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LEGISLATIVE ACTION

Senate

House

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04/21/2010 05:40 PM

Senator Storms moved the following:

Senate Amendment (with title amendment)

Between lines 1442 and 1443

insert:

Section 48. Subsection (3) of section 39.407, Florida Statutes, is amended to read:

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

(3) (a) All children placed in out-of-home care shall be provided with a comprehensive behavioral health assessment. The child protective investigator or dependency case manager shall submit a referral for such assessment within 7 days after the



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14 child is placed in out-of-home care.

15 (b) Any child who has been in out-of-home care for more
16 than 1 year, or who did not receive a comprehensive behavioral
17 health assessment when placed into out-of-home care, is eligible
18 to receive a comprehensive behavioral health assessment. Such
19 assessments evaluate behaviors that give rise to the concern
20 that the child has unmet mental health needs. Any party to the
21 dependency proceeding, or the court on its own motion, may
22 request that an assessment be performed.

23 (c) The child protective investigator or dependency case
24 manager is responsible for ensuring that all recommendations in
25 the comprehensive behavioral health assessment are incorporated
26 into the child's case plan and that the recommended services are
27 provided in a timely manner. If, at a case planning conference,
28 a determination is made that a specific recommendation should
29 not be included in a child's case plan, a written explanation
30 must be provided to the court as to why the recommendation is
31 not being followed.

32 (d) This subsection does not to prevent a child from
33 receiving any other form of psychological assessment if needed.

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

38 ~~(3)(a)1. Except as otherwise provided in subparagraph (b)1.~~
39 ~~or paragraph (c), before the department provides psychotropic~~
40 ~~medications to a child in its custody, the prescribing physician~~
41 ~~shall attempt to obtain express and informed consent, as defined~~
42 ~~in s. 394.455(9) and as described in s. 394.459(3)(a), from the~~



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43 ~~child's parent or legal guardian. The department must take steps~~
44 ~~necessary to facilitate the inclusion of the parent in the~~
45 ~~child's consultation with the physician. However, if the~~
46 ~~parental rights of the parent have been terminated, the parent's~~
47 ~~location or identity is unknown or cannot reasonably be~~
48 ~~ascertained, or the parent declines to give express and informed~~
49 ~~consent, the department may, after consultation with the~~
50 ~~prescribing physician, seek court authorization to provide the~~
51 ~~psychotropic medications to the child. Unless parental rights~~
52 ~~have been terminated and if it is possible to do so, the~~
53 ~~department shall continue to involve the parent in the~~
54 ~~decisionmaking process regarding the provision of psychotropic~~
55 ~~medications. If, at any time, a parent whose parental rights~~
56 ~~have not been terminated provides express and informed consent~~
57 ~~to the provision of a psychotropic medication, the requirements~~
58 ~~of this section that the department seek court authorization do~~
59 ~~not apply to that medication until such time as the parent no~~
60 ~~longer consents.~~

61 ~~2. Any time the department seeks a medical evaluation to~~
62 ~~determine the need to initiate or continue a psychotropic~~
63 ~~medication for a child, the department must provide to the~~
64 ~~evaluating physician all pertinent medical information known to~~
65 ~~the department concerning that child.~~

66 ~~(b)1. If a child who is removed from the home under s.~~
67 ~~39.401 is receiving prescribed psychotropic medication at the~~
68 ~~time of removal and parental authorization to continue providing~~
69 ~~the medication cannot be obtained, the department may take~~
70 ~~possession of the remaining medication and may continue to~~
71 ~~provide the medication as prescribed until the shelter hearing,~~



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72 ~~if it is determined that the medication is a current~~
73 ~~prescription for that child and the medication is in its~~
74 ~~original container.~~

75 ~~2. If the department continues to provide the psychotropic~~
76 ~~medication to a child when parental authorization cannot be~~
77 ~~obtained, the department shall notify the parent or legal~~
78 ~~guardian as soon as possible that the medication is being~~
79 ~~provided to the child as provided in subparagraph 1. The child's~~
80 ~~official departmental record must include the reason parental~~
81 ~~authorization was not initially obtained and an explanation of~~
82 ~~why the medication is necessary for the child's well-being.~~

83 ~~3. If the department is advised by a physician licensed~~
84 ~~under chapter 458 or chapter 459 that the child should continue~~
85 ~~the psychotropic medication and parental authorization has not~~
86 ~~been obtained, the department shall request court authorization~~
87 ~~at the shelter hearing to continue to provide the psychotropic~~
88 ~~medication and shall provide to the court any information in its~~
89 ~~possession in support of the request. Any authorization granted~~
90 ~~at the shelter hearing may extend only until the arraignment~~
91 ~~hearing on the petition for adjudication of dependency or 28~~
92 ~~days following the date of removal, whichever occurs sooner.~~

93 ~~4. Before filing the dependency petition, the department~~
94 ~~shall ensure that the child is evaluated by a physician licensed~~
95 ~~under chapter 458 or chapter 459 to determine whether it is~~
96 ~~appropriate to continue the psychotropic medication. If, as a~~
97 ~~result of the evaluation, the department seeks court~~
98 ~~authorization to continue the psychotropic medication, a motion~~
99 ~~for such continued authorization shall be filed at the same time~~
100 ~~as the dependency petition, within 21 days after the shelter~~



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101 hearing.

