

By Senator Storms

10-01452-12

20121808

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

10-01452-12

20121808

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

10-01452-12

20121808

59 adverse side effects; requiring documentation of the  
60 adverse side effects; prohibiting the prescription of  
61 psychotropic medication to certain children who are in  
62 out-of-home care absent certain conditions; requiring  
63 review by a licensed child psychiatrist before  
64 psychotropic medication is administered to certain  
65 children who are in out-of-home care under certain  
66 conditions; prohibiting authorization for a child in  
67 the custody of the department to participate in any  
68 clinical trial designed to evaluate the use of  
69 psychotropic medication in children; requiring that  
70 the department inform the court of a child's medical  
71 and behavioral status at each judicial hearing;  
72 requiring that the department adopt rules; amending s.  
73 743.0645, F.S.; conforming a cross-reference;  
74 providing an effective date.

75  
76 Be It Enacted by the Legislature of the State of Florida:

77  
78 Section 1. Subsection (3) of section 39.407, Florida  
79 Statutes, is amended to read:

80 39.407 Medical, psychiatric, and psychological examination  
81 and treatment of child; physical, mental, or substance abuse  
82 examination of person with or requesting child custody.—

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

10-01452-12

20121808

88       (b) Any child who has been in out-of-home care for more  
89 than 1 year, or who did not receive a comprehensive behavioral  
90 health assessment when placed into out-of-home care, is eligible  
91 to receive a comprehensive behavioral health assessment. Such  
92 assessments evaluate behaviors that give rise to the concern  
93 that the child has unmet mental health needs. Any party to the  
94 dependency proceeding, or the court on its own motion, may  
95 request that an assessment be performed.

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

105       (d) This provision does not prevent a child from receiving  
106 any other form of psychological assessment when needed.

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

111       ~~(3)(a)1. Except as otherwise provided in subparagraph (b)1.~~  
112 ~~or paragraph (e), before the department provides psychotropic~~  
113 ~~medications to a child in its custody, the prescribing physician~~  
114 ~~shall attempt to obtain express and informed consent, as defined~~  
115 ~~in s. 394.455(9) and as described in s. 394.459(3)(a), from the~~  
116 ~~child's parent or legal guardian. The department must take steps~~

10-01452-12

20121808

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

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

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

10-01452-12

20121808

146 ~~prescription for that child and the medication is in its~~  
147 ~~original container.~~

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

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

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

10-01452-12

20121808

175 ~~(c) Except as provided in paragraphs (b) and (c), the~~  
176 ~~department must file a motion seeking the court's authorization~~  
177 ~~to initially provide or continue to provide psychotropic~~  
178 ~~medication to a child in its legal custody. The motion must be~~  
179 ~~supported by a written report prepared by the department which~~  
180 ~~describes the efforts made to enable the prescribing physician~~  
181 ~~to obtain express and informed consent for providing the~~  
182 ~~medication to the child and other treatments considered or~~  
183 ~~recommended for the child. In addition, the motion must be~~  
184 ~~supported by the prescribing physician's signed medical report~~  
185 ~~providing:~~

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

191 ~~2. A statement indicating that the physician has reviewed~~  
192 ~~all medical information concerning the child which has been~~  
193 ~~provided.~~

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

199 ~~4. An explanation of the nature and purpose of the~~  
200 ~~treatment; the recognized side effects, risks, and~~  
201 ~~contraindications of the medication; drug-interaction~~  
202 ~~precautions; the possible effects of stopping the medication;~~  
203 ~~and how the treatment will be monitored, followed by a statement~~

10-01452-12

20121808

204 ~~indicating that this explanation was provided to the child if~~  
205 ~~age appropriate and to the child's caregiver.~~

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

212 ~~(d)1. The department must notify all parties of the~~  
213 ~~proposed action taken under paragraph (c) in writing or by~~  
214 ~~whatever other method best ensures that all parties receive~~  
215 ~~notification of the proposed action within 48 hours after the~~  
216 ~~motion is filed. If any party objects to the department's~~  
217 ~~motion, that party shall file the objection within 2 working~~  
218 ~~days after being notified of the department's motion. If any~~  
219 ~~party files an objection to the authorization of the proposed~~  
220 ~~psychotropic medication, the court shall hold a hearing as soon~~  
221 ~~as possible before authorizing the department to initially~~  
222 ~~provide or to continue providing psychotropic medication to a~~  
223 ~~child in the legal custody of the department. At such hearing~~  
224 ~~and notwithstanding s. 90.803, the medical report described in~~  
225 ~~paragraph (c) is admissible in evidence. The prescribing~~  
226 ~~physician need not attend the hearing or testify unless the~~  
227 ~~court specifically orders such attendance or testimony, or a~~  
228 ~~party subpoenas the physician to attend the hearing or provide~~  
229 ~~testimony. If, after considering any testimony received, the~~  
230 ~~court finds that the department's motion and the physician's~~  
231 ~~medical report meet the requirements of this subsection and that~~  
232 ~~it is in the child's best interests, the court may order that~~

