

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1140

SPONSOR: Children and Families Committee and Senator Cowin

SUBJECT: Medication/Administering to Children

DATE: February 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.			HC	
3.			ED	
4.			JU	
5.			CJ	
6.				

I. Summary:

The committee substitute for SB 1140 sets forth requirements regarding the provision of medication to children in three different state systems: child protection, child care, and education. First, the bill prohibits a child from being taken into custody due to a parent's refusal to administer psychotropic medications unless such refusal caused the child's neglect or abuse. Second, requirements are established for obtaining parental authorization to administer medication to children in child care programs with criminal penalties created for violations of these requirements. Third, school personnel are prohibited from recommending the use of psychotropic medications for students.

This bill substantially amends sections 39.401 and 1006.062, of the Florida Statutes. The bill creates s. 402.3127, of the Florida Statutes.

II. Present Situation:

Primary care physicians identify approximately 19 percent of the children they see as having behavioral and emotional problems.¹ A number of treatment options are available to address mental health problems in children including psychotropic medications. While generally not the first option, the National Institute of Mental Health reports that psychotropic medications may be prescribed when the possible benefits of the medications outweigh the risk and, in particular, when psychosocial interventions are not effective by themselves and there are potentially serious negative consequences for the child.² There are several major categories of psychotropic

¹ President's New Freedom Commission on Mental Health: Report to the President, May 2003.

² *Treatment of Children with Mental Disorders*, National Institute of Mental Health, updated June 18, 2001.

medications: stimulants, antidepressants, anti-anxiety agents, anti-psychotics, and mood stabilizers. These medications may be used to treat a variety of symptoms, including as follows:

- Stimulant medications are frequently used for Attention Deficit Hyperactivity Disorder (ADHD), which is the most common behavioral disorder of childhood;
- Anti-depressants and anti-anxiety medications are frequently used for depression, anxiety, and obsessive compulsive disorders;
- Anti-psychotic medications are used to treat children with schizophrenia, bipolar disorders, autism, and severe conduct disorders; and
- Mood stabilizing medications are also used to treat bipolar disorders.³

Chapter 39, F.S., provides the statutory framework for child abuse, neglect, and abandonment. Child abuse under ch. 39, F.S., is defined as a willful or threatened act that results in physical, mental, or sexual injury to a child or results in harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired (s. 39.01(2), F.S.). Child neglect is the deprivation of basic necessities such as food, shelter, clothing, or medical treatment that can cause or places the child in danger of causing significant impairment to the child's physical, mental, or emotional health (s. 39.01(45), F.S.). Procedures for the Department of Children and Families (CF Operating Procedures No. 175-28) which guide the identification of child abuse, neglect, and abandonment identify an allegation of deprivation of medical treatment as medical neglect. This type of allegation can include that the parent has not sought medical attention for an illness or injury or is not following through with the medical treatment prescribed for an illness or injury. Pursuant to statute and the operating procedures, the lack of provision of the medical treatment is not in of itself medical neglect but instead the neglect occurs when not providing the medical treatment results in or could result in serious or long-term harm to the child.

Section 39.401, F.S., stipulates those conditions under which a child may be removed from the home and taken into the custody of the department. Specifically, the child may be taken into the custody of the department only under the following conditions:

- The child has been abused, neglected, or abandoned;
- The child is experiencing an illness or injury, or is in imminent danger of such illness or injury, that resulted from abuse, neglect, or abandonment;
- The parent or legal guardian has violated a court imposed condition of placement; or
- A parent, legal custodian, or responsible adult relative is not immediately known and available to care for the child.

The intent of child care regulation in most states is to protect the health, safety, and well-being of the children. Basic health and safety regulations usually include the administration of medication. The National Health and Safety Performance Standards published by the American Public Health Association and the American Academy of Pediatrics include standards that recommend the limitation of administration of medications at child care facilities to prescription medications ordered by a health care provider for a specific child, with written permission of the parent or legal guardian, and to nonprescription medications recommended by a health care provider for a specific child or for a specific circumstance for any child in the facility, again with written permission of the parent or legal guardian. It is also recommended that facilities have

³ *Treatment of Children with Mental Disorders*, Supra.

standards for labeling and storage of medications, training caregivers to administer medication, and maintaining written records on the administration of medications. In Florida, licensing requirements for child care facilities, family day care homes, large family child care homes, and specialized child care facilities for the care of mildly ill children include standards for dispensing, storing, and maintaining records relative to medications (Chapters 65C-20, 65C-22, and 65C-25, F.A.C.). Basically, the standards require the prescription and non-prescription medications provided by the parents be in the original containers. Written authorization is required to dispense any non-prescription medication. Prescription medication is to be dispensed according to the label directions.

