

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 209 CS

Administration of Medication to Public School Students

SPONSOR(S): Barreiro

TIED BILLS:

IDEN./SIM. BILLS: SB 1766

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>PreK-12 Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Howlette</u>	<u>Mizereck</u>
2) <u>Health Care Regulation Committee</u>	<u>10 Y, 1 N, w/CS</u>	<u>Hamrick</u>	<u>Mitchell</u>
3) <u>Education Appropriations Committee</u>	<u>(W/D)</u>		
4) <u>Education Council</u>	<u>11 Y, 0 N, w/CS</u>	<u>Howlette</u>	<u>Cobb</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 209 prohibits recipients of state funds used for educational purposes from requiring a student to be prescribed or administered psychotropic medication as a condition of receiving educational services. Such services include, but are not limited to, school enrollment, class attendance, extracurricular activity participation, or school-related event attendance.

The bill takes effect upon becoming law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill restricts the ability of state-funded education or school-related services providers to require students to take psychotropic medication.

Safeguard individual liberty – Students receiving state-funded education or school-related services would not be required to take psychotropic medication as a condition of receiving services.

Empower Families – Families of students receiving state-funded education or school-related services would not have to consent to psychotropic medication for their children in order to receive services.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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

The position identified by the U.S. Department of Education relative to the role of the educators as it pertains to prescribing medications is that it is the responsibility of the medical professionals, not the educational professionals, to prescribe any medication.³ However, it is recognized that the input about the student's behavior that educators can provide may aid in a diagnosis.

Individuals with Disabilities Education Act

Schools are required by IDEA to provide services or make modifications or adaptations for students whose disability adversely affects their educational performance.

When IDEA was reauthorized in 2004, a provision was added to provide that a State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act⁴ as a condition of attending school, receiving an evaluation or receiving services.⁵ This does not prohibit teachers or other school personnel from consulting or sharing class-room based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

The Individual Disabilities Education Act (IDEA) of 2004 becomes effective on July 1, 2005.

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

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

³ Letter from Richard Riley of the U.S. Department of Education to Congressman Peter Hoekstra, November 21, 2000.

⁴ 21 U.S.C. 801 et seq.

⁵ 20 U.S.C.1412

Students with Disabilities

According to federal regulations a student is determined to have a disability when they have been evaluated and determined to have mental retardation, hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, or other health impairment, deaf-blindness, or multiple disabilities that require special education and related services.⁶

Section 1003.01(3)(a), F.S., provides a definition for an exceptional student, which is any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students with disabilities who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visual impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in the rules set by the State Board of Education .

Students Diagnosed with Attention Deficit Hyperactivity Disorder

It is estimated that 1.46-2.46 million children or 3-5 percent of the student population have Attention Deficit Hyperactivity Disorder (ADHD).⁷ The diagnostic methods, treatment options, and medications have become controversial subjects, particularly in education.⁸

One of the concerns raised has been that school officials are reported to be offering their diagnosis of ADHD and urging parents to obtain drug treatment for the child.⁹

Students with ADHD may need the services as provided under IDEA and Section 504 of the Rehabilitation Act of 1973 to assist them with their educational needs.

Adaptations available to assist students with ADHD include “curriculum adjustments, alternative classroom organization and management, specialized teaching techniques and study skills, use of behavior management, and increased parent/teacher collaboration.”¹⁰

Authority to Administer Prescription Medication

Currently, s. 1006.062(1), F.S., allows for non-medical district school board personnel to assist students in the administration of prescription medication when certain conditions have been met. These conditions require that each district school board include in its approved school health services plan a procedure to provide training by a licensed health professional for designated school personnel to assist students in the administration of prescribed medication. In addition, this section requires each district school board to adopt policies governing the administration of prescription medication that require:

- o A written statement from the parent to the school principle granting the school principal or principal's designee permission during the school day;
- o That each prescribed medication to be administered by district school board personnel shall be received, counted, and stored in its original container, and when the medication is not in use, it shall be stored under lock and key in a designated school location.

⁶ See 34 CFR 300.7(a)(1)

⁷ Identifying and Treating Attention Deficit Hyperactivity Disorder: A resource for School and Home, U.S. Department of Education, 2003, p. 2.

⁸ Identifying and Treating Attention Deficit Hyperactivity Disorder, Supra, p. 1.

⁹ Child Medication Safety Act of 2003, 108th Congress, House of Representatives Report, May 21, 2003, p. 5

¹⁰ Identifying and Treating Attention Deficit Hyperactivity Disorder, Supra, p. 6.

EFFECT OF PROPOSED CHANGES

Current law provides the standards and regulations for assisting students in the administration of prescription medication. House Bill 209 defines psychotropic medication and specifically prohibits recipients of state funds used for educational purposes from requiring a student to be prescribed or administered psychotropic medication as a condition of receiving educational or school-based services that are financed in whole or in part by the state funds. Such services include, but are not limited to, school enrollment, class attendance, extracurricular activity participation, or school-related event attendance.

The bill requires that psychotropic medication be administered according s. 1006.062, F.S.

C. SECTION DIRECTORY:

Section 1: Creates s. 1006.0625, F.S., relating to the administration of psychotropic medication, prohibitions, and conditions.

Section 2: Establishes an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have an impact on state government revenues.

2. Expenditures:

This bill does not appear to have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

This bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

PreK-12 Committee

The PreK-12 Committee met on February 22, 2005 and adopted two amendments to the bill.

The first amendment deletes the requirement that psychotropic drugs must be administered by licensed health care professionals, and substitutes the requirement that they be administered according to the provisions of s.1006.062, F.S. which governs school board policy for administration of all other medications. It requires that personnel administering prescription medication must be trained by a licensed RN, LPN, physician or physician assistant; written parental permission must be acquired; security and storage requirements must be met; and school districts are not liable for civil damages. The amendment also deletes the requirement that the administration meet federal HIPAA requirements. Since education records are already protected, no reference is necessary. According to the bill analysis from the Department of Health:

“Education records are protected under the federal Family Education Rights and Privacy Act 20 US 1232g as well as Section 1002.22(3)(d), F.S. Accordingly, a record maintained by a school nurse qualifies as an education record under FERPA. HIPAA specifically excludes education records covered under FERPA from its definition of protected health information. Thus, the reference to HIPAA in section 1006.0625(3)(b) of the bill does not afford the protection that it seems to contemplate.”

The second amendment clarifies that nothing in section (4) of the bill shall prevent a teacher or other school district personnel from sharing observations with parents regarding student performance and behavior.

Health Care Regulation Committee

The Health Care Regulation Committee adopted two amendments on March 23, 2005, and reported the bill favorably with a CS.

Amendment 1-amended the language in subsection (3) that provided that school or school district personnel could not initiate or make referrals. The amendment provides that school personnel may refer for treatment or diagnosis as long as full disclosure occurs.

Amendment 2-is a technical amendment that added the term “anti” on line 28, before “anxiety agents.”

This analysis is drafted to the committee substitute.

Education Council

The Education Council adopted one amendment at its April 19, 2005 meeting, and reported the bill favorably with a committee substitute.

The amendment removed the provision that prohibited school personnel from referring a student, without full disclosure as specified, for diagnosis or treatment of specified mental disorders.

This analysis is drawn to the committee substitute.