

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/CS/SB 2262

SPONSOR: Education Committee, Children and Families Committee and Senator Smith

SUBJECT: Prescription of Psychotropic Medications to Minors

DATE: April 13, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HC</u>	_____
4.	_____	_____	<u>AED</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

CS/CS/SB 2262 creates the Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida. The purpose of this center is to collect, track, and assess information regarding dependent minors in state custody who have been or are currently being prescribed psychotropic medications.

This bill provides for the appointment of a director for the center, creates an advisory board and specifies the membership of the board.

The center is directed to work with the Department of Children and Family Services (DCF), the Department of Juvenile Justice (DJJ), and the Agency for Health Care Administration (AHCA) to collect specific information relating to children in the custody of the state who are receiving or have received psychotropic medications. The bill also directs DCF, DJJ, and AHCA to provide client information to the center, in accordance with state and federal privacy laws.

The center is required to provide a report to the Legislature regarding the treatment of dependent minors with psychotropic medications by January 1, 2005. The provisions of this section of the bill are repealed on July 1, 2005.

The bill also contains provisions relating to parental consent to administration of psychotropic medications, administration of medications by child care providers, and recommendations regarding psychotropic medications by school personnel.

This bill amends sections 743.0645, 39.401, 402.3127, and 1006.062 of the Florida Statutes.

The bill will take effect July 1, 2004.

II. Present Situation:

Use of psychotropic medications by children

A substantial number of children in the United States have diagnosed mental disorders. According to research, a review of Medicaid prescription records (from unidentified states) during 1995 indicated that 150,000 preschoolers under the age of six were prescribed psychotropic medications.¹ Additionally, the 1999 MECA Study (Methodology for Epidemiology of Mental Disorders in Children and Adolescents) estimated that almost 21 percent of the children in the United States between the ages of nine and 17 had a diagnosable mental or addictive disorder that caused impairment, and 11 percent of these children (approximately 4 million) had a significant impairment that limited their ability to function.

Psychotropic medication is one of many treatment interventions that may be used to address mental health problems. Medication may be recommended and prescribed for children with mental, behavioral, or emotional symptoms when the potential benefits of treatment outweigh the risks. There has been growing public concern, however, over reports that very young children are being prescribed psychotropic medications with potentially adverse side effects.

Some of the concern regarding the use of psychotropic medications with children stems from the limited information that is available regarding the efficacy and the potential side effects of these drugs with children. Most clinical trials for these drugs were conducted on an adult population. The same results are not always obtained when these drugs are used with children, and the side effects for children are frequently different from those experienced by adults. The Food and Drug Administration (FDA) has publicly expressed concerns regarding the use of antidepressants in children and recently established an advisory committee to further study and evaluate the use of psychotropic medications with children.

In Florida, there has been controversy around the number of children in the custody of the state who are on psychotropic medications. The controversy has included the types of medications prescribed, the circumstances under which the drugs were used, how consent was obtained, and the lack of oversight provided by state agencies in the prescription and use of these medications. No source of information currently exists, however, to accurately depict the prescribing patterns and frequency with which these medications are provided to children under state custody or the appropriate use of these drugs.

Child protection

Chapter 39, F.S., provides the statutory framework for addressing child abuse, neglect, and abandonment. Child abuse under chapter 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 significant impairment to his

¹ Trends in the Prescribing of Psychotropic Medications to Preschoolers, Zito, J.A., Safer, D.J., dosReis, S., Gardner, J.F., Boles, M., and Lynch, F., The Journal of the American Medical Association, Vol. 283, No.8, February, 2000.

or her 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 and of itself medical neglect but instead the neglect occurs when not providing the medical treatment results, 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.

Child care

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 standards for labeling and storing 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 in 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.

Statutory sanctions for misuse of medications with children

Sanctions 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 chapter 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 a 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.).

