

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

329 (1) LEGISLATIVE FINDINGS AND INTENT.-

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

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

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

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

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

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

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

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

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

401 (d) "Express and informed consent" means a process by which
402 a provider of medical services obtains voluntary consent from a
403 parent whose rights have not been terminated or a legal guardian
404 of the child who has received full, accurate, and sufficient
405 information and an explanation about the child's medical
406 condition, medication, and treatment in order to enable the

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407 parent or guardian to make a knowledgeable decision without any
408 element of fraud, deceit, duress, or other form of coercion.

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

415 (f) "Psychotropic medication" means a prescription
416 medication that is used for the treatment of mental disorders
417 and includes, without limitation, hypnotics, antipsychotics,
418 antidepressants, antianxiety agents, sedatives, stimulants, and
419 mood stabilizers.

420 (3) APPOINTMENT OF GUARDIAN AD LITEM.-

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

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

429 (b) Under the provisions of this section, the guardian ad
430 litem shall participate in the development of the mental health
431 treatment plan, monitor whether all requirements of the mental
432 health treatment plan are being provided to the child, including
433 counseling, behavior analysis, or other services, medications,
434 and treatment modalities; and notice the court of the child's
435 objections, if any, to the mental health treatment plan. The

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436 guardian ad litem shall prepare and submit to the court a
437 written report every 45 days or as directed by the court,
438 advising the court and the parties as to the status of the care,
439 health, and medical treatment of the child pursuant to the
440 mental health treatment plan and any change in the status of the
441 child. The guardian ad litem will immediately notify parties as
442 soon as any medical emergency of the child becomes known. The
443 guardian ad litem shall ensure that the prescribing physician
444 has been provided with all pertinent medical information
445 concerning the child.

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

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

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

464 (a) The prescribing physician shall obtain assent from the

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

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

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

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494 at the sixth grade to eighth-grade reading level.

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

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

522 1. Express and informed consent may be oral or written and

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523 must be documented by the prescribing physician. If the
524 department or the physician is unable to obtain consent from the
525 parent or legal guardian, the reasons must be documented.

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

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

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

547 (e) Under no circumstance may a medication be discontinued
548 without explicit instruction from a physician as to how to
549 safely discontinue the medication.

550 (6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN
551 SHELTER CARE OR IN FOSTER CARE WHEN INFORMED CONSENT HAS NOT

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552 BEEN OBTAINED.—

553 (a) Motion for court authorization for administration of
554 psychotropic medications.—

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

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

570 b. The prescribing physician's completed and signed mental
571 health treatment plan.

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

578 3. If any party objects to the proposed administration of
579 the psychotropic medication to the child, that party must file
580 its objection within 2 working days after being notified of the

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581 department's motion. A party may request an extension of time to
582 object for good cause shown, provided that such extension would
583 be in the best interests of the child. Any extension shall be
584 for a specific number of days not to exceed the time absolutely
585 necessary.

586 4. Lack of assent from the child shall be deemed a timely
587 objection from the child.

588 (b) Court action on motion for administration of
589 psychotropic medication.—

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

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

609 a. The signed mental health treatment plan of the

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610 prescribing physician is admissible in evidence at the hearing.

611 b. The court shall ask the department whether additional
612 medical, mental health, behavior analysis, counseling, or other
613 services are being provided to the child which the prescribing
614 physician considers to be necessary or beneficial in treating
615 the child's medical condition and which the physician recommends
616 or expects to be provided to the child along with the
617 medication.

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

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

627 a. The severity and likelihood of risks associated with the
628 treatment.

629 b. The magnitude and likelihood of benefits expected from
630 the treatment.

631 c. The child's prognosis without the proposed psychotropic
632 medication.

633 d. The availability and effectiveness of alternative
634 treatments.

635 e. The wishes of the child concerning treatment
636 alternatives.

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

638 g. The recommendation of the guardian ad litem.

