HB0286

LRB097 06663 KTG 46749 b

97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB0286

Introduced 01/28/11, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

New Act

Creates the Administration of Psychotropic Medications to Children Act. Requires prior approval from an authorized agent before the administration of psychotropic medications to children for whom the Department of Children and Family Services has legal responsibility. Requires authorized agents to receive training on the list of psychotropic medications approved by the Pharmacological Review Committee, a committee created under the Act for the purpose of developing and publishing a manual that lists all Committee approved psychotropic medications, including the purpose of these medications, the acceptable range of dosages, contraindications, and time limits, if any. Contains provisions on medication approval standards; rules governing the administration of psychotropic medications to children housed in residential facilities or facilities run by the Illinois Department of Corrections; on-site inspections of residential facilities; required forms; training requirements; penalties for violators of the Act; and other matters. Effective immediately.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning children.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Administration of Psychotropic Medications to Children Act.

Section 5. Purpose. The following standards and procedures shall govern the administration of psychotropic medications to persons under the guardianship of the Department of Children and Family Services pursuant to court order or for whom the Department has custody and has, by court order or via an adoptive surrender, been authorized to consent to major medical procedures. It is the purpose of this Act to create a system that promptly identifies and evaluates the needs of children for psychotropic medications, provides timely access to such medications, and monitors children on such medications, while recognizing the risks that such medications pose, particularly if they are not prescribed and monitored with care. Psychotropic medications must not be used simply for the convenience of staff members, to punish children, or as a substitute for adequate staffing and programming.

Section 10. Definitions. As used in this Act:

"Authorized agent" means a staff member for the Department

of Children and Family Services who has been appointed and authorized by the Director of the Department to officially act in the place of the Department's Guardianship Administrator to authorize and consent to matters concerning children for whom the Department has legal responsibility.

"Children for whom the Department has legal responsibility" means children for whom the Department of Children and Family Services has temporary protective custody as authorized by the Abused and Neglected Child Reporting Act; children for whom the Department has been appointed legal custodian or guardian by order of a court of competent jurisdiction; children whose parent or parents have signed an adoptive surrender; or children for whom the Department has temporary custody via a voluntary placement agreement.

"Department" means the Illinois Department of Children and Family Services.

"Director" means the Director of the Illinois Department of Children and Family Services.

"Emergency" means the existence of circumstances in which a child for whom the Department has legal responsibility poses a threat of imminent, serious harm to self or others.

"IDOC" means the Illinois Department of Corrections.

"Pharmacological Review Committee" or "Committee" means a committee appointed by the Department that is comprised of at least 3 representatives, at least one of whom is a Board certified psychiatrist who specializes in the treatment of

children and adolescents.

"Psychiatric consultant" means a "psychiatrist" as that term is defined in Section 1-121 of the Mental Health and Developmental Disabilities Code, who has specialized in child and adolescent psychiatry.

"Psychotropic medications" means medications whose use for antipsychotic, antidepressant, antimanic, antianxiety, behavioral modification or behavioral management purposes is listed in AMA Drug Evaluations, latest edition, or Physician's Desk Reference, latest edition, or that are administered for any of these purposes.

"Residential facility" means any facility housing one or more children for whom the Department of Children and Family Services has legal responsibility, regardless of whether that facility is located within the State, including but not limited to group homes, child care institutions, and inpatient mental health facilities, including those operated by the Illinois Department of Human Services. Facilities operated by IDOC are not residential facilities, as defined in this Act.

Section 15. General provisions.

(a) The administration of psychotropic medications to children for whom the Department has legal responsibility as punishment for bad behavior, for the convenience of caregivers, or as a substitute for adequate ongoing programming for the children's needs is prohibited.

(b) Except in an emergency, and subject to subsection (a) of this Section, psychotropic medications shall never be administered to children for whom the Department has legal responsibility without the prior approval of an authorized agent as set forth in this Act. For purposes of consenting to the administration of psychotropic medications, the Department must be the legal guardian or custodian that has been granted the authority to consent to major medical care.