102 ~~(c) Except as provided in paragraphs (b) and (c), the~~
103 ~~department must file a motion seeking the court's authorization~~
104 ~~to initially provide or continue to provide psychotropic~~
105 ~~medication to a child in its legal custody. The motion must be~~
106 ~~supported by a written report prepared by the department which~~
107 ~~describes the efforts made to enable the prescribing physician~~
108 ~~to obtain express and informed consent for providing the~~
109 ~~medication to the child and other treatments considered or~~
110 ~~recommended for the child. In addition, the motion must be~~
111 ~~supported by the prescribing physician's signed medical report~~
112 ~~providing:~~

113 ~~1. The name of the child, the name and range of the dosage~~
114 ~~of the psychotropic medication, and that there is a need to~~
115 ~~prescribe psychotropic medication to the child based upon a~~
116 ~~diagnosed condition for which such medication is being~~
117 ~~prescribed.~~

118 ~~2. A statement indicating that the physician has reviewed~~
119 ~~all medical information concerning the child which has been~~
120 ~~provided.~~

121 ~~3. A statement indicating that the psychotropic medication,~~
122 ~~at its prescribed dosage, is appropriate for treating the~~
123 ~~child's diagnosed medical condition, as well as the behaviors~~
124 ~~and symptoms the medication, at its prescribed dosage, is~~
125 ~~expected to address.~~

126 ~~4. An explanation of the nature and purpose of the~~
127 ~~treatment; the recognized side effects, risks, and~~
128 ~~contraindications of the medication; drug interaction~~
129 ~~precautions; the possible effects of stopping the medication;~~



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130 ~~and how the treatment will be monitored, followed by a statement~~
131 ~~indicating that this explanation was provided to the child if~~
132 ~~age appropriate and to the child's caregiver.~~

133 ~~5. Documentation addressing whether the psychotropic~~
134 ~~medication will replace or supplement any other currently~~
135 ~~prescribed medications or treatments; the length of time the~~
136 ~~child is expected to be taking the medication; and any~~
137 ~~additional medical, mental health, behavioral, counseling, or~~
138 ~~other services that the prescribing physician recommends.~~

139 ~~(d)1. The department must notify all parties of the~~
140 ~~proposed action taken under paragraph (c) in writing or by~~
141 ~~whatever other method best ensures that all parties receive~~
142 ~~notification of the proposed action within 48 hours after the~~
143 ~~motion is filed. If any party objects to the department's~~
144 ~~motion, that party shall file the objection within 2 working~~
145 ~~days after being notified of the department's motion. If any~~
146 ~~party files an objection to the authorization of the proposed~~
147 ~~psychotropic medication, the court shall hold a hearing as soon~~
148 ~~as possible before authorizing the department to initially~~
149 ~~provide or to continue providing psychotropic medication to a~~
150 ~~child in the legal custody of the department. At such hearing~~
151 ~~and notwithstanding s. 90.803, the medical report described in~~
152 ~~paragraph (c) is admissible in evidence. The prescribing~~
153 ~~physician need not attend the hearing or testify unless the~~
154 ~~court specifically orders such attendance or testimony, or a~~
155 ~~party subpoenas the physician to attend the hearing or provide~~
156 ~~testimony. If, after considering any testimony received, the~~
157 ~~court finds that the department's motion and the physician's~~
158 ~~medical report meet the requirements of this subsection and that~~



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159 ~~it is in the child's best interests, the court may order that~~
160 ~~the department provide or continue to provide the psychotropic~~
161 ~~medication to the child without additional testimony or~~
162 ~~evidence. At any hearing held under this paragraph, the court~~
163 ~~shall further inquire of the department as to whether additional~~
164 ~~medical, mental health, behavioral, counseling, or other~~
165 ~~services are being provided to the child by the department which~~
166 ~~the prescribing physician considers to be necessary or~~
167 ~~beneficial in treating the child's medical condition and which~~
168 ~~the physician recommends or expects to provide to the child in~~
169 ~~concert with the medication. The court may order additional~~
170 ~~medical consultation, including consultation with the MedConsult~~
171 ~~line at the University of Florida, if available, or require the~~
172 ~~department to obtain a second opinion within a reasonable~~
173 ~~timeframe as established by the court, not to exceed 21 calendar~~
174 ~~days, after such order based upon consideration of the best~~
175 ~~interests of the child. The department must make a referral for~~
176 ~~an appointment for a second opinion with a physician within 1~~
177 ~~working day. The court may not order the discontinuation of~~
178 ~~prescribed psychotropic medication if such order is contrary to~~
179 ~~the decision of the prescribing physician unless the court first~~
180 ~~obtains an opinion from a licensed psychiatrist, if available,~~
181 ~~or, if not available, a physician licensed under chapter 458 or~~
182 ~~chapter 459, stating that more likely than not, discontinuing~~
183 ~~the medication would not cause significant harm to the child.~~
184 ~~If, however, the prescribing psychiatrist specializes in mental~~
185 ~~health care for children and adolescents, the court may not~~
186 ~~order the discontinuation of prescribed psychotropic medication~~
187 ~~unless the required opinion is also from a psychiatrist who~~



