

## **FLORIDA DEPENDENCY BENCHCARD: PSYCHOTROPIC MEDICATIONS**

### ***If the child comes into care with psychotropic medication already prescribed:***

1. DCF should attempt to obtain permission from the parent to continue the psychotropic medication. §39.407(2)(a)1, Florida Statutes.
  - a. If parental authorization cannot be obtained, DCF may take possession of the remaining medication and may continue to provide the medication as prescribed until the shelter hearing, if it is determined that the medication is a current prescription for that child and the medication is in its original container. §39.407(3)(b)1, Florida Statutes.
  - b. If DCF continues to provide the psychotropic medication to a child when parental authorization cannot be obtained, the department shall notify the parent or legal guardian as soon as possible. The child's official departmental record must include the reason parental authorization was not initially obtained and an explanation of why the medication is necessary for the child's well-being. §39.407(3)(b)2, Florida Statutes.
2. If DCF is unable to get parental authorization and DCF is advised by a physician that the child should continue the psychotropic medication, DCF shall request court authorization at the shelter hearing to continue to provide the psychotropic medication and shall provide to the court any information in its possession in support of the request. Any authorization granted at the shelter hearing may extend only:
  - a. until the arraignment hearing on the petition for adjudication of dependency or
  - b. 28 days following the date of removal, whichever occurs sooner. §39.407(3)(b)3; Fla.R.Juv.P. Rule 8.355(c)(1)(A).
3. DCF should then schedule a physical evaluation with a licensed physician. §39.407(3)(b)4, Florida Statutes. DCF should also consider requesting a Comprehensive Behavioral Health Assessment (CBHA).
4. As a result of the required physician's evaluation, if DCF believes it is appropriate to continue the psychotropic medication beyond the time authorized by the court at the shelter hearing, DCF shall file a motion seeking continued court authorization at the same time as it files the dependency petition, within 21 days after the shelter hearing. §39.407(3)(b)(4), Florida Statutes; Fla.R.Juv.P. Rule 8.355(c)(1)(B). The motion must be supported by:

- a. a written report prepared by DCF which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child;
- b. the prescribing physician's signed medical report providing:
  - 1. The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.
  - 2. A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.
  - 3. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.
  - 4. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.
  - 5. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends.
  - 6. If the child's prescribing physician certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order.
- c. The medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm.
- d. The department must submit a motion seeking continuation of the medication and the physician's medical report to the court, the child's guardian ad litem, and all other parties within 3 working days after the department commences providing the medication to the child.

1. The department shall seek the order at the next regularly scheduled court hearing, or within 30 days after the date of the prescription, whichever occurs sooner.
2. If any party objects to the department's motion, the court shall hold a hearing within 7 days. §39.407(3)(e)1, Florida Statutes.
7. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization. §39.407(3)(e)2, Florida Statutes.
8. Note: §39.402(11)(b), Florida Statutes, requires the court to request the parent's consent to provide access to the child's medical records and further requires that when a parent is unavailable or unable to consent or withholds consent and the court deems access to the records necessary to provide services to the child, the court is to issue an order granting access to the records.
9. Note: §39.402(11)(c), Florida Statutes, requires the court to request that the parents consent to provide access to the child's educational records and further requires that when a parent is unavailable or unable to consent or withholds consent and the court deems access to the records and information is necessary to provide services to the child, the court shall issue an order granting access.

***If child needs to be evaluated/prescribed psychotropic medication after coming into care:***

1. DCF should schedule a physical evaluation with a licensed physician. §39.407(3)(b)4, Florida Statutes. DCF should also consider requesting a Comprehensive Behavioral Health Assessment (CBHA), and ensure that all medical reports have been provided to the prescribing physician.
2. If the parents have not consented, DCF shall file a motion with the court to authorize the administration of the psychotropic medication. The motion shall include the following information:
  - a. DCF's written report describing the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and describing other treatments considered or recommended for the child; and
  - b. The prescribing physician's signed medical report, as required by law. Fla.R.Juv.P. Rule 8.355(a)(1).
3. The court shall hear DCF's motion at the next regularly scheduled court hearing required by law, or within 30 days after the date of the prescription, whichever occurs sooner. However, if any party files an objection to the motion, the court shall hold a hearing within 7 days. Fla.R.Juv.P. Rule 8.355(c)(2)(C).