(c) In regards to children for whom the Department has legal responsibility and who have been committed to facilities operated by IDOC, the administration of psychotropic medications to these children shall be governed solely by IDOC rules as set forth in Part 415 of Title 20 of the Illinois Administrative Code and the Unified Code of Corrections. In its role as guardian, the Department may contest decisions made by IDOC in accordance with IDOC rules regarding the involuntary administration of psychotropic medications to Department wards placed in facilities operated by IDOC.

(d) The Department shall establish a Pharmacological Review Committee which shall develop and publish a manual entitled the Pharmacy and Therapeutic Manual. The manual shall list all acceptable psychotropic medications that are approved by the Committee for use with children for whom the Department has legal responsibility and shall list their purposes, the acceptable range of dosages, contraindications, and time limits, if any. The names, qualifications, and professional

positions of Committee members shall be listed on the front page of the manual. The Committee shall also review the manual on at least an annual basis and make recommendations for changes, as necessary.

(e) The Pharmacy and Therapeutic Manual and any revisions to it shall be provided to all authorized agents and to all residential facilities housing children for whom the Department has legal responsibility.

(f) Authorized agents shall be provided with regular periodic training in the use and contents of the manual. The Department shall appoint, subject to Committee, a professional who specializes in treating children and adolescents to provide training to authorized agents on the use of the manual and its contents. The training shall include the following:

(1) Initial training before the authorized agent assumes the responsibilities of the position. This training shall include an explanation of the manual's purpose, how to use the manual, and the manual's contents, including an explanation of commonly prescribed psychotropic medications, the appropriate dosages for children and adolescents, common side effects, danger signs, illnesses for which medication is commonly prescribed, the discretion left to the authorized agent, and the procedure for approval or denial of a psychotropic medication.

(2) Annual training.

(3) Training before any revisions to the manual take effect.

(g) The Department's Guardianship Administrator or his or her designee shall review the authorized agent's consents given pursuant to this Act within 30 days after the start of the authorized agent's use of the manual and at least once every 90 days thereafter.

(h) The Department shall employ or contract with one or more psychiatric consultants. Authorized agents shall consult with the psychiatric consultant employed or contracted by the Department.

(i) The Department shall provide the Pharmacological Review Committee with statistical and non-identifying data regarding the administration of psychotropic medications to children governed by this Act including, where applicable, data from foster parent licensure reviews and administrative case reviews. The Committee shall review such data at least annually to determine whether psychotropic medications are being administered appropriately and in compliance with this Act. The Committee shall determine whether additional or different data shall be collected and whether this Act should be modified to achieve the goals set forth in this Section.

Section 20. Medication approval standards.

(a) Authorized agents may, at their discretion, approve the administration of any psychotropic medication whose use and

dosage is listed in the Pharmacy and Therapeutic Manual, provided that children for whom the Department has legal responsibility are not taking any other psychotropic medications and subject to the provisions of subsection (a) of Section 15 of this Act. Authorized agents may approve the administration of any psychotropic medication that does not meet the criterion listed in this Section only following consultation with the Department's psychiatric consultant. The authorized agent shall note on the consent form when consent has been given for the administration of a psychotropic medication that is not listed in the Pharmacy and Therapeutic Manual.

(b) Whenever the authorized agent is advised that a child for whom the Department has legal responsibility objects to the administration of a psychotropic medication, the authorized agent must consult with both the physician who is recommending the medication and the psychiatric consultant employed or contracted by the Department prior to approving or denying the medication. Authorized agents shall assess the basis for the child's objection to the psychotropic medication. This assessment may include asking the child's caseworker to interview the child to determine the basis for his or her objection. The reason for the child's objection must be fully documented on the approval form established in subsection (a) of Section 25 of this Act.

(c) Every authorization for the administration of a

psychotropic medication to a child for whom the Department has legal responsibility shall be limited in time. Under no circumstance may a psychotropic medication be authorized for a period exceeding 180 days. At the expiration of the period set forth in the authorization, a psychotropic medication may be authorized again pursuant to the standards and procedures contained in this Section.