Public school and nonpublic school child care programs that are deemed to be child care pursuant to s. 402.3025, F.S., must comply with these child care licensing standards. These deemed public school and nonpublic school child care programs include those not operated or staffed directly by the public schools, those serving children under 3 years of age who are not eligible for the special education programs (P.L. No 94-142 or P.L. No. 99-457), and programs in private schools serving children between the ages of 3 and 5 years when a majority of children in the school are under 5 years of age. The administration of medication for child care programs operated and staffed by the school system is governed by s. 1006.062, F.S., and local school board policy. Section 1006.062, F.S., requires written authorization from the parents for the dispensing of prescription medications. Each school board is required to adopt policies and procedures for the administration of prescription medications and to provide training to school personnel in the administration of prescription medication.

Ramifications are available through Florida law to respond to the harm that can be caused by misuse of medications including licensing sanctions, the child protection laws, and criminal penalties. First, s. 402.310, F.S., provides for sanctions for violating child care licensing standards, specifically imposing administrative fines and denial, suspension, or revocation of the license. Given the current statutory construction of these provisions, administrative fines are the primary sanction applied for violation of the requirements for administering medications. These child care licensing standards and, in turn, the sanctions, currently do not apply to family day care homes that are not required or choose not to be licensed, to certain programs in public and nonpublic schools deemed not to be child care pursuant to s. 402.3025, F.S., to religious exempt child care programs pursuant to s. 402.316, F.S., and to summer camps and child care services in transient establishments pursuant to s. 402.302(2), F.S.

Second, inappropriate administration of medication could also be considered child abuse if harm is caused by the misuse of the medications. All child care programs with the exception of those programs in the public schools and nonpublic schools deemed not to be child care pursuant to s. 402.3025, F.S., would fall under the jurisdiction of Florida's child abuse laws in ch. 39, F.S. The state attorney, law enforcement agency, and licensing agency are to be automatically notified of all reports of child abuse in a child care program (s. 39.302, F.S.).

Third, in addition to the civil actions that could be taken in response to the misuse of medications in child care programs, s. 827.03(1), F.S., establishes the crime of child abuse which is the intentional infliction of, or intentional act that could result in, mental or physical injury to the child. Committing the crime of child abuse is a felony of the third degree if there is no great bodily harm, permanent disability, or permanent disfigurement to the child. If the abuse results in

great bodily harm, permanent disability, or permanent disfigurement to the child, the crime becomes aggravated child abuse and is felony of the first degree (s. 827.03(2), F.S.). A felony of the third degree is punishable by a term of imprisonment not to exceed 5 years, a \$5,000 fine, or, in the case of a violent career criminal, a longer term of imprisonment (ss. 775.082, 775.083, and 775.084, F.S.). A felony of the first degree is punishable by a term of imprisonment not to exceed 30 years or, under certain circumstances, life, a fine of \$10,000, or a longer term of imprisonment for the violent career criminal (ss. 775.082, 775.083, and 775.084, F.S.).

It is estimated that 1.46 to 2.46 million children or 3 to 5 percent of the student population have ADHD.⁴ The diagnostic methods, treatment options, and medications have become a very controversial subject, particularly in education.⁵ One of the concerns raised has been that school officials are reported to be offering their diagnosis of ADHD and urging parents to obtain drug treatment for the child.⁶ These concerns have resulted in the consideration of federal legislation to require states to develop and implement policies and procedures prohibiting school personnel from requiring that a child obtain a prescription for a controlled substance in order to attend school.⁷

The National Conference of State Legislatures reports that a number of states are currently considering legislation related to psychotropic medications and psychiatric treatment. States that passed laws particular to this issue prior to 2003 included Connecticut that prohibited school personnel from recommending the use of psychotropic drugs for any child, but did not prohibit recommending a child be evaluated by a medical practitioner or school personnel from consulting one. Similarly, Virginia directed the Board of Education to develop and implement policies prohibiting school personnel from recommending the use of psychotropic medications for any students.

Concerns raised as the federal legislation has been debated have been that the legislation may deter educators from talking to parents about concerns with a student's emotional well-being and mental health. Educators were identified as a critical source of information about a child's behavior but may potentially refrain from identifying mental health problems in a child due to fear of violating the law.⁸ Students with ADHD may need the services of the federal Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 to assist them with their education needs. Schools are required by IDEA and Section 504 to provide special education or make modifications or adaptations for students whose ADHD adversely affects their educational performance. Adaptations available to assist ADHD students include "curriculum adjustments, alternative classroom organization and management, specialized teaching techniques and study skills, use of behavior management, and increased parent/teacher collaboration."⁹ The position identified by the U.S. Department of Education relative to the role of the educators as it pertains to prescribing medications is that it is the responsibility of the

⁴ *Identifying and Treating Attention Deficit Hyperactivity Disorder: A resource for School and Home*, U.S. Department of Education, 2003, p.2.