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188 ~~specializes in mental health care for children and adolescents.~~
189 ~~The court may also order the discontinuation of prescribed~~
190 ~~psychotropic medication if a child's treating physician,~~
191 ~~licensed under chapter 458 or chapter 459, states that~~
192 ~~continuing the prescribed psychotropic medication would cause~~
193 ~~significant harm to the child due to a diagnosed nonpsychiatric~~
194 ~~medical condition.~~

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

197 ~~(c)1. If the child's prescribing physician certifies in the~~
198 ~~signed medical report required in paragraph (c) that delay in~~
199 ~~providing a prescribed psychotropic medication would more likely~~
200 ~~than not cause significant harm to the child, the medication may~~
201 ~~be provided in advance of the issuance of a court order. In such~~
202 ~~event, the medical report must provide the specific reasons why~~
203 ~~the child may experience significant harm and the nature and the~~
204 ~~extent of the potential harm. The department must submit a~~
205 ~~motion seeking continuation of the medication and the~~
206 ~~physician's medical report to the court, the child's guardian ad~~
207 ~~litem, and all other parties within 3 working days after the~~
208 ~~department commences providing the medication to the child. The~~
209 ~~department shall seek the order at the next regularly scheduled~~
210 ~~court hearing required under this chapter, or within 30 days~~
211 ~~after the date of the prescription, whichever occurs sooner. If~~
212 ~~any party objects to the department's motion, the court shall~~
213 ~~hold a hearing within 7 days.~~

214 ~~2. Psychotropic medications may be administered in advance~~
215 ~~of a court order in hospitals, crisis stabilization units, and~~
216 ~~in statewide inpatient psychiatric programs. Within 3 working~~



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217 ~~days after the medication is begun, the department must seek~~
218 ~~court authorization as described in paragraph (c).~~

219 ~~(f)1. The department shall fully inform the court of the~~
220 ~~child's medical and behavioral status as part of the social~~
221 ~~services report prepared for each judicial review hearing held~~
222 ~~for a child for whom psychotropic medication has been prescribed~~
223 ~~or provided under this subsection. As a part of the information~~
224 ~~provided to the court, the department shall furnish copies of~~
225 ~~all pertinent medical records concerning the child which have~~
226 ~~been generated since the previous hearing. On its own motion or~~
227 ~~on good cause shown by any party, including any guardian ad~~
228 ~~litem, attorney, or attorney ad litem who has been appointed to~~
229 ~~represent the child or the child's interests, the court may~~
230 ~~review the status more frequently than required in this~~
231 ~~subsection.~~

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

236 ~~(g) The department shall adopt rules to ensure that~~
237 ~~children receive timely access to clinically appropriate~~
238 ~~psychotropic medications. These rules must include, but need not~~
239 ~~be limited to, the process for determining which adjunctive~~
240 ~~services are needed, the uniform process for facilitating the~~
241 ~~prescribing physician's ability to obtain the express and~~
242 ~~informed consent of a child's parent or guardian, the procedures~~
243 ~~for obtaining court authorization for the provision of a~~
244 ~~psychotropic medication, the frequency of medical monitoring and~~
245 ~~reporting on the status of the child to the court, how the~~



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246 ~~child's parents will be involved in the treatment planning~~
247 ~~process if their parental rights have not been terminated, and~~
248 ~~how caretakers are to be provided information contained in the~~
249 ~~physician's signed medical report. The rules must also include~~
250 ~~uniform forms to be used in requesting court authorization for~~
251 ~~the use of a psychotropic medication and provide for the~~
252 ~~integration of each child's treatment plan and case plan. The~~
253 ~~department must begin the formal rulemaking process within 90~~
254 ~~days after the effective date of this act.~~

255 Section 49. Section 39.4071, Florida Statutes, is created
256 to read:

257 39.4071 Use of psychotropic medication for children in out
258 of-home placement.-

259 (1) LEGISLATIVE FINDINGS AND INTENT.-

260 (a) The Legislature finds that children in out-of-home
261 placements often have multiple risk factors that predispose them
262 to emotional and behavioral disorders and that they receive
263 mental health services at higher rates and are more likely to be
264 given psychotropic medications than children from comparable
265 backgrounds.

266 (b) The Legislature also finds that the use of psychotropic
267 medications for the treatment of children in out-of-home
268 placements who have emotional and behavioral disturbances has
269 increased over recent years. While the increased use of
270 psychotropic medications is paralleled by an increase in the
271 rate of the coadministration of two or more psychotropic
272 medications, data on the safety and efficacy of many of the
273 psychotropic medications used in children and research
274 supporting the coadministration of two or more psychotropic



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275 medications in this population is limited.