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

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

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

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

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

664 (b) If the department believes, based on the certification
665 of the prescribing physician, that delay in providing the
666 prescribed psychotropic medication to the child would, more
667 likely than not, cause significant harm to the child, the

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668 department shall administer the medication to the child
669 immediately. The department must submit a motion to the court
670 seeking continuation of the medication within 3 working days
671 after the department begins providing the medication to the
672 child.

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

680 2. The department shall serve the motion on all parties
681 within 3 working days after the department begins providing the
682 medication to the child.

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

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

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

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697 medication during a crisis, the department shall provide
698 immediate notice to all parties and to the court of each such
699 emergency use.

700 (8) DISCONTINUATION OR ALTERATION OF MEDICATION;
701 DESTRUCTION OF MEDICATION.—No party may alter the provision of
702 prescribed psychotropic medication to a child in any way except
703 upon order of the court or advice of a physician.

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

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

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

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

721 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the
722 determination that a child needs mental health services, a
723 mental health treatment plan must be developed which lists the
724 particular mental health needs of the child and the services
725 that will be provided to address those needs. When possible, the

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726 plan shall be developed in a face-to-face conference with the
727 child, the child's parents, case manager, physician, therapist,
728 legal guardian, guardian ad litem, and any other interested
729 party. The mental health treatment plan shall be incorporated
730 into the case plan as tasks for the department and may be
731 amended under s. 39.6013.

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

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

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

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

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

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

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

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

776 (b) The department shall develop and administer procedures
777 to require the caregiver and prescribing physician to report any
778 adverse side effects of the medication to the department or its
779 designee and the guardian ad litem. Any adverse side effects
780 must be documented in the mental health treatment plan and
781 medical records for the child.

782 (10) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION
783 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME

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784 CARE.—

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

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

- 800 1. Hospital;
801 2. Crisis stabilization unit or receiving facility;
802 3. Therapeutic group home; or
803 4. Statewide inpatient psychiatric program.

804
805 These levels of care demonstrate the requirement of compelling
806 governmental interest through the extensive admission criteria
807 being met. If the department does so, it must file a motion to
808 seek court authorization for the continued administration of the
809 medication within 3 working days.

810 (c) If a child receives a one-time dose of a psychotropic
811 medication during a crisis, the department shall provide
812 immediate notice to all parties and to the court of each such

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813 emergency use.

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

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

831 (13) ADOPTION OF RULES.—The department may adopt rules to
832 ensure that children receive timely access to mental health
833 services, including, but not limited to, clinically appropriate
834 psychotropic medications. These rules must include, but need not
835 be limited to, the process for determining which adjunctive
836 services are needed, the uniform process for facilitating the
837 prescribing physician's ability to obtain the express and
838 informed consent of a child's parent or legal guardian, the
839 procedures for obtaining court authorization for the provision
840 of a psychotropic medication, the frequency of medical
841 monitoring and reporting on the status of the child to the

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842 court, how the child's parents will be involved in the
843 treatment-planning process if their parental rights have not
844 been terminated, and how caretakers are to be provided
845 information contained in the physician's signed mental health
846 treatment plan. The rules must also include uniform forms or
847 standardized information to be used on a statewide basis in
848 requesting court authorization for the use of a psychotropic
849 medication and provide for the integration of each child's
850 mental health treatment plan and case plan. The department must
851 begin the formal rulemaking process within 90 days after the
852 effective date of this act.

853 Section 3. Paragraph (b) of subsection (1) of section
854 743.0645, Florida Statutes, is amended to read:

855 743.0645 Other persons who may consent to medical care or
856 treatment of a minor.—

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

858 (b) "Medical care and treatment" includes ordinary and
859 necessary medical and dental examination and treatment,
860 including blood testing, preventive care including ordinary
861 immunizations, tuberculin testing, and well-child care, but does
862 not include surgery, general anesthesia, provision of
863 psychotropic medications, or other extraordinary procedures for
864 which a separate court order, power of attorney, or informed
865 consent as provided by law is required, except as provided in s.
866 39.4071 s. ~~39.407(3)~~.

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