the
587 best interests of the child. Any extension shall be for a
588 specific number of days not to exceed the time absolutely

589 necessary.

590 4. Lack of assent from the child shall be deemed a timely
 591 objection from the child.

592 (b) Court action on motion for administration of
 593 psychotropic medication.—

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

609 2. If any party timely files its objection to the proposed
 610 administration of the psychotropic medication to the child, the
 611 court shall hold a hearing as soon as possible on the
 612 department's motion.

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

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

617 services are being provided to the child which the prescribing
 618 physician considers to be necessary or beneficial in treating
 619 the child's medical condition and which the physician recommends
 620 or expects to be provided to the child along with the
 621 medication.

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

624 4. After considering the department's motion and any
 625 testimony received, the court may enter its order authorizing
 626 the department to provide or continue to provide the proposed
 627 psychotropic medication to the child. The court must find a
 628 compelling governmental interest that the proposed psychotropic
 629 medication is in the child's best interest. In so determining
 630 the court shall consider, at a minimum, the following factors:

631 a. The severity and likelihood of risks associated with
 632 the treatment.

633 b. The magnitude and likelihood of benefits expected from
 634 the treatment.

635 c. The child's prognosis without the proposed psychotropic
 636 medication.

637 d. The availability and effectiveness of alternative
 638 treatments.

639 e. The wishes of the child concerning treatment
 640 alternatives.

641 f. The recommendation of the parents or legal guardian.

642 g. The recommendation of the guardian ad litem.

643 (7) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD
 644 IN OUT-OF-HOME CARE BEFORE COURT AUTHORIZATION HAS BEEN

HB 1405

2012

645 OBTAINED.—The department may provide continued administration of
646 psychotropic medication to a child before authorization by the
647 court has been obtained only as provided in this subsection.

648 (a) If a child is removed from the home and taken into
649 custody under s. 39.401, the department may continue to
650 administer a current prescription of psychotropic medication to
651 the child; however, the department shall request court
652 authorization for the continued administration of the medication
653 at the shelter hearing. This request shall be included in the
654 shelter petition.

655 1. The department shall provide all information in its
656 possession to the court in support of its request at the shelter
657 hearing. The court may authorize the continued administration of
658 the psychotropic medication only until the arraignment hearing
659 on the petition for adjudication, or for 28 days following the
660 date of the child's removal, whichever occurs first.

661 2. If the department believes, based on the required
662 physician's evaluation, that it is appropriate to continue the
663 psychotropic medication beyond the time authorized by the court
664 at the shelter hearing, the department shall file a motion
665 seeking continued court authorization at the same time that it
666 files the dependency petition, but within 21 days after the
667 shelter hearing.

668 (b) If the department believes, based on the certification
669 of the prescribing physician, that delay in providing the
670 prescribed psychotropic medication to the child would, more
671 likely than not, cause significant harm to the child, the
672 department shall administer the medication to the child

HB 1405

2012

673 immediately. The department shall submit a motion to the court
674 seeking continuation of the medication within 3 working days
675 after the department begins providing the medication to the
676 child.

677 1. The motion seeking authorization for the continued
678 administration of the psychotropic medication to the child must
679 include all information required in this section. The required
680 medical report must also include the specific reasons why the
681 child may experience significant harm, and the nature and the
682 extent of the potential harm, resulting from a delay in
683 authorizing the prescribed medication.

684 2. The department shall serve the motion on all parties
685 within 3 working days after the department begins providing the
686 medication to the child.

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

692 (c) The department may authorize, in advance of a court
693 order, the administration of psychotropic medications to a child
694 in its custody in a hospital, crisis stabilization unit or
695 receiving facility, therapeutic group home, or statewide
696 inpatient psychiatric program. If the department does so, it
697 must file a motion to seek court authorization for the continued
698 administration of the medication within 3 working days as
699 required in this section.

700 (d) If a child receives a one-time dose of a psychotropic

HB 1405

2012

701 medication during a crisis, the department shall provide
702 immediate notice to all parties and to the court of each such
703 emergency use.

704 (8) DISCONTINUATION OR ALTERATION OF MEDICATION;
705 DESTRUCTION OF MEDICATION.—A party may not alter the provision
706 of prescribed psychotropic medication to a child in any way
707 except upon order of the court or advice of a physician.

708 (a) On the motion of any party or its own motion, the
709 court may order the discontinuation of a medication already
710 prescribed. Such discontinuation must be performed in
711 consultation with a physician in such a manner as to minimize
712 risk to the child.

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

718 (c) Upon any discontinuation of a medication, the
719 department shall document the date and reason for the
720 discontinuation and shall notify all parties. The guardian ad
721 litem must be notified within 24 hours as previously provided
722 herein.

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

725 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the
726 determination that a child needs mental health services, a
727 mental health treatment plan must be developed which lists the
728 particular mental health needs of the child and the services

HB 1405

2012

729 that will be provided to address those needs. When possible, the
730 plan shall be developed in a face-to-face conference with the
731 child, the child's parents, case manager, physician, therapist,
732 legal guardian, guardian ad litem, and any other interested
733 party. The mental health treatment plan shall be incorporated
734 into the case plan as tasks for the department and may be
735 amended under s. 39.6013.