276 (c) The Legislature further finds that significant
277 challenges are encountered in providing quality mental health
278 care to children in out-of-home placements. Not uncommonly,
279 children in out-of-home placements are subjected to multiple
280 placements and many service providers, with communication
281 between providers often poor, resulting in fragmented medical
282 and mental health care. The dependable, ongoing therapeutic and
283 caregiving relationships these children need are hampered by the
284 high turnover among child welfare caseworkers and care
285 providers. Furthermore, children in out-of-home placements,
286 unlike children from intact families, often have no consistent
287 interested party who is available to coordinate treatment and
288 monitoring plans or to provide longitudinal oversight of care.

289 (d) The Legislature recognizes the important role the
290 Guardian ad Litem Program has played in Florida's dependency
291 system for the past 30 years serving the state's most vulnerable
292 children through the use of trained volunteers, case
293 coordinators, child advocates and attorneys. The program's
294 singular focus is on the child and its mission is to advocate
295 for the best interest of the child. It is often the guardian ad
296 litem who is the constant in a child's life, maintaining
297 consistent contact with the child, the child's caseworkers, and
298 others involved with the child, including family, doctors,
299 teachers, and service providers. Studies have shown that a child
300 assigned a guardian ad litem will, on average, experience fewer
301 placement changes than a child without a guardian ad litem. It
302 is therefore the intent of the Legislature that children in out-
303 of-home placements who may benefit from psychotropic medications



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304 receive those medications safely as part of a comprehensive
305 mental health treatment plan requiring the appointment of a
306 guardian ad litem whose responsibility is to monitor the plan
307 for compliance and suitability as to the child's best interest.

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

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

312 (b) "Obtaining assent" means a process by which a provider
313 of medical services helps a child achieve a developmentally
314 appropriate awareness of the nature of his or her condition,
315 informs the child of what can be expected through tests and
316 treatment, makes a clinical assessment of the child's
317 understanding of the situation and the factors influencing how
318 he or she is responding, and solicits an expression of the
319 child's willingness to adhere to the proposed care. The mere
320 absence of an objection by the child may not be construed as
321 assent.

322 (c) "Comprehensive behavioral health assessment" means an
323 in-depth and detailed assessment of the child's emotional,
324 social, behavioral, and developmental functioning within the
325 family home, school, and community. A comprehensive behavioral
326 health assessment includes direct observation of the child in
327 the home, school, and community, as well as in the clinical
328 setting, and adheres to the requirements in the Florida Medicaid
329 Community Behavioral Health Services Coverage and Limitations
330 Handbook.

331 (d) "Express and informed consent" means a process by which
332 a provider of medical services obtains voluntary consent from a



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333 parent whose rights have not been terminated or a legal guardian
334 of the child who has received full, accurate, and sufficient
335 information and an explanation about the child's medical
336 condition, medication, and treatment in order to enable the
337 parent or guardian to make a knowledgeable decision without any
338 element of fraud, deceit, duress, or other form of coercion.

339 (e) "Mental health treatment plan" means a plan that lists
340 the particular mental health needs of the child and the services
341 that will be provided to address those needs. If the plan
342 includes prescribing psychotropic medication to a child in out-
343 of-home placement, the plan must also include the information
344 required under subsection (9).

345 (f) "Psychotropic medication" means a prescription
346 medication that is used for the treatment of mental disorders
347 and includes, without limitation, hypnotics, antipsychotics,
348 antidepressants, antianxiety agents, sedatives, stimulants, and
349 mood stabilizers.

350 (3) APPOINTMENT OF GUARDIAN AD LITEM.-

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

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

359 (b) Pursuant to this section, the guardian ad litem shall
360 participate in the development of the mental health treatment
361 plan, monitor whether all requirements of the mental health



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362 treatment plan are being provided to the child, including
363 counseling, behavior analysis, or other services, medications,
364 and treatment modalities; and notice the court of the child's
365 objections, if any, to the mental health treatment plan. The
366 guardian ad litem shall prepare and submit to the court a
367 written report every 45 days or as directed by the court,
368 advising the court and the parties as to the status of the care,
369 health, and medical treatment of the child pursuant to the
370 mental health treatment plan and any change in the status of the
371 child. The guardian ad litem must immediately notify parties as
372 soon as a medical emergency of the child becomes known. The
373 guardian ad litem shall ensure that the prescribing physician
374 has been provided with all pertinent medical information
375 concerning the child.

376 (c) The department and the community-based care lead agency
377 shall notify the court and the guardian ad litem, and, if
378 applicable, the child's attorney, in writing within 24 hours
379 after any change in the status of the child, including, but not
380 limited to, a change in placement, a change in school, a change
381 in medical condition or medication, or a change in prescribing
382 physician, other service providers, counseling, or treatment
383 scheduling.

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

388 (5) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the
389 time of removal from his or her home, a child is being provided,
390 or at any time is being evaluated for the initiation of,



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391 prescribed psychotropic medication under this section, express
392 and informed consent and assent shall be sought by the
393 prescribing physician.

