



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5279

Introduced 2/3/2010, 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.

LRB096 19253 KTG 34644 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning children.

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

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

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

21 Section 10. Definitions. As used in this Act:

22 "Authorized agent" means a staff member for the Department

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

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

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

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

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

22 "IDOC" means the Illinois Department of Corrections.

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

1 children and adolescents.

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

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

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

20 Section 15. General provisions.

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

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

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

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

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

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

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

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

26 (2) Annual training.

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

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

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

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

23 Section 20. Medication approval standards.

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

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

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

26 (c) Every authorization for the administration of a

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

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

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

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

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

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

4 Section 25. Children in residential facilities.

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

- 10 (1) The child's name, age, weight, and diagnosis.
- 11 (2) The medication to be administered.
- 12 (3) The dosage and frequency of the medication.
- 13 (4) The duration of administering the medication,
14 which in no event shall exceed 180 days.
- 15 (5) Target symptom or symptoms and behavior.
- 16 (6) Other medication the child is receiving.
- 17 (7) The potential side effects of the medication which
18 are of greatest concern.
- 19 (8) The name of the prescribing physician.
- 20 (9) In the case of children who are 14 years of age or
21 older, whether the ward objects to the administration of
22 the medication.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (g) The Department shall offer training at least once every
26 6 months for personnel employed by residential facilities

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

3 Section 30. Miscellaneous provisions.

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

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

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

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

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

8 (1) Monetary damages in either of the following
9 amounts, whichever is greater: (i) actual damages or (ii)
10 \$5,000 for each violation. A separate and distinct
11 violation shall be regarded as committed each day that the
12 person fails to comply with this Act.

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

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

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

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

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