⁵ *Identifying and Treating Attention Deficit Hyperactivity Disorder*, Supra, p. 1.

⁶ Child Medication Safety Act of 2003, 108th Congress, House of Representatives Report, May 21, 2003, p. 5

⁷ Child Medication Safety Act of 2003, Supra, p. 3.

⁸ Swindell, Bill, *House Votes to Bar School from Requiring Medication*, Congressional Quarterly, and Swindell, Bill, *Bill Would Prevent Schools from Requiring Drug Usage*, Congressional Quarterly.

⁹ *Identifying and Treating Attention Deficit Hyperactivity Disorder*, Supra, p. 6.

medical professionals, not the educational professionals, to prescribe any medication.¹⁰ However, it was recognized that the input the educators can provide about the student's behavior can often aid in a diagnosis.

III. Effect of Proposed Changes:

The committee substitute for SB 1140 sets forth requirements regarding the provision of medication to children in three different state systems: child protection, child care, and education. First, the bill prohibits a child from being taken into custody due to a parent's refusal to administer psychotropic medications unless such refusal caused the child's neglect or abuse. Second, requirements are established for obtaining parental authorization to administer medication to children in child care programs with criminal penalties created for violations of these requirements. Third, school personnel are prohibited from recommending the use of psychotropic medications for students

Specifically, s. 39.401, F.S., is amended to provide that the refusal of the parent, legal guardian, or other person responsible for the child's welfare to administer or consent to the administration of psychotropic medications to the child is not grounds to take the child into custody. The bill prohibits the court from entering an order for the department to take the child into custody based solely on this condition. The bill provides that the child may be taken into custody by the department or by order of the court if the refusal to administer the psychotropic medication or refusal to consent to such administration is found to cause the neglect or abuse of the child. This provision does not alter the definition of abuse and neglect as it relates to the administration of psychotropic medication, only the conditions under which the child may be taken into custody.

The bill creates s. 402.3127, F.S., which prohibits any employee, owner, household member, volunteer, or operator of a child care facility, family day care home, or large family child care home which is required to be licensed or registered from administering any medication to a child attending the facility without the written authorization of the child's parent or legal guardian. This prohibition also applies to a child care program operated by a public or nonpublic school that is deemed to be child care pursuant to s. 402.3025, F.S. The written authorization from the parent is required to include certain information, such as the name of the child, dates the authorization is applicable, dosage instruction, and signature of the parent or legal guardian. The bill allows for the identified individuals in the child care facility to administer medication without written permission if an emergency medical condition exists, the parents are not available, and the medication is administered pursuant to the instructions of a bona fide medical care provider. A "bona fide medical care provider" is defined by the bill as an individual who is licensed, certified, or otherwise authorized to prescribe the medication. An "emergency medical condition" is also defined by the bill as those "circumstances when a prudent layperson acting reasonably would believe that an emergency medical condition exists." The parents or legal guardians of the child must be immediately notified if the child care facility administered medication under this emergency provision. The child care facility is required to immediately notify the child's medical care provider if the parents or legal guardians cannot be located.

¹⁰ Letter from Richard Riley of the U.S. Department of Education to Congressman Peter Hoekstra, November 21, 2000.

The bill provides for criminal penalties for failure to comply with the requirements of s. 402.3127, F.S., that is, administering medication to a child attending a child care facility without written authorization unless the stipulated emergency circumstances are met. It is a third degree felony if the requirements of this section are violated and the violation results in serious injury to the child. If the violation of these requirements does not result in serious injury to the child, it is a misdemeanor of the first degree.

The committee substitute for SB 1140 directs each school board to adopt rules to prohibit school board employees from recommending the use of psychotropic medications. District school board medical personnel are specifically not prohibited from recommending that a student be evaluated by a medical practitioner. The bill also specifically provides that school board medical personnel are not prohibited from consulting with a medical practitioner with the consent of the student's parent.

The bill provides for an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Both the Department of Education and the Department of Children and Families report that this bill will not have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The requirements for administering medication in child care facilities allows for “medication” to be administered without written authorization of the parent in an emergency and in accordance with the instructions of a medical care provider. The bill does not stipulate whether this applies to prescription or nonprescription medications which could allow for a medication prescribed for another child that is not authorized by a parent to be administered to a child.

The provision regarding not prohibiting school board personnel from recommending that a student be evaluated by a medical practitioner and consulting with the practitioner with the parent’s consent is specific to school board medical personnel and does not speak to other school board personnel. It is, therefore, not clear if school board personnel who are not medical personnel would also still be permitted to recommend that students be evaluated and consult with the medical practitioners with the permission of the parents.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