394 (a) The prescribing physician shall obtain assent from the
395 child, unless the prescribing physician determines that it is
396 not appropriate. In making this assessment, the prescribing
397 physician shall consider the capacity of the child to make an
398 independent decision based on his or her age, maturity, and
399 psychological and emotional state. If the physician determines
400 that it is not appropriate, the physician must document the
401 decision in the mental health treatment plan. If the physician
402 determines it is appropriate and the child refuses to give
403 assent, the physician must document the child's refusal in the
404 mental health treatment plan.

405 1. Assent from a child shall be sought in a manner that is
406 understandable to the child using a developmentally appropriate
407 assent form. The child shall be provided with sufficient
408 information, such as the nature and purpose of the medication,
409 how it will be administered, the probable risks and benefits,
410 alternative treatments and the risks and benefits thereof, and
411 the risks and benefits of refusing or discontinuing the
412 medication, and when it may be appropriately discontinued.
413 Assent may be oral or written and must be documented by the
414 prescribing physician.

415 2. Oral assent is appropriate for a child who is younger
416 than 7 years of age. Assent from a child who is 7 to 13 years of
417 age may be sought orally or in a simple form that is written at
418 the second-grade or third-grade reading level. A child who is 14
419 years of age or older may understand the language presented in



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420 the consent form for parents or legal guardians. If so, the
421 child may sign the consent form along with the parent or legal
422 guardian. Forms for parents and older children shall be written
423 at the sixth grade to eighth-grade reading level.

424 3. In each case where assent is obtained, a copy of the
425 assent documents must be provided to the parent or legal
426 guardian and the guardian ad litem, with the original assent
427 documents becoming a part of the child's mental health treatment
428 plan and filed with the court.

429 (b) Express and informed consent for the administration of
430 psychotropic medication may be given only by a parent whose
431 rights have not been terminated or a legal guardian of the child
432 who has received full, accurate, and sufficient information and
433 an explanation about the child's medical condition, medication,
434 and treatment in order to enable the parent or guardian to make
435 a knowledgeable decision. A sufficient explanation includes, but
436 need not be limited to, the following information, which must be
437 provided and explained in plain language by the prescribing
438 physician to the parent or legal guardian: the child's
439 diagnosis, the symptoms to be addressed by the medication, the
440 name of the medication and its dosage ranges, the reason for
441 prescribing it, and its purpose or intended results; benefits,
442 side effects, risks, and contraindications, including effects of
443 not starting or stopping the medication; method for
444 administering the medication and how it will monitored;
445 potential drug interactions; alternative treatments to
446 psychotropic medication; a plan to reduce or eliminate ongoing
447 medication when medically appropriate; the counseling,
448 behavioral analysis, or other services used to complement the



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449 use of medication, if applicable; and that the parent or legal
450 guardian may revoke the consent at any time.

451 1. Express and informed consent may be oral or written and
452 must be documented by the prescribing physician. If the
453 department or the physician is unable to obtain consent from the
454 parent or legal guardian, the reasons must be documented.

455 2. If express and informed consent is obtained, a copy of
456 the consent documents must be provided to the parent or legal
457 guardian and the guardian ad litem, with the original consent
458 documents becoming a part of the child's mental health treatment
459 plan and filed with the court.

460 (c) The informed consent of any parent whose whereabouts
461 are unknown for 60 days, who is adjudicated incapacitated, who
462 does not have regular and frequent contact with the child, who
463 later revokes assent, or whose parental rights are terminated
464 after giving consent, is invalid. If the informed consent of a
465 parent becomes invalid, the department may seek informed consent
466 from any other parent or legal guardian. If the informed consent
467 provided by a parent whose parental rights have been terminated
468 is invalid and no other parent or legal guardian gives informed
469 consent, the department shall file a motion for the
470 administration of psychotropic medication along with the motion
471 for final judgment of termination of parental rights.

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

476 (e) A medication may not be discontinued without explicit
477 instruction from a physician as to how to safely discontinue the



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478 medication.

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

482 (a) Motion for court authorization for administration of
483 psychotropic medications.—

484 1. If a physician who has evaluated the child prescribes
485 psychotropic medication as part of the mental health treatment
486 plan and the child's parents or legal guardians have not
487 provided express and informed consent as provided by law or such
488 consent is invalid as set forth in paragraph (5) (c), the
489 department or its agent shall file a motion with the court
490 within 3 working days to authorize the administration of the
491 psychotropic medication before the administration of the
492 medication, except as provided in subsection (7). In each case
493 in which a motion is required, the motion must include:

494 a. A written report by the department describing the
495 efforts made to enable the prescribing physician to obtain
496 express and informed consent and describing other treatments
497 attempted, considered, and recommended for the child; and

498 b. The prescribing physician's completed and signed mental
499 health treatment plan.