Attention deficit hyperactivity disorder and school policy

It is estimated that 1.46 to 2.46 million children, or 3 to 5 percent of the student population, have ADHD.² The diagnostic methods, treatment options, and medications have become a very controversial subject, particularly in education.³ 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.⁴ 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.⁵

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 they may potentially refrain from identifying mental health problems in a child due to fear of violating the law.⁶ Students with ADHD may need the services provided under 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."⁷ 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 medical professionals, not the educational professionals, to prescribe any medication.⁸ However, it was recognized that the input the educators can provide about the student's behavior can often aid in a diagnosis.

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

³ *Identifying and Treating Attention Deficit Hyperactivity Disorder*, Supra, p. 1.

⁴ Child Medication Safety Act of 2003, 108th Congress, House of Representatives Report, May 21, 2003, p. 5

⁵ Child Medication Safety Act of 2003, Supra, p. 3.

⁶ 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.

⁷ *Identifying and Treating Attention Deficit Hyperactivity Disorder*, Supra, p. 6.

⁸ Letter from Richard Riley of the U.S. Department of Education to Congressman Peter Hoekstra, November 21, 2000.

III. Effect of Proposed Changes:

Section 1. Creation of Center for Juvenile Psychotropic Studies:

CS/CS/SB 2262 creates the Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida. The purpose of this center is to collect, track, and assess information regarding dependent minors in the custody of the state who have been or currently are being prescribed psychotropic medications. The bill provides for the appointment of a director and creates an advisory board. The bill directs the center to work in conjunction with Department of Children and Family Services (DCF), the Department of Juvenile Justice (DJJ), and the Agency for Health Care Administration (AHCA) to collect information pertaining to the provision of psychotropic medications to children in the custody of the state. The bill also requires the center to make a report to the Legislature.

The Center for Juvenile Psychotropic Studies

CS/CS/SB 2262 creates s. 743.0645(6), F.S., establishing The Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida. The purpose of this center is to collect, track, and assess information regarding the use of psychotropic medications with minors in state custody. The term “psychotropic medications” is defined in the bill generally to include medications that require a prescription and are used for the treatment of medical disorders. The center must also evaluate:

- Information regarding the medical evaluations given to children prescribed medications,
- What other treatments were recommended in addition to the medication and whether those treatments were delivered,
- Whether informed consent was received from legal guardians before treatment,
- Whether followup monitoring and treatment was given to the child,
- Whether full records were provided to courts for decisionmaking purposes, and
- Whether the prescription was appropriate for the age and diagnosis of the child.

The bill specifies that the director of the center is to be appointed by the dean of the College of Medicine.

Advisory Board

The bill creates an advisory board that is required to periodically review and advise the center regarding its actions taken pursuant to the bill’s requirements. The board must consist of nine members who are experts in the field of psychiatric health and must include:

- the Secretary of DCF or his or her designee,
- the Secretary of DJJ or his or her designee,
- the Secretary of AHCA or his or her designee,
- the Secretary of the Department of Health or his or her designee,
- one member appointed by the Senate President from the Florida Psychiatric Society,

- one member appointed by the Speaker of the House of Representatives who is a pediatrician,
- One member appointed by the President of the University of Florida who is an epidemiologist, and
- Two members appointed by the Governor, one of whom has been a guardian ad litem and one of whom is employed by the Florida Mental Health Institute.

The board membership specified by this bill includes representatives from state agencies that currently have responsibilities for the care of children.

Information Gathering

The center is directed to work in conjunction with DCF, DJJ, and AHCA (to the extent permitted by the privacy requirements of state and federal law) to gather information regarding dependent minors that must include but is not limited to:

- Demographic information, to include age, geographic location, and economic status;
- Family history that includes any involvement with the child welfare or juvenile justice system, including social service and court records;
- Medical history of the minor that includes the minor's medical condition;
- All information regarding the medications prescribed or administered to the minor, including information contained in the medication administration record; and
- The practice patterns, licensure and board certification of prescribing physicians.