10-01452-12

20121808

233 ~~the department provide or continue to provide the psychotropic~~  
234 ~~medication to the child without additional testimony or~~  
235 ~~evidence. At any hearing held under this paragraph, the court~~  
236 ~~shall further inquire of the department as to whether additional~~  
237 ~~medical, mental health, behavioral, counseling, or other~~  
238 ~~services are being provided to the child by the department which~~  
239 ~~the prescribing physician considers to be necessary or~~  
240 ~~beneficial in treating the child's medical condition and which~~  
241 ~~the physician recommends or expects to provide to the child in~~  
242 ~~concert with the medication. The court may order additional~~  
243 ~~medical consultation, including consultation with the MedConsult~~  
244 ~~line at the University of Florida, if available, or require the~~  
245 ~~department to obtain a second opinion within a reasonable~~  
246 ~~timeframe as established by the court, not to exceed 21 calendar~~  
247 ~~days, after such order based upon consideration of the best~~  
248 ~~interests of the child. The department must make a referral for~~  
249 ~~an appointment for a second opinion with a physician within 1~~  
250 ~~working day. The court may not order the discontinuation of~~  
251 ~~prescribed psychotropic medication if such order is contrary to~~  
252 ~~the decision of the prescribing physician unless the court first~~  
253 ~~obtains an opinion from a licensed psychiatrist, if available,~~  
254 ~~or, if not available, a physician licensed under chapter 458 or~~  
255 ~~chapter 459, stating that more likely than not, discontinuing~~  
256 ~~the medication would not cause significant harm to the child.~~  
257 ~~If, however, the prescribing psychiatrist specializes in mental~~  
258 ~~health care for children and adolescents, the court may not~~  
259 ~~order the discontinuation of prescribed psychotropic medication~~  
260 ~~unless the required opinion is also from a psychiatrist who~~  
261 ~~specializes in mental health care for children and adolescents.~~

10-01452-12

20121808

262 ~~The court may also order the discontinuation of prescribed~~  
263 ~~psychotropic medication if a child's treating physician,~~  
264 ~~licensed under chapter 458 or chapter 459, states that~~  
265 ~~continuing the prescribed psychotropic medication would cause~~  
266 ~~significant harm to the child due to a diagnosed nonpsychiatric~~  
267 ~~medical condition.~~

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

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

287 ~~2. Psychotropic medications may be administered in advance~~  
288 ~~of a court order in hospitals, crisis stabilization units, and~~  
289 ~~in statewide inpatient psychiatric programs. Within 3 working~~  
290 ~~days after the medication is begun, the department must seek~~

10-01452-12

20121808

291 ~~court authorization as described in paragraph (c).~~

292 ~~(f)1. The department shall fully inform the court of the~~  
293 ~~child's medical and behavioral status as part of the social~~  
294 ~~services report prepared for each judicial review hearing held~~  
295 ~~for a child for whom psychotropic medication has been prescribed~~  
296 ~~or provided under this subsection. As a part of the information~~  
297 ~~provided to the court, the department shall furnish copies of~~  
298 ~~all pertinent medical records concerning the child which have~~  
299 ~~been generated since the previous hearing. On its own motion or~~  
300 ~~on good cause shown by any party, including any guardian ad~~  
301 ~~litem, attorney, or attorney ad litem who has been appointed to~~  
302 ~~represent the child or the child's interests, the court may~~  
303 ~~review the status more frequently than required in this~~  
304 ~~subsection.~~

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

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

10-01452-12

20121808

320 ~~process if their parental rights have not been terminated, and~~  
321 ~~how caretakers are to be provided information contained in the~~  
322 ~~physician's signed medical report. The rules must also include~~  
323 ~~uniform forms to be used in requesting court authorization for~~  
324 ~~the use of a psychotropic medication and provide for the~~  
325 ~~integration of each child's treatment plan and case plan. The~~  
326 ~~department must begin the formal rulemaking process within 90~~  
327 ~~days after the effective date of this act.~~

328 Section 2. Section 39.4071, Florida Statutes, is created to  
329 read:

330 39.4071 Use of psychotropic medication for children in out  
331 of-home placement.-