4. Determine whether parties were properly served or noticed, if not in attendance.
  - a. DCF must have notified all parties of the proposed action taken in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to DCF's motion, that party should have filed the objection within 2 working days. §39.407(3)(d)1, Florida Statutes; Fla.R.Juv.P. Rules 8.355(a)(2), 8.355(a)(3).
  - b. If no party timely files an objection to DCF's motion, the court may enter its order authorizing the proposed administration of the psychotropic medication without a hearing. Fla.R.Juv.P. Rule 8.355(b)(1).
5. Verify that DCF obtained a medical evaluation to determine the need to initiate or continue a psychotropic medication before filing the dependency petition. §39.407(3)(b)(4), Florida Statutes.
6. Determine if DCF attempted to include the parents in the decision making process. §39.407(3)(a)1, Florida Statutes.
  - a. Did DCF take steps to include the parent in the child's consultation with the physician? §39.407(3)(a)1, Florida Statutes.
  - b. Did DCF attempt to obtain express and informed consent from the parents before filing the motion? §39.407(3)(a)1, Florida Statutes.
7. Confirm that DCF provided the evaluating physician with all pertinent medical information known to DCF concerning that child. §39.407(3)(a)2, Florida Statutes.
8. Verify that DCF's motion was supported by a written report prepared by the department which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child. In addition, the motion must be supported by the prescribing physician's signed medical report providing:
  - a. The name of the child, the name and range of the dosage, and that the child's need is based upon a diagnosed condition for which such medication is being prescribed.
  - b. A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.
  - c. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.
  - d. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored,

followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.

- e. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends. §39.407(3)(c), Florida Statutes.

NOTE: The medical report of the prescribing physician is admissible into evidence. Fla.R.Juv.P. Rule 8.355(b)(2)(A).

- 9. Ask whether or not the child consents to the medication. §39.407(8), Florida Statutes.
- 10. Determine if the motion for medication is in the child's best interests. §39.407(3)(d)1, Florida Statutes; Fla.R.Juv.P. Rule 8.355(b)(2)(D).
- 11. Ask DCF whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child by DCF which the prescribing physician considers to be necessary or beneficial in treating the child's medical condition and which the physician recommends or expects to provide to the child in concert with the medication. §39.407(3)(d)1, Florida Statutes; Fla.R.Juv.P. Rule 8.355(b)(2)(B).
- 12. Be aware that the court may order additional medical consultation or require DCF to obtain a second opinion within 21 calendar days. The department must make a referral for an appointment for a second opinion with a physician within 1 working day. §39.407(3)(d)1, Florida Statutes.
- 13. The court may not order the discontinuation of prescribed psychotropic medication if such order is contrary to the decision of the prescribing physician unless the court first obtains an opinion from a licensed psychiatrist, if available, or, if not available, a physician stating that more likely than not, discontinuing the medication would not cause significant harm to the child. If, however, the prescribing psychiatrist specializes in mental health care for children and adolescents, the court may not order the discontinuation of prescribed psychotropic medication unless the required opinion is also from a psychiatrist who specializes in mental health care for children and adolescents. The court may also order the discontinuation of prescribed psychotropic medication if a child's treating physician states that continuing the prescribed psychotropic medication would cause significant harm to the child due to a diagnosed non-psychiatric medical condition. §39.407(3)(d)1, Florida Statutes.
  - a. When the court orders an additional medical consultation or second medical opinion, the department is required to file a written report including the results of this additional consultation or a copy of the second medical opinion with the court within the time required by the court. Fla.R.Juv.P. Rule 8.355(b)(1).

14. The burden of proof shall be by a preponderance of the evidence. §39.407(3)(d)2, Florida Statutes.

***Follow up:***

1. The department shall fully inform the court of the child's medical and behavioral status as part of the JRSSR and shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, the court may review the status more frequently. §39.407(3)(f)1, Florida Statutes.
2. The parents or legal custodian remain financially responsible for the cost of medical treatment provided to the child even if either one or both of the parents or if the legal custodian did not consent to the medical treatment. After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse the department or other provider of medical services for treatment provided. §39.407(13), Florida Statutes.
3. DCF may consent to medical treatment for a dependent child when the child has been committed to the department and the department has become the legal custodian of the child. §39.407(14), Florida Statutes.

***General information:***

1. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization. §39.407(3)(e)2, Florida Statutes; Fla.R.Juv.P. Rule 8.355(c)(3).
2. If the child's prescribing physician certifies in the signed medical report that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's medical report to the court, the child's guardian ad litem, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a hearing within 7 days. §39.407(3)(e)1, Florida Statutes. Fla.R.Juv.P. Rule 8.355(c)(2).