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

738 1. The name of the child, a statement indicating that
739 there is a need to prescribe psychotropic medication to the
740 child based upon a diagnosed condition for which there is an
741 evidence base for the medication that is being prescribed, a
742 statement indicating the compelling governmental interest in
743 prescribing the psychotropic medication, and the name and range
744 of the dosage of the psychotropic medication.

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

749 3. A medication profile, including all medications the
750 child is prescribed or will be prescribed, any previously
751 prescribed medications where known, and whether those
752 medications are being added, continued, or discontinued upon
753 implementation of the mental health treatment plan.

754 4. A statement indicating that the psychotropic
755 medication, at its prescribed dosage, is appropriate for
756 treating the child's diagnosed medical condition, as well as the

HB 1405

2012

757 behaviors and symptoms that the medication, at its prescribed
758 dosage, is expected to address.

759 5. An explanation of the nature and purpose of the
760 treatment; the recognized side effects, risks, and
761 contraindications of the medication, including procedures for
762 reporting adverse effects; drug-interaction precautions; the
763 possible effects of stopping or not initiating the medication;
764 and how the treatment will be monitored, followed by a statement
765 indicating that this explanation was provided to the child if
766 developmentally appropriate and to the child's caregiver.

767 6. Documentation addressing whether the psychotropic
768 medication will replace or supplement any other currently
769 prescribed medications or treatments; the length of time the
770 child is expected to be taking the medication; a plan for the
771 discontinuation of any medication when medically appropriate;
772 and any additional medical, mental health, behavioral,
773 counseling, or other services that the prescribing physician
774 recommends as part of a comprehensive treatment plan.

775 7. A document describing those observable behaviors
776 warranting psychotropic treatment, the means for obtaining
777 reliable frequency data on these same observable behaviors, and
778 the reporting of this data with sufficient frequency to support
779 medication decisions.

780 (b) The department shall develop and administer procedures
781 to require the caregiver and prescribing physician to report any
782 adverse side effects of the medication to the department or its
783 designee and the guardian ad litem. Any adverse side effects
784 must be documented in the mental health treatment plan and

HB 1405

2012

785 medical records for the child.

786 (10) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION
787 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME
788 CARE.—

789 (a) Absent a finding of a compelling governmental
790 interest, a psychotropic medication may not be authorized by the
791 court for any child from birth through 10 years of age who is in
792 out-of-home placement. Based on a finding of a compelling
793 governmental interest but before a psychotropic medication is
794 authorized by the court for any child from birth through 10
795 years of age who is in an out-of-home placement, a review of the
796 administration must be obtained from a child psychiatrist who is
797 licensed under chapter 458 or chapter 459. The results of this
798 review must be provided to the child and the parent or legal
799 guardian before final express and informed consent is given.

800 (b) The department may authorize, in advance of a court
801 order, the administration of psychotropic medications to a child
802 from birth through 10 years of age in its custody in the
803 following levels of residential care:

- 804 1. Hospital;
- 805 2. Crisis stabilization unit or receiving facility;
- 806 3. Therapeutic group home; or
- 807 4. Statewide inpatient psychiatric program.

808
809 These levels of care demonstrate the requirement of compelling
810 governmental interest through the extensive admission criteria
811 being met. If the department does so, it must file a motion to
812 seek court authorization for the continued administration of the

HB 1405

2012

813 medication within 3 working days.

814 (c) If a child receives a one-time dose of a psychotropic
815 medication during a crisis, the department shall provide
816 immediate notice to all parties and to the court of each such
817 emergency use.

818 (11) CLINICAL TRIALS.—At no time shall a child in the
819 custody of the department be allowed to participate in a
820 clinical trial that is designed to develop new psychotropic
821 medications or evaluate their application to children.

822 (12) JUDICIAL REVIEW HEARINGS.—The department shall fully
823 inform the court of the child's medical and behavioral status as
824 part of the social services report prepared for each judicial
825 review hearing held for a child for whom psychotropic medication
826 has been prescribed or provided under this subsection. As a part
827 of the information provided to the court, the department shall
828 furnish copies of all pertinent medical records concerning the
829 child which have been generated since the previous hearing. On
830 its own motion or on good cause shown by any party, including
831 any guardian ad litem, attorney, or attorney ad litem who has
832 been appointed to represent the child or the child's interests,
833 the court may review the status more frequently than required in
834 this subsection.

835 (13) ADOPTION OF RULES.—The department shall adopt rules
836 to ensure that children receive timely access to mental health
837 services, including, but not limited to, clinically appropriate
838 psychotropic medications. These rules must include, but need not
839 be limited to, the process for determining which adjunctive
840 services are needed, the uniform process for facilitating the

HB 1405

2012

841 prescribing physician's ability to obtain the express and
842 informed consent of a child's parent or legal guardian, the
843 procedures for obtaining court authorization for the provision
844 of a psychotropic medication, the frequency of medical
845 monitoring and reporting on the status of the child to the
846 court, how the child's parents will be involved in the
847 treatment-planning process if their parental rights have not
848 been terminated, and how caretakers are to be provided
849 information contained in the physician's signed mental health
850 treatment plan. The rules must also include uniform forms or
851 standardized information to be used statewide in requesting
852 court authorization for the use of a psychotropic medication and
853 provide for the integration of each child's mental health
854 treatment plan and case plan. The department shall begin the
855 formal rulemaking process by October 1, 2012.