332 (1) LEGISLATIVE FINDINGS AND INTENT.-

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

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

10-01452-12

20121808

349       (c) The Legislature further finds that significant  
350 challenges are encountered in providing quality mental health  
351 care to children in out-of-home placements. Not uncommonly,  
352 children in out-of-home placements are subjected to multiple  
353 placements and many service providers, with communication  
354 between providers often poor, resulting in fragmented medical  
355 and mental health care. The dependable, ongoing therapeutic and  
356 caregiving relationships these children need are hampered by the  
357 high turnover among child welfare caseworkers and care  
358 providers. Furthermore, children in out-of-home placements,  
359 unlike children from intact families, often have no consistent  
360 interested party who is available to coordinate treatment and  
361 monitoring plans or to provide longitudinal oversight of care.

362       (d) The Legislature recognizes the important role the  
363 Guardian ad Litem Program has played in this state's dependency  
364 system for the past 30 years serving the state's most vulnerable  
365 children through the use of trained volunteers, case  
366 coordinators, child advocates, and attorneys. The program's  
367 singular focus is on the child and its mission is to advocate  
368 for the best interest of the child. It is often the guardian ad  
369 litem who is the constant in a child's life, maintaining  
370 consistent contact with the child, the child's caseworkers, and  
371 others involved with the child, including family, doctors,  
372 teachers, and service providers. Studies have shown that a child  
373 assigned a guardian ad litem will, on average, experience fewer  
374 placement changes than a child without a guardian ad litem. It  
375 is therefore the intent of the Legislature that children in out-  
376 of-home placements who may benefit from psychotropic medications  
377 receive those medications safely as part of a comprehensive

10-01452-12

20121808

378 mental health treatment plan requiring the appointment of a  
379 guardian ad litem whose responsibility is to monitor the plan  
380 for compliance and suitability as to the child's best interest.

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

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

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

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

404 (d) "Express and informed consent" means a process by which  
405 a provider of medical services obtains voluntary consent from a  
406 parent whose rights have not been terminated or a legal guardian

10-01452-12

20121808

407 of the child who has received full, accurate, and sufficient  
408 information and an explanation about the child's medical  
409 condition, medication, and treatment in order to enable the  
410 parent or guardian to make a knowledgeable decision without any  
411 element of fraud, deceit, duress, or other form of coercion.

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

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

423 (3) APPOINTMENT OF GUARDIAN AD LITEM.—

424 (a) If not already appointed, a guardian ad litem shall be  
425 appointed by the court at the earliest possible time to  
426 represent the best interests of a child in out-of-home placement  
427 who is prescribed a psychotropic medication or is being  
428 evaluated for the initiation of psychotropic medication.  
429 Pursuant to s. 39.820, the appointed guardian ad litem is a  
430 party to any judicial proceeding as a representative of the  
431 child and serves until discharged by the court.

432 (b) Under the provisions of this section, the guardian ad  
433 litem shall participate in the development of the mental health  
434 treatment plan, monitor whether all requirements of the mental  
435 health treatment plan are being provided to the child, including

10-01452-12

20121808

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

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

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

461 (5) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the  
462 time of removal from his or her home, a child is being provided,  
463 or at any time is being evaluated for the initiation of,  
464 prescribed psychotropic medication under this section, express

10-01452-12

20121808

465 and informed consent and assent shall be sought by the  
466 prescribing physician.

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

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

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

10-01452-12

20121808

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

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

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

10-01452-12

20121808

523 use of medication, when applicable; and that the parent or legal  
524 guardian may revoke the consent at any time.

525 1. Express and informed consent may be oral or written and  
526 must be documented by the prescribing physician. If the  
527 department or the physician is unable to obtain consent from the  
528 parent or legal guardian, the reasons must be documented.

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

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

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

550 (e) Under no circumstance may a medication be discontinued  
551 without explicit instruction from a physician as to how to

10-01452-12

20121808

552 safely discontinue the medication.

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

556 (a) Motion for court authorization for administration of  
557 psychotropic medications.—

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

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

573 b. The prescribing physician's completed and signed mental  
574 health treatment plan.

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

10-01452-12

20121808

581 3. If any party objects to the proposed administration of  
582 the psychotropic medication to the child, that party must file  
583 its objection within 2 working days after being notified of the  
584 department's motion. A party may request an extension of time to  
585 object for good cause shown, if such extension would be in the  
586 best interests of the child. Any extension shall be for a  
587 specific number of days not to exceed the time absolutely  
588 necessary.

589 4. Lack of assent from the child shall be deemed a timely  
590 objection from the child.

