

HB 1405

2012

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  
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

HB 1405

2012

57 | to develop and administer procedures to require the  
58 | caregiver and prescribing physician to report any  
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  
73 | ss. 409.912 and 743.0645, F.S.; conforming cross-  
74 | references; 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

HB 1405

2012

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.

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~~  
112 ~~(b)1. or paragraph (c), before the department provides~~

HB 1405

2012

113 ~~psychotropic medications to a child in its custody, the~~  
114 ~~prescribing physician shall attempt to obtain express and~~  
115 ~~informed consent, as defined in s. 394.455(9) and as described~~  
116 ~~in s. 394.459(3)(a), from the child's parent or legal guardian.~~  
117 ~~The department must take steps necessary to facilitate the~~  
118 ~~inclusion of the parent in the child's consultation with the~~  
119 ~~physician. However, if the parental rights of the parent have~~  
120 ~~been terminated, the parent's location or identity is unknown or~~  
121 ~~cannot reasonably be ascertained, or the parent declines to give~~  
122 ~~express and informed consent, the department may, after~~  
123 ~~consultation with the prescribing physician, seek court~~  
124 ~~authorization to provide the psychotropic medications to the~~  
125 ~~child. Unless parental rights have been terminated and if it is~~  
126 ~~possible to do so, the department shall continue to involve the~~  
127 ~~parent in the decisionmaking process regarding the provision of~~  
128 ~~psychotropic medications. If, at any time, a parent whose~~  
129 ~~parental rights have not been terminated provides express and~~  
130 ~~informed consent to the provision of a psychotropic medication,~~  
131 ~~the requirements of this section that the department seek court~~  
132 ~~authorization do not apply to that medication until such time as~~  
133 ~~the parent no 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~~

HB 1405

2012

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~~  
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~~

HB 1405

2012

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.~~

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~~  
195 ~~medication, at its prescribed dosage, is appropriate for~~  
196 ~~treating the child's diagnosed medical condition, as well as the~~

HB 1405

2012

197 ~~behaviors and symptoms the medication, at its prescribed dosage,~~  
198 ~~is 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~~  
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~~



HB 1405

2012

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~~  
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~~

HB 1405

2012

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.~~  
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~~  
271 ~~the signed medical report required in paragraph (c) that delay~~  
272 ~~in providing a prescribed psychotropic medication would more~~  
273 ~~likely than not cause significant harm to the child, the~~  
274 ~~medication may be provided in advance of the issuance of a court~~  
275 ~~order. In such event, the medical report must provide the~~  
276 ~~specific reasons why the child may experience significant harm~~  
277 ~~and the nature and the extent of the potential harm. The~~  
278 ~~department must submit a motion seeking continuation of the~~  
279 ~~medication and the physician's medical report to the court, the~~  
280 ~~child's guardian ad litem, and all other parties within 3~~

HB 1405

2012

281 ~~working days after the department commences providing the~~  
282 ~~medication to the child. The department shall seek the order at~~  
283 ~~the next regularly scheduled court hearing required under this~~  
284 ~~chapter, or within 30 days after the date of the prescription,~~  
285 ~~whichever occurs sooner. If any party objects to the~~  
286 ~~department's motion, the court shall hold a hearing within 7~~  
287 ~~days.~~

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

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

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

HB 1405

2012

309 ~~circumstances is safe and medically appropriate.~~

310 ~~(g) The department shall adopt rules to ensure that~~  
311 ~~children receive timely access to clinically appropriate~~  
312 ~~psychotropic medications. These rules must include, but need not~~  
313 ~~be limited to, the process for determining which adjunctive~~  
314 ~~services are needed, the uniform process for facilitating the~~  
315 ~~prescribing physician's ability to obtain the express and~~  
316 ~~informed consent of a child's parent or guardian, the procedures~~  
317 ~~for obtaining court authorization for the provision of a~~  
318 ~~psychotropic medication, the frequency of medical monitoring and~~  
319 ~~reporting on the status of the child to the court, how the~~  
320 ~~child's parents will be involved in the treatment planning~~  
321 ~~process if their parental rights have not been terminated, and~~  
322 ~~how caretakers are to be provided information contained in the~~  
323 ~~physician's signed medical report. The rules must also include~~  
324 ~~uniform forms to be used in requesting court authorization for~~  
325 ~~the use of a psychotropic medication and provide for the~~  
326 ~~integration of each child's treatment plan and case plan. The~~  
327 ~~department must begin the formal rulemaking process within 90~~  
328 ~~days after the effective date of this act.~~

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

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

333 (1) LEGISLATIVE FINDINGS AND INTENT.—

334 (a) The Legislature finds that children in out-of-home  
335 placements often have multiple risk factors that predispose them  
336 to emotional and behavioral disorders and that they receive

337 mental health services at higher rates and are more likely to be  
338 given psychotropic medications than children from comparable  
339 backgrounds.