500 2. The department must file a copy of the motion with the
501 court and, within 48 hours after filing the motion, notify all
502 parties in writing, or by whatever other method best ensures
503 that all parties receive notification, of its proposed
504 administration of psychotropic medication to the child.

505 3. If any party objects to the proposed administration of
506 the psychotropic medication to the child, that party must file



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507 its objection within 2 working days after being notified of the
508 department's motion. A party may request an extension of time to
509 object for good cause shown if such extension would be in the
510 best interests of the child. Any extension must be for a
511 specific number of days not to exceed the time absolutely
512 necessary.

513 4. Lack of assent from the child is deemed a timely
514 objection from the child.

515 (b) Court action on motion for administration of
516 psychotropic medication.—

517 1. If no party timely files an objection to the
518 department's motion and the motion is legally sufficient, the
519 court may enter its order authorizing the proposed
520 administration of the psychotropic medication without a hearing.
521 Based on its determination of the best interests of the child,
522 the court may order additional medical consultation, including
523 consultation with the MedConsult line at the University of
524 Florida, if available, or require the department to obtain a
525 second opinion within a reasonable time established by the
526 court, not to exceed 21 calendar days. If the court orders an
527 additional medical consultation or second medical opinion, the
528 department shall file a written report including the results of
529 this additional consultation or a copy of the second medical
530 opinion with the court within the time required by the court,
531 and serve a copy of the report on all parties.

532 2. If any party timely files its objection to the proposed
533 administration of the psychotropic medication, the court shall
534 hold a hearing as soon as possible on the department's motion.

535 a. The signed mental health treatment plan of the



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536 prescribing physician is admissible in evidence at the hearing.

537 b. The court shall ask the department whether additional
538 medical, mental health, behavior analysis, counseling, or other
539 services are being provided to the child which the prescribing
540 physician considers to be necessary or beneficial in treating
541 the child's medical condition and which the physician recommends
542 or expects to be provided to the child along with the
543 medication.

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

546 4. After considering the department's motion and any
547 testimony received, the court may enter its order authorizing
548 the department to provide or continue to provide the proposed
549 psychotropic medication. The court must find a compelling
550 governmental interest that the proposed psychotropic medication
551 is in the child's best interest. In so determining the court
552 shall, at a minimum, consider the following factors:

553 a. The severity and likelihood of risks associated with the
554 treatment.

555 b. The magnitude and likelihood of benefits expected from
556 the treatment.

557 c. The child's prognosis without the proposed psychotropic
558 medication.

559 d. The availability and effectiveness of alternative
560 treatments.

561 e. The wishes of the child concerning treatment
562 alternatives.

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

564 g. The recommendation of the guardian ad litem.



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

567 The department may provide continued administration of
568 psychotropic medication to a child before authorization by the
569 court has been obtained only as provided in this subsection.

570 (a) If a child is removed from the home and taken into
571 custody under s. 39.401, the department may continue to
572 administer a current prescription of psychotropic medication;
573 however, the department shall request court authorization for
574 the continued administration of the medication at the shelter
575 hearing. This request shall be included in the shelter petition.

576 1. The department shall provide all information in its
577 possession to the court in support of its request at the shelter
578 hearing. The court may authorize the continued administration of
579 the psychotropic medication only until the arraignment hearing
580 on the petition for adjudication, or for 28 days following the
581 date of the child's removal, whichever occurs first.

582 2. If the department believes, based on the required
583 physician's evaluation, that it is appropriate to continue the
584 psychotropic medication beyond the time authorized by the court
585 at the shelter hearing, the department shall file a motion
586 seeking continued court authorization at the same time that it
587 files the dependency petition, but within 21 days after the
588 shelter hearing.

589 (b) If the department believes, based on the certification
590 of the prescribing physician, that delay in providing the
591 prescribed psychotropic medication would, more likely than not,
592 cause significant harm to the child, the department shall
593 administer the medication immediately. The department must



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594 submit a motion to the court seeking continuation of the
595 medication within 3 working days after the department begins
596 providing the medication to the child.

597 1. The motion seeking authorization for the continued
598 administration of the psychotropic medication must include all
599 information required in this section. The required medical
600 report must also include the specific reasons why the child may
601 experience significant harm, and the nature and the extent of
602 the potential harm, resulting from a delay in authorizing the
603 prescribed medication.

604 2. The department shall serve the motion on all parties
605 within 3 working days after the department begins providing the
606 medication to the child.

607 3. The court shall hear the department's motion at the next
608 regularly scheduled court hearing required by law, or within 30
609 days after the date of the prescription, whichever occurs first.
610 However, if any party files an objection to the motion, the
611 court must hold a hearing within 7 days.

612 (c) The department may authorize, in advance of a court
613 order, the administration of psychotropic medications to a child
614 in its custody in a hospital, crisis stabilization unit or
615 receiving facility, therapeutic group home, or statewide
616 inpatient psychiatric program. If the department does so, it
617 must file a motion to seek court authorization for the continued
618 administration of the medication within 3 working days as
619 required in this section.