591 (b) Court action on motion for administration of  
592 psychotropic medication.—

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

608 2. If any party timely files its objection to the proposed  
609 administration of the psychotropic medication to the child, the

10-01452-12

20121808

610 court shall hold a hearing as soon as possible on the  
611 department's motion.

612 a. The signed mental health treatment plan of the  
613 prescribing physician is admissible in evidence at the hearing.

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

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

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

630 a. The severity and likelihood of risks associated with the  
631 treatment.

632 b. The magnitude and likelihood of benefits expected from  
633 the treatment.

634 c. The child's prognosis without the proposed psychotropic  
635 medication.

636 d. The availability and effectiveness of alternative  
637 treatments.

638 e. The wishes of the child concerning treatment

10-01452-12

20121808

639 alternatives.

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

641 g. The recommendation of the guardian ad litem.

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

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

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

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

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

667 (b) If the department believes, based on the certification

10-01452-12

20121808

668 of the prescribing physician, that delay in providing the  
669 prescribed psychotropic medication to the child would, more  
670 likely than not, cause significant harm to the child, the  
671 department shall administer the medication to the child  
672 immediately. The department shall submit a motion to the court  
673 seeking continuation of the medication within 3 working days  
674 after the department begins providing the medication to the  
675 child.

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

683 2. The department shall serve the motion on all parties  
684 within 3 working days after the department begins providing the  
685 medication to the child.

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

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

10-01452-12

20121808

697 administration of the medication within 3 working days as  
698 required in this section.

699 (d) If a child receives a one-time dose of a psychotropic  
700 medication during a crisis, the department shall provide  
701 immediate notice to all parties and to the court of each such  
702 emergency use.

703 (8) DISCONTINUATION OR ALTERATION OF MEDICATION;  
704 DESTRUCTION OF MEDICATION.—A party may not alter the provision  
705 of prescribed psychotropic medication to a child in any way  
706 except upon order of the court or advice of a physician.

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

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

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

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

724 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the  
725 determination that a child needs mental health services, a

10-01452-12

20121808

726 mental health treatment plan must be developed which lists the  
727 particular mental health needs of the child and the services  
728 that will be provided to address those needs. When possible, the  
729 plan shall be developed in a face-to-face conference with the  
730 child, the child's parents, case manager, physician, therapist,  
731 legal guardian, guardian ad litem, and any other interested  
732 party. The mental health treatment plan shall be incorporated  
733 into the case plan as tasks for the department and may be  
734 amended under s. 39.6013.

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

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

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

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

753 4. A statement indicating that the psychotropic medication,  
754 at its prescribed dosage, is appropriate for treating the

10-01452-12

20121808

755 child's diagnosed medical condition, as well as the behaviors  
756 and symptoms that the medication, at its prescribed dosage, is  
757 expected to address.

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

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

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

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

10-01452-12

20121808

784 medical records for the child.

785 (10) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION  
786 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME  
787 CARE.—

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

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

- 803 1. Hospital;
- 804 2. Crisis stabilization unit or receiving facility;
- 805 3. Therapeutic group home; or
- 806 4. Statewide inpatient psychiatric program.

807

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

10-01452-12

20121808

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

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

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

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

10-01452-12

20121808

842 procedures for obtaining court authorization for the provision  
843 of a psychotropic medication, the frequency of medical  
844 monitoring and reporting on the status of the child to the  
845 court, how the child's parents will be involved in the  
846 treatment-planning process if their parental rights have not  
847 been terminated, and how caretakers are to be provided  
848 information contained in the physician's signed mental health  
849 treatment plan. The rules must also include uniform forms or  
850 standardized information to be used statewide in requesting  
851 court authorization for the use of a psychotropic medication and  
852 provide for the integration of each child's mental health  
853 treatment plan and case plan. The department shall begin the  
854 formal rulemaking process by October 1, 2012.

855 Section 3. Paragraph (b) of subsection (1) of section  
856 743.0645, Florida Statutes, is amended to read:

857 743.0645 Other persons who may consent to medical care or  
858 treatment of a minor.—

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

860 (b) "Medical care and treatment" includes ordinary and  
861 necessary medical and dental examination and treatment,  
862 including blood testing, preventive care including ordinary  
863 immunizations, tuberculin testing, and well-child care, but does  
864 not include surgery, general anesthesia, provision of  
865 psychotropic medications, or other extraordinary procedures for  
866 which a separate court order, power of attorney, or informed  
867 consent as provided by law is required, except as provided in s.  
868 39.4071 ~~s. 39.407(3)~~.

869 Section 4. This act shall take effect July 1, 2012.