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

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

363 (d) The Legislature recognizes the important role the  
364 Guardian ad Litem Program has played in this state's dependency

365 system for the past 30 years serving the state's most vulnerable  
 366 children through the use of trained volunteers, case  
 367 coordinators, child advocates, and attorneys. The program's  
 368 singular focus is on the child and its mission is to advocate  
 369 for the best interest of the child. It is often the guardian ad  
 370 litem who is the constant in a child's life, maintaining  
 371 consistent contact with the child, the child's caseworkers, and  
 372 others involved with the child, including family, doctors,  
 373 teachers, and service providers. Studies have shown that a child  
 374 assigned a guardian ad litem will, on average, experience fewer  
 375 placement changes than a child without a guardian ad litem. It  
 376 is therefore the intent of the Legislature that children in out-  
 377 of-home placements who may benefit from psychotropic medications  
 378 receive those medications safely as part of a comprehensive  
 379 mental health treatment plan requiring the appointment of a  
 380 guardian ad litem whose responsibility is to monitor the plan  
 381 for compliance and suitability as to the child's best interest.

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

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

386 (b) "Obtaining assent" means a process by which a provider  
 387 of medical services helps a child achieve a developmentally  
 388 appropriate awareness of the nature of his or her condition,  
 389 informs the child of what can be expected through tests and  
 390 treatment, makes a clinical assessment of the child's  
 391 understanding of the situation and the factors influencing how  
 392 he or she is responding, and solicits an expression of the

HB 1405

2012

393 child's willingness to adhere to the proposed care. The mere  
394 absence of an objection by the child may not be construed as  
395 assent.

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

405 (d) "Express and informed consent" means a process by  
406 which a provider of medical services obtains voluntary consent  
407 from a parent whose rights have not been terminated or a legal  
408 guardian of the child who has received full, accurate, and  
409 sufficient information and an explanation about the child's  
410 medical condition, medication, and treatment in order to enable  
411 the parent or guardian to make a knowledgeable decision without  
412 any element of fraud, deceit, duress, or other form of coercion.

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

419 (f) "Psychotropic medication" means a prescription  
420 medication that is used for the treatment of mental disorders

HB 1405

2012

421 and includes, without limitation, hypnotics, antipsychotics,  
422 antidepressants, antianxiety agents, sedatives, stimulants, and  
423 mood stabilizers.

424 (3) APPOINTMENT OF GUARDIAN AD LITEM.—

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

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

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



HB 1405

2012

449 concerning the child.

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

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

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

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

HB 1405

2012

477 it is appropriate to obtain assent from the child and the child  
478 refuses to give assent, the physician must document the child's  
479 refusal in the mental health treatment plan.

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

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

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

504 (b) Express and informed consent for the administration of

HB 1405

2012

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

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

530 2. When express and informed consent is obtained, a copy  
531 of the consent documents must be provided to the parent or legal  
532 guardian and the guardian ad litem, with the original consent

533 documents becoming a part of the child's mental health treatment  
 534 plan and filed with the court.

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

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

551 (e) Under no circumstance may a medication be discontinued  
 552 without explicit instruction from a physician as to how to  
 553 safely discontinue the medication.

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

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

559 1. Any time a physician who has evaluated the child  
 560 prescribes psychotropic medication as part of the mental health

HB 1405

2012

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

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

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

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

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

HB 1405

2012

589 necessary.

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

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

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

609 2. If any party timely files its objection to the proposed  
610 administration of the psychotropic medication to the child, the  
611 court shall hold a hearing as soon as possible on the  
612 department's motion.

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

615 b. The court shall ask the department whether additional  
616 medical, mental health, behavior analysis, counseling, or other

HB 1405

2012

617 services are being provided to the child which the prescribing  
618 physician considers to be necessary or beneficial in treating  
619 the child's medical condition and which the physician recommends  
620 or expects to be provided to the child along with the  
621 medication.

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

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

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

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

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

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

639 e. The wishes of the child concerning treatment  
640 alternatives.

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

642 g. The recommendation of the guardian ad litem.

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

HB 1405

2012

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

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

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

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

668 (b) If the department believes, based on the certification  
669 of the prescribing physician, that delay in providing the  
670 prescribed psychotropic medication to the child would, more  
671 likely than not, cause significant harm to the child, the  
672 department shall administer the medication to the child



HB 1405

2012

673 immediately. The department shall submit a motion to the court  
674 seeking continuation of the medication within 3 working days  
675 after the department begins providing the medication to the  
676 child.

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

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

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

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

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

701 medication during a crisis, the department shall provide  
 702 immediate notice to all parties and to the court of each such  
 703 emergency use.

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

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

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

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

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

725 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the  
 726 determination that a child needs mental health services, a  
 727 mental health treatment plan must be developed which lists the  
 728 particular mental health needs of the child and the services

HB 1405

2012

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

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

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

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

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

754 4. A statement indicating that the psychotropic  
755 medication, at its prescribed dosage, is appropriate for  
756 treating the child's diagnosed medical condition, as well as the

HB 1405

2012

757 behaviors and symptoms that the medication, at its prescribed  
758 dosage, is expected to address.

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

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

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

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

785 medical records for the child.

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

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

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

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

808

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

HB 1405

2012

813 medication within 3 working days.