(d) Whenever a physician recommends the administration of a psychotropic medication to a child for whom the Department has legal responsibility, the child shall be advised of the purposes and effects of the medication and of the potential side effects of the medication to the extent that such advice is consistent with the nature and frequency of the side effects and the child's ability to understand the information communicated. The child shall also be provided written information concerning the medication and its side effects, unless it has been determined that such information could not be understood by the child. This written information shall be provided in the child's primary language. Nothing in this subsection shall be deemed to create any liability on the part of the physician or the residential facility based upon the failure to provide the child with complete and accurate information. The information required under this subsection to be provided to the child shall also be provided to the child's parent where (i) parental rights have not been terminated, (ii) the Department has information as to how it may communicate

with the parent, (iii) the child has not objected to sharing the information with the parent, and (iv) the court has not entered an order prohibiting disclosure of this information to the parent.

(e) Authorized agents retain the authority to deny consent to the administration of psychotropic medications to a child for whom the Department has legal responsibility, whether or not these medications are among those listed in the Pharmacy and Therapeutic Manual or whether or not they have been approved by the psychiatric consultant. Authorized agents may only deny consent to the administration of psychotropic medications after consulting both the prescribing physician and the psychiatric consultant. The Pharmacy and Therapeutic Manual shall contain a statement setting forth this authority. In the event of a denial of a medication request, the specific reasons for the denial shall be set forth on the Psychotropic Medication Approval form established under Section 25 of this Act.

(f) Authorized agents must render their oral approval or denial of a psychotropic medication request within 24 hours from the time they receive the request for approval, and shall confirm their approval in writing within 2 working days, unless the reason for the delay is the unavailability of the prescribing physician to consult with the authorized agent. If oral approval or denial of the request for medication is not rendered within 24 hours from the time the request was

received, the requesting party shall contact the Department's Guardianship Administrator or his or her designee for assistance in obtaining a response.

Section 25. Children in residential facilities.

(a) The Department shall create and distribute a Psychotropic Medication Approval Form. Copies of the form shall be distributed to all residential facilities housing wards of the Department and to all authorized agents. That form shall include the following information:

(1) The child's name, age, weight, and diagnosis.

(2) The medication to be administered.

(3) The dosage and frequency of the medication.

(4) The duration of administering the medication, which in no event shall exceed 180 days.

(5) Target symptom or symptoms and behavior.

(6) Other medication the child is receiving.

(7) The potential side effects of the medication which are of greatest concern.

(8) The name of the prescribing physician.

(9) In the case of children who are 14 years of age or older, whether the ward objects to the administration of the medication.

(b) Residential facilities that provide care to children for whom the Department has legal responsibility shall be advised by the Department that, whenever they seek approval of

an authorized agent for the administration of a psychotropic medication, they will be asked the questions listed on the Psychotropic Medication Approval Form. The residential facility shall complete a copy of the approval form which is to be kept in the child's medical file at the facility. Whenever approval is granted by an authorized agent, the agent shall complete and sign 3 copies of the form, retain one copy for the child's case record, and forward copies to the Department's Guardianship Administrator or his or her designee and a copy to the residential facility where the child resides.

(c) Prior consent from an authorized agent is not required when an emergency exists. However, the authorized agent shall be notified in writing of the administration of a psychotropic medication to a child for whom the Department has legal responsibility, within one week of its initial administration. The Department shall provide each residential facility with Emergency Psychotropic Medication forms to be used by the residential facility in reporting to the authorized agent the administration of emergency medication. This form shall be completed by either a registered nurse or a physician who has examined the child and shall contain the information set forth in subsection (a). Additionally, the form shall require a brief explanation of the nature and circumstances of the emergency. A copy of this form shall be placed in the child's medical file at the residential facility and copies shall be forwarded to the Department's Guardianship Administrator or his or her

designee and the authorized agent for the child. Emergency medication may not continue for more than 48 hours, excluding Saturdays, Sundays and holidays. The administration of a psychotropic medication beyond this period may occur only if approved by an authorized agent as provided for in this Act.