620 (d) If a child receives a one-time dose of a psychotropic
621 medication during a crisis, the department shall provide
622 immediate notice to all parties and to the court of each such



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623 emergency use.

624 (8) DISCONTINUATION OR ALTERATION OF MEDICATION;
625 DESTRUCTION OF MEDICATION.—A party may not alter the provision
626 of prescribed psychotropic medication in any way except upon
627 order of the court or advice of a physician.

628 (a) On the motion of any party or its own motion, the court
629 may order the discontinuation of a medication already
630 prescribed. Such discontinuation must be performed in
631 consultation with a physician in such a manner as to minimize
632 risk to the child.

633 (b) The child's repeated refusal to take or continue to
634 take a medication shall be treated as a motion to discontinue
635 the medication and shall be set for hearing as soon as possible
636 but within 7 days after knowledge of such repeated refusal.

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

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

643 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the
644 determination that a child needs mental health services, a
645 mental health treatment plan must be developed which lists the
646 particular mental health needs of the child and the services
647 that will be provided to address those needs. If possible, the
648 plan shall be developed in a face-to-face conference with the
649 child, the child's parents, case manager, physician, therapist,
650 legal guardian, guardian ad litem, and any other interested
651 party. The mental health treatment plan shall be incorporated



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652 into the case plan as tasks for the department and may be
653 amended under s. 39.6013.

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

656 1. The name of the child, a statement indicating that there
657 is a need to prescribe psychotropic medication based upon a
658 diagnosed condition for which there is an evidence base for the
659 medication that is being prescribed, a statement indicating the
660 compelling governmental interest in prescribing the psychotropic
661 medication, and the name and range of the dosage of the
662 psychotropic medication.

663 2. A statement indicating that the physician has reviewed
664 all medical information concerning the child which has been
665 provided by the department or community-based care lead agency
666 and briefly listing all information received.

667 3. A medication profile, including all medications the
668 child is prescribed or will be prescribed, any previously
669 prescribed medications if known, and whether those medications
670 are being added, continued, or discontinued upon implementation
671 of the mental health treatment plan.

672 4. A statement indicating that the psychotropic medication,
673 at its prescribed dosage, is appropriate for treating the
674 child's diagnosed medical condition, as well as the behaviors
675 and symptoms that the medication, at its prescribed dosage, is
676 expected to address.

677 5. An explanation of the nature and purpose of the
678 treatment; the recognized side effects, risks, and
679 contraindications of the medication, including procedures for
680 reporting adverse effects; drug-interaction precautions; the



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

685 6. Documentation addressing whether the psychotropic
686 medication will replace or supplement any other currently
687 prescribed medications or treatments; the length of time the
688 child is expected to be taking the medication; a plan for the
689 discontinuation of any medication if medically appropriate; and
690 any additional medical, mental health, behavioral, counseling,
691 or other services that the prescribing physician recommends as
692 part of a comprehensive treatment plan.

693 7. A document describing those observable behaviors
694 warranting psychotropic treatment, the means for obtaining
695 reliable frequency data on these same observable behaviors, and
696 the reporting of this data with sufficient frequency to support
697 medication decisions.

698 (b) The department shall develop and administer procedures
699 to require the caregiver and prescribing physician to report any
700 adverse side effects of the medication to the department or its
701 designee and the guardian ad litem. Any adverse side effects
702 must be documented in the mental health treatment plan and
703 medical records for the child.

704 (10) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION
705 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME
706 CARE.—

707 (a) Absent a finding of a compelling state interest, a
708 psychotropic medication may not be authorized by the court for
709 any child from birth through 10 years of age who is in out-of-



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710 home placement. Based on a finding of a compelling state
711 interest but before a psychotropic medication is authorized by
712 the court for such child, a review of the administration must be
713 obtained from a child psychiatrist who is licensed under chapter
714 458 or chapter 459. The results of this review must be provided
715 to the child and the parent or legal guardian before final
716 express and informed consent is given.

717 (b) In advance of a court order, the department may
718 authorize the administration of psychotropic medications to a
719 child from birth through 10 years of age in its custody in the
720 following levels of residential care:

- 721 1. Hospital;
- 722 2. Crisis stabilization unit or receiving facility;
- 723 3. Therapeutic group home; or
- 724 4. Statewide inpatient psychiatric program.

725
726 These levels of care demonstrate the requirement of a compelling
727 state interest through the extensive admission criteria being
728 met. If the department does so, it must file a motion to seek
729 court authorization for the continued administration of the
730 medication within 3 working days.

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

735 (11) CLINICAL TRIALS.—A child in the custody of the
736 department may not participate in a clinical trial that is
737 designed to develop new psychotropic medications or evaluate
738 their application to children.



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739 (12) JUDICIAL REVIEW HEARINGS.—The department shall fully
740 inform the court of the child’s medical and behavioral status as
741 part of the social services report prepared for each judicial
742 review hearing held for a child for whom psychotropic medication
743 has been prescribed or provided under this subsection. As a part
744 of the information provided, the department shall furnish copies
745 of all pertinent medical records concerning the child which have
746 been generated since the previous hearing. On its own motion or
747 on good cause shown by any party, including any guardian ad
748 litem, attorney, or attorney ad litem who has been appointed to
749 represent the child or the child’s interests, the court may
750 review the status more frequently than required under this
751 subsection.