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

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

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

835 (13) ADOPTION OF RULES.—The department shall adopt rules  
836 to ensure that children receive timely access to mental health  
837 services, including, but not limited to, clinically appropriate  
838 psychotropic medications. These rules must include, but need not  
839 be limited to, the process for determining which adjunctive  
840 services are needed, the uniform process for facilitating the

HB 1405

2012

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

856 Section 3. Subsection (51) of section 409.912, Florida  
857 Statutes, is amended to read:

858 409.912 Cost-effective purchasing of health care.—The  
859 agency shall purchase goods and services for Medicaid recipients  
860 in the most cost-effective manner consistent with the delivery  
861 of quality medical care. To ensure that medical services are  
862 effectively utilized, the agency may, in any case, require a  
863 confirmation or second physician's opinion of the correct  
864 diagnosis for purposes of authorizing future services under the  
865 Medicaid program. This section does not restrict access to  
866 emergency services or poststabilization care services as defined  
867 in 42 C.F.R. part 438.114. Such confirmation or second opinion  
868 shall be rendered in a manner approved by the agency. The agency

HB 1405

2012

869 shall maximize the use of prepaid per capita and prepaid  
870 aggregate fixed-sum basis services when appropriate and other  
871 alternative service delivery and reimbursement methodologies,  
872 including competitive bidding pursuant to s. 287.057, designed  
873 to facilitate the cost-effective purchase of a case-managed  
874 continuum of care. The agency shall also require providers to  
875 minimize the exposure of recipients to the need for acute  
876 inpatient, custodial, and other institutional care and the  
877 inappropriate or unnecessary use of high-cost services. The  
878 agency shall contract with a vendor to monitor and evaluate the  
879 clinical practice patterns of providers in order to identify  
880 trends that are outside the normal practice patterns of a  
881 provider's professional peers or the national guidelines of a  
882 provider's professional association. The vendor must be able to  
883 provide information and counseling to a provider whose practice  
884 patterns are outside the norms, in consultation with the agency,  
885 to improve patient care and reduce inappropriate utilization.  
886 The agency may mandate prior authorization, drug therapy  
887 management, or disease management participation for certain  
888 populations of Medicaid beneficiaries, certain drug classes, or  
889 particular drugs to prevent fraud, abuse, overuse, and possible  
890 dangerous drug interactions. The Pharmaceutical and Therapeutics  
891 Committee shall make recommendations to the agency on drugs for  
892 which prior authorization is required. The agency shall inform  
893 the Pharmaceutical and Therapeutics Committee of its decisions  
894 regarding drugs subject to prior authorization. The agency is  
895 authorized to limit the entities it contracts with or enrolls as  
896 Medicaid providers by developing a provider network through



HB 1405

2012

897 provider credentialing. The agency may competitively bid single-  
898 source-provider contracts if procurement of goods or services  
899 results in demonstrated cost savings to the state without  
900 limiting access to care. The agency may limit its network based  
901 on the assessment of beneficiary access to care, provider  
902 availability, provider quality standards, time and distance  
903 standards for access to care, the cultural competence of the  
904 provider network, demographic characteristics of Medicaid  
905 beneficiaries, practice and provider-to-beneficiary standards,  
906 appointment wait times, beneficiary use of services, provider  
907 turnover, provider profiling, provider licensure history,  
908 previous program integrity investigations and findings, peer  
909 review, provider Medicaid policy and billing compliance records,  
910 clinical and medical record audits, and other factors. Providers  
911 are not entitled to enrollment in the Medicaid provider network.  
912 The agency shall determine instances in which allowing Medicaid  
913 beneficiaries to purchase durable medical equipment and other  
914 goods is less expensive to the Medicaid program than long-term  
915 rental of the equipment or goods. The agency may establish rules  
916 to facilitate purchases in lieu of long-term rentals in order to  
917 protect against fraud and abuse in the Medicaid program as  
918 defined in s. 409.913. The agency may seek federal waivers  
919 necessary to administer these policies.

920 (51) The agency may not pay for psychotropic medication  
921 prescribed for a child in the Medicaid program without the  
922 express and informed consent of the child's parent or legal  
923 guardian. The physician shall document the consent in the  
924 child's medical record and provide the pharmacy with a signed

HB 1405

2012

925 attestation of this documentation with the prescription. The  
926 express and informed consent or court authorization for a  
927 prescription of psychotropic medication for a child in the  
928 custody of the Department of Children and Family Services shall  
929 be obtained pursuant to s. 39.4071 ~~s. 39.407~~.

930 Section 4. Paragraph (b) of subsection (1) of section  
931 743.0645, Florida Statutes, is amended to read:

932 743.0645 Other persons who may consent to medical care or  
933 treatment of a minor.—

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

935 (b) "Medical care and treatment" includes ordinary and  
936 necessary medical and dental examination and treatment,  
937 including blood testing, preventive care including ordinary  
938 immunizations, tuberculin testing, and well-child care, but does  
939 not include surgery, general anesthesia, provision of  
940 psychotropic medications, or other extraordinary procedures for  
941 which a separate court order, power of attorney, or informed  
942 consent as provided by law is required, except as provided in s.  
943 39.4071 ~~s. 39.407(3)~~.

944 Section 5. This act shall take effect July 1, 2012.