Both federal and state requirements permit the sharing of client healthcare information for research purposes.⁹ It appears that the provisions of this bill directing the sharing of this information are congruent with current privacy requirements. The collection of this information at a central location will provide an opportunity to address numerous concerns and answer questions that have been raised regarding medication practices with children in state custody.

The bill provides immunity from civil liability for persons furnishing medical records in furtherance of the charge of the center, absent bad faith or malice. The bill also provides immunity for persons participating in the center's research activities or who provide information to the center regarding the incompetence, impairment, or unprofessional conduct of any health care provider licensed under applicable chapters of law, absent intentional fraud or malice.

Reporting

The bill directs the center to report its findings regarding psychotropic medications prescribed to dependent minors in state custody to the President of the Senate, Speaker of the House of Representatives, and the appropriate committee chairs of the Senate and House of Representatives by January 1, 2005.

In order to meet the time frames associated with the mandated report, information will have to be collected and organized at the departmental level to be shared with the center. Representatives from the University of Florida and DCF have indicated that this work can be accomplished

⁹ Health Insurance and Portability Accountability Act (1996); Section 456.057, Florida Statutes.

within the time allocated. The contents of this report may be useful in setting public policy, developing clinical practice guidelines, and developing oversight procedures governing the utilization of psychotropic medications with children in state custody.

This section is to take effect on July 1, 2004, and will repeal on July 1, 2005.

Section 2. Parental consent to administration of medications:

The bill provides that the refusal of a parent or other responsible person to administer or consent to the administration of any psychotropic medication to a child does not, by itself, constitute grounds for the state to take the child into custody, unless the failure to administer the medication causes the child to be neglected or abused.

Section 3. Unauthorized administration of medication to minors:

The bill provides that child care providers may not administer medication to a child without written authorization from the child's parent or guardian. It provides an exemption, however, for emergency situations if the care provider is under instructions from a health care practitioner. A violation of this section would be a 3rd degree felony if serious injury to the child results, and a 1st degree misdemeanor if no serious injury to the child results.

Section 4. Recommendations regarding medication by school board personnel:

The committee substitute provides that each district school board must adopt rules prohibiting all personnel from recommending the use of psychotropic medications for any student. School board personnel will still be permitted, however, to recommend that a student be evaluated by a medical practitioner and to consult with a medical practitioner with the consent of the student's parent.

Section 5. The bill will take effect 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:

The Department of Children and Family Services reports there will be unknown costs associated with the implementation of this bill related to travel for board members as well as costs to exchange data with the Center for Juvenile Psychotropic Studies. However, it is estimated that these costs will be minimal and can be absorbed within existing resources.

Staff from the University of Florida estimate that funding in the amount of \$250,000 will be needed to implement the bill. The funding will be used to support staffing needs, travel, equipment, and supplies. However, a portion of the costs can be absorbed within existing resources.

The Department of Juvenile Justice reports that in order to meet the data requirements specified by this bill, it will likely need to develop a website or adapt the Juvenile Justice Information System (JJIS). Six additional staff will be necessary to assist in data collection and entry for this project. The combined costs projected by DJJ for staff, equipment, and travel exceed \$250,000.

Both the Department of Education and the Department of Children and Families report that the provisions contained in Sections 2, 3 and 4 of this bill will not have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Children and Family Services currently has a contract with the Department of Psychiatry of the College of Medicine, University of Florida, to provide a medication consultation line. The MedConsult line is available to prescribing physicians for consultation, as well as to judges, child welfare workers, guardians ad litem and foster parents for up-to-date information on psychotropic medications, including the side effects and uses of the medications.

Given the extensive issues relating to the treatment of children with psychotropic medications, it may be beneficial for the advisory board to have broader membership. Additional membership could include representatives from other universities, consumers, and advocates.

VIII. Amendments:

None.

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