752 (13) ADOPTION OF RULES.—The department may adopt rules to
753 ensure that children receive timely access to mental health
754 services, including, but not limited to, clinically appropriate
755 psychotropic medications. These rules must include, but need not
756 be limited to, the process for determining which adjunctive
757 services are needed, the uniform process for facilitating the
758 prescribing physician’s ability to obtain the express and
759 informed consent of a child’s parent or legal guardian, the
760 procedures for obtaining court authorization for the provision
761 of a psychotropic medication, the frequency of medical
762 monitoring and reporting on the status of the child to the
763 court, how the child’s parents will be involved in the
764 treatment-planning process if their parental rights have not
765 been terminated, and how caretakers are to be provided
766 information contained in the physician’s signed mental health
767 treatment plan. The rules must also include uniform forms or



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768 standardized information to be used on a statewide basis in
769 requesting court authorization for the use of a psychotropic
770 medication and provide for the integration of each child's
771 mental health treatment plan and case plan. The department must
772 begin the formal rulemaking process within 90 days after July 1,
773 2010.

774 Section 50. Paragraph (b) of subsection (1) of section
775 743.0645, Florida Statutes, is amended to read:

776 743.0645 Other persons who may consent to medical care or
777 treatment of a minor.—

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

779 (b) "Medical care and treatment" includes ordinary and
780 necessary medical and dental examination and treatment,
781 including blood testing, preventive care including ordinary
782 immunizations, tuberculin testing, and well-child care, but does
783 not include surgery, general anesthesia, provision of
784 psychotropic medications, or other extraordinary procedures for
785 which a separate court order, power of attorney, or informed
786 consent as provided by law is required, except as provided in s.
787 39.4071 ~~s. 39.407(3)~~.

788
789 ===== T I T L E A M E N D M E N T =====

790 And the title is amended as follows:

791 Delete line 69

792 and insert:

793 of Management rules; amending s. 39.407, F.S.;

794 requiring the provision of a comprehensive mental

795 health treatment plan; specifying eligibility;

796 prescribing duties for the Department of Children and



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797 Family Services; deleting provisions relating to the
798 provision of psychotropic medications to children in
799 out-of-home care; creating s. 39.4071, F.S.; providing
800 legislative findings and intent; providing
801 definitions; requiring that a guardian ad litem be
802 appointed by the court to represent a child in the
803 custody of the Department of Children and Family
804 Services who is prescribed a psychotropic medication;
805 prescribing the duties of the guardian ad litem;
806 requiring that the department or lead agency notify
807 the guardian ad litem of any change in the status of
808 the child; providing for psychiatric evaluation of the
809 child; requiring that express and informed consent and
810 assent be obtained from a child or the child's parent
811 or guardian; providing requirements for a prescribing
812 physician in obtaining consent and assent; providing
813 for the invalidation of a parent's informed consent;
814 requiring the department to seek informed consent from
815 the legal guardian in certain circumstances; requiring
816 the department to file a motion for the administration
817 of psychotropic medication with the final judgment of
818 termination of parental rights under certain
819 circumstances; requiring that a court authorize the
820 administration of psychotropic medication to a child
821 who is in shelter care or in foster care and for whom
822 informed consent from the parents or a legal guardian
823 has not been obtained; providing requirements for the
824 motion to the court; requiring that any party
825 objecting to the administration of psychotropic



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826 medication file its objection within a specified
827 period; authorizing the court to obtain a second
828 opinion regarding the proposed administration;
829 requiring that the court hold a hearing if any party
830 objects to the proposed administration; specifying
831 circumstances under which the department may provide
832 psychotropic medication to a child before court
833 authorization is obtained; requiring that the
834 department seek court authorization for continued
835 administration of the medication; providing for an
836 expedited hearing on such motion under certain
837 circumstances; requiring the department to provide
838 notice to all parties and the court for each emergency
839 use of psychotropic medication under certain
840 conditions; providing for discontinuation, alteration,
841 and destruction of medication; requiring that a mental
842 health treatment plan be developed for each child or
843 youth who needs mental health services; requiring
844 certain information to be included in a mental health
845 treatment plan; requiring the department to develop
846 and administer procedures to require the caregiver and
847 prescribing physician to report any adverse side
848 effects; requiring documentation of the adverse side
849 effects; prohibiting the prescription of psychotropic
850 medication to certain children who are in out-of-home
851 care absent certain conditions; requiring review by a
852 licensed child psychiatrist before psychotropic
853 medication is administered to certain children who are
854 in out-of-home care under certain conditions;



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855 prohibiting authorization for a child in the custody
856 of the department to participate in any clinical trial
857 designed to evaluate the use of psychotropic
858 medication in children; amending s. 743.0645, F.S.;
859 conforming a cross-reference; directing the Division