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LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

05/05/2011 04:58 PM

Senator Storms moved the following:

1 **Senate Amendment to Amendment (351842) (with title**
2 **amendment)**

3
4 Between lines 4 and 5
5 insert:

6 Section 1. Paragraphs (c) and (d) of subsection (3) of
7 section 39.407, Florida Statutes, are amended to read:

8 39.407 Medical, psychiatric, and psychological examination
9 and treatment of child; physical, mental, or substance abuse
10 examination of person with or requesting child custody.—

11 (3)

12 (c) Except as provided in paragraphs (b) and (e), the
13 department must file a motion seeking the court's authorization



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14 to initially provide or continue to provide psychotropic
15 medication to a child in its legal custody. The motion must be
16 supported by a written report prepared by the department which
17 describes the efforts made to enable the prescribing physician
18 to obtain express and informed consent to provide ~~for providing~~
19 the medication to the child and other treatments considered or
20 recommended for the child. ~~In addition,~~ The motion must also be
21 supported by the prescribing physician's signed medical report
22 providing:

23 1. The name of the child, the name and range of the dosage
24 of the psychotropic medication, and the ~~that there is a~~ need to
25 prescribe psychotropic medication to the child based upon a
26 diagnosed condition for which such medication is being
27 prescribed.

28 2. A statement indicating that the physician has reviewed
29 all medical information concerning the child which has been
30 provided.

31 3. A statement indicating that the psychotropic medication,
32 at its prescribed dosage, is appropriate for treating the
33 child's diagnosed medical condition, as well as the behaviors
34 and symptoms the medication, at its prescribed dosage, is
35 expected to address.

36 4. An explanation of the nature and purpose of the
37 treatment; the recognized side effects, risks, and
38 contraindications of the medication; drug-interaction
39 precautions; the possible effects of stopping the medication;
40 and how the treatment will be monitored, followed by a statement
41 indicating that this explanation was provided to the child if
42 age appropriate and to the child's caregiver.



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43 5. Documentation addressing whether the psychotropic
44 medication will replace or supplement any other currently
45 prescribed medications or treatments; the length of time the
46 child is expected to be taking the medication; and any
47 additional medical, mental health, behavioral, counseling, or
48 other services that the prescribing physician recommends.

49 6. For a child 10 years of age or younger who is in an out-
50 of-home placement, the results of a review of the administration
51 of the medication by a child psychiatrist who is licensed under
52 chapter 458 or chapter 459. The review must be provided to the
53 child and the parent or legal guardian before final express and
54 informed consent is given. The review must include a
55 determination of the following:

56 a. The presence of a genetic psychiatric disorder or a
57 family history of a psychiatric disorder;

58 b. Whether the cause of a psychiatric disorder is physical
59 or environmental; and

60 c. The likelihood of the child being an imminent danger to
61 self or others.

62 (d)~~1~~. The department must notify all parties of the
63 proposed action taken under paragraph (c) in writing or by
64 whatever other method best ensures that all parties receive
65 notification of the proposed action within 48 hours after the
66 motion is filed. If any party objects to the department's
67 motion, that party shall file the objection within 2 working
68 days after being notified of the department's motion. If any
69 party files an objection to the authorization of the proposed
70 psychotropic medication, the court shall hold a hearing as soon
71 as possible before authorizing the department to initially



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72 provide or to continue providing psychotropic medication to a
73 child in the legal custody of the department.

74 1. At such hearing and notwithstanding s. 90.803, the
75 medical report described in paragraph (c) is admissible in
76 evidence. The prescribing physician need not attend the hearing
77 or testify unless the court specifically orders such attendance
78 or testimony, or a party subpoenas the physician to attend the
79 hearing or provide testimony.

80 2. If, after considering any testimony received, the court
81 finds that the department's motion and the physician's medical
82 report meet the requirements of this subsection and that it is
83 in the child's best interests, the court may order that the
84 department provide or continue to provide the psychotropic
85 medication to the child without additional testimony or
86 evidence.

87 3. At any hearing held under this paragraph, the court
88 shall ~~further~~ inquire of the department as to whether additional
89 medical, mental health, behavioral, counseling, or other
90 services are being provided to the child by the department which
91 the prescribing physician considers to be necessary or
92 beneficial in treating the child's medical condition and which
93 the physician recommends or expects to provide to the child in
94 concert with the medication. The court may order additional
95 medical consultation, including consultation with the MedConsult
96 line at the University of Florida, if available, or require the
97 department to obtain a second opinion within a reasonable
98 timeframe as established by the court, not to exceed 21 calendar
99 days, ~~after such order~~ based upon consideration of the best
100 interests of the child. The department must make a referral for



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101 an appointment for a second opinion with a physician within 1
102 working day.

103 4. The court may not order the discontinuation of
104 prescribed psychotropic medication if such order is contrary to
105 the decision of the prescribing physician unless the court first
106 obtains an opinion from a licensed psychiatrist, if available,
107 or, if not available, a physician licensed under chapter 458 or
108 chapter 459, stating that more likely than not, discontinuing
109 the medication would not cause significant harm to the child.
110 If, however, the prescribing psychiatrist specializes in mental
111 health care for children and adolescents, the court may not
112 order the discontinuation of prescribed psychotropic medication
113 unless the required opinion is also from a psychiatrist who
114 specializes in mental health care for children and adolescents.
115 The court may also order the discontinuation of prescribed
116 psychotropic medication if a child's treating physician,
117 licensed under chapter 458 or chapter 459, states that
118 continuing the prescribed psychotropic medication would cause
119 significant harm to the child due to a diagnosed nonpsychiatric
120 medical condition.

121 5. If a child who is in out-of-home placement is 10 years
122 of age or younger, psychotropic medication may not be authorized
123 by the court absent a finding of a compelling governmental
124 interest. In making such finding, the court shall consider the
125 findings of the psychiatric review described in subparagraph
126 (c) 6.

127 ~~6.2.~~ The burden of proof at any hearing held under this
128 paragraph shall be by a preponderance of the evidence.
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130 ===== T I T L E A M E N D M E N T =====

131 And the title is amended as follows:

132 Delete line 3982

133 and insert:

134 An act relating to Medicaid; amending s. 39.407, F.S.;

135 requiring a motion by the Department of Children and

136 Family Services to provide psychotropic medication to

137 a child 10 years of age or younger to include a review

138 by a child psychiatrist; providing that a court may

139 not authorize the administration of such medication

140 absent a finding of compelling state interest based on

141 the review; amending s. 393.0661,