(d) The administration of psychotropic medications shall be monitored as follows: The medical director of each residential facility, or a designee who has been licensed in accordance with the provisions of the Nurse Practice Act, shall conduct a monthly review of all psychotropic medications and record that review in writing. This record shall be reviewed during the on-site inspections required under subsection (f) of this Section. During this monthly review, the medical director or his or her designee shall conduct an inventory of all psychotropic medications and shall verify the following:

(1) That the psychotropic medications are labeled with the assigned child's name, directions for administering the medication, the date and prescribing physician's name, the prescription number, and the drug store or pharmacy.

(2) That all medications are stored in a locked cabinet or within a locked refrigerator, if required for proper storage.

(3) That all controlled substances are accounted for or, if any amount of a controlled substance is missing, an incident report has been filed with the Director of the facility.

(4) That psychotropic medications are dispensed in accordance with the requirements of the prescription.

(5) That written consents for the provision of psychotropic medications have been received from the parent or guardian, as appropriate.

(6) That any medications for children who have left the facility or who have been on runaway status 14 days or longer have been properly disposed of.

(e) The Department's Guardianship Administrator or his or her designee shall collect all emergency psychotropic medication forms and all psychotropic medication approval forms in binders divided according to residential facility. The Department's Guardianship Administrator or his or her designee shall review these binders monthly. The psychiatric consultant shall also review these binders every 90 days.

(f) The Department shall conduct unannounced on-site inspections of each residential facility at least annually to assure that the approval forms reflect the actual practice in the residential facility and that the residential facility is in compliance with this Act. Such reviews shall include an investigation into whether the emergency psychotropic medication forms and the psychotropic medication approval forms accurately reflect those minors who have objected to the administration of medication.

(g) The Department shall offer training at least once every 6 months for personnel employed by residential facilities

concerning the provisions under this Section and the procedures through which psychotropic medication may be authorized.

Section 30. Miscellaneous provisions.

(a) The Psychotropic Medication Approval form specified in Section 25 of this Act shall be attached as an exhibit to the client service plan form for each psychotropic medication which is being administered.

(b) When a child has a neurological or psychiatric condition for which the administration of psychotropic medications is likely, the Department shall request from a court of competent jurisdiction the power to consent to major medical care including specifically the administration of psychotropic medications.

(c) Minors who have been declared emancipated by any court for the purposes of consent to medical treatment shall have the qualified right to refuse psychotropic medications as provided for adults in Sections 2-107 and 2-107.1 of the Mental Health and Developmental Disabilities Code, but subject to subsection (c) of Section 15 of this Act.

(d) Children for whom the Department has legal responsibility and who have reached the age of 18 shall have the qualified right to refuse psychotropic medications as provided for adults in Sections 2-107 and 2-107.1 of the Mental Health and Developmental Disabilities Code, but subject to subsection (c) of Section 15 of this Act.

Section 35. Violations; monetary relief. A person who administers psychotropic medications to children for whom the Department has legal responsibility without obtaining the authorization required under this Act or who administers psychotropic medications on an emergency basis and fails to provide the Department with the notification required under this Act shall be liable to the child for the following:

(1) Monetary damages in either of the following amounts, whichever is greater: (i) actual damages or (ii) $5,000 for each violation. A separate and distinct violation shall be regarded as committed each day that the person fails to comply with this Act.

(2) Punitive damages when the person is found to have willfully violated this Act.

(3) Reasonable attorney's fees, costs, and expenses relating to an action brought under this Act.

Section 40. Liability of employer. When a person who violates the authorization or notification requirements set forth in this Act does so as an employee of a residential facility, both the residential facility and the employee shall be jointly and severally liable for the monetary damages, punitive damages, reasonable attorney's fees, costs, and expenses set forth in Section 35 of this Act.

Section 45. Rights. The rights and remedies provided for in this Act are meant to supplant those available under the common law as of the effective date of this Act, but do not affect an individual's common law rights as they existed before the effective date of this Act. The rights and remedies provided under this Act are supplemental to any other rights and remedies provided by law.

Section 99. Effective date. This Act takes effect upon becoming law.