856 Section 3. Subsection (51) of section 409.912, Florida
857 Statutes, is amended to read:

858 409.912 Cost-effective purchasing of health care.—The
859 agency shall purchase goods and services for Medicaid recipients
860 in the most cost-effective manner consistent with the delivery
861 of quality medical care. To ensure that medical services are
862 effectively utilized, the agency may, in any case, require a
863 confirmation or second physician's opinion of the correct
864 diagnosis for purposes of authorizing future services under the
865 Medicaid program. This section does not restrict access to
866 emergency services or poststabilization care services as defined
867 in 42 C.F.R. part 438.114. Such confirmation or second opinion
868 shall be rendered in a manner approved by the agency. The agency

HB 1405

2012

869 shall maximize the use of prepaid per capita and prepaid
870 aggregate fixed-sum basis services when appropriate and other
871 alternative service delivery and reimbursement methodologies,
872 including competitive bidding pursuant to s. 287.057, designed
873 to facilitate the cost-effective purchase of a case-managed
874 continuum of care. The agency shall also require providers to
875 minimize the exposure of recipients to the need for acute
876 inpatient, custodial, and other institutional care and the
877 inappropriate or unnecessary use of high-cost services. The
878 agency shall contract with a vendor to monitor and evaluate the
879 clinical practice patterns of providers in order to identify
880 trends that are outside the normal practice patterns of a
881 provider's professional peers or the national guidelines of a
882 provider's professional association. The vendor must be able to
883 provide information and counseling to a provider whose practice
884 patterns are outside the norms, in consultation with the agency,
885 to improve patient care and reduce inappropriate utilization.
886 The agency may mandate prior authorization, drug therapy
887 management, or disease management participation for certain
888 populations of Medicaid beneficiaries, certain drug classes, or
889 particular drugs to prevent fraud, abuse, overuse, and possible
890 dangerous drug interactions. The Pharmaceutical and Therapeutics
891 Committee shall make recommendations to the agency on drugs for
892 which prior authorization is required. The agency shall inform
893 the Pharmaceutical and Therapeutics Committee of its decisions
894 regarding drugs subject to prior authorization. The agency is
895 authorized to limit the entities it contracts with or enrolls as
896 Medicaid providers by developing a provider network through

HB 1405

2012

897 provider credentialing. The agency may competitively bid single-
898 source-provider contracts if procurement of goods or services
899 results in demonstrated cost savings to the state without
900 limiting access to care. The agency may limit its network based
901 on the assessment of beneficiary access to care, provider
902 availability, provider quality standards, time and distance
903 standards for access to care, the cultural competence of the
904 provider network, demographic characteristics of Medicaid
905 beneficiaries, practice and provider-to-beneficiary standards,
906 appointment wait times, beneficiary use of services, provider
907 turnover, provider profiling, provider licensure history,
908 previous program integrity investigations and findings, peer
909 review, provider Medicaid policy and billing compliance records,
910 clinical and medical record audits, and other factors. Providers
911 are not entitled to enrollment in the Medicaid provider network.
912 The agency shall determine instances in which allowing Medicaid
913 beneficiaries to purchase durable medical equipment and other
914 goods is less expensive to the Medicaid program than long-term
915 rental of the equipment or goods. The agency may establish rules
916 to facilitate purchases in lieu of long-term rentals in order to
917 protect against fraud and abuse in the Medicaid program as
918 defined in s. 409.913. The agency may seek federal waivers
919 necessary to administer these policies.

920 (51) The agency may not pay for psychotropic medication
921 prescribed for a child in the Medicaid program without the
922 express and informed consent of the child's parent or legal
923 guardian. The physician shall document the consent in the
924 child's medical record and provide the pharmacy with a signed

HB 1405

2012

925 attestation of this documentation with the prescription. The
926 express and informed consent or court authorization for a
927 prescription of psychotropic medication for a child in the
928 custody of the Department of Children and Family Services shall
929 be obtained pursuant to s. 39.4071 ~~s. 39.407~~.

930 Section 4. Paragraph (b) of subsection (1) of section
931 743.0645, Florida Statutes, is amended to read:

932 743.0645 Other persons who may consent to medical care or
933 treatment of a minor.—

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

935 (b) "Medical care and treatment" includes ordinary and
936 necessary medical and dental examination and treatment,
937 including blood testing, preventive care including ordinary
938 immunizations, tuberculin testing, and well-child care, but does
939 not include surgery, general anesthesia, provision of
940 psychotropic medications, or other extraordinary procedures for
941 which a separate court order, power of attorney, or informed
942 consent as provided by law is required, except as provided in s.
943 39.4071 ~~s. 39.407(3)~~.

944 Section 5. This act shall take effect July 1, 2012.