

Report of Gabriel Myers Work Group



August 20, 2009

**Charlie Crist
Governor**



**George H. Sheldon
Secretary**



EXECUTIVE SUMMARY

Florida Department of Children and Families Secretary, George H. Sheldon, appointed the Gabriel Myers Work Group in April 2009 to analyze and make recommendations regarding Gabriel Myers, a 7-year-old in foster care who apparently hanged himself on April 16, 2009 at the home of his foster parents in Margate, Florida.

The Work Group convened six times and included:

- Dr. James D. Sewell, Assistant Commissioner (Retired), Florida Department of Law Enforcement, Chair
- Bill Janes, Assistant Secretary for Substance Abuse and Mental Health, Department of Children and Families
- Robin Rosenberg, Deputy Director, Florida's Children First
- Dr. Rajiv Tandon, Professor of Psychiatry, University of Florida College of Medicine
- Dr. Anne Wells, Chief, Medicaid Pharmacy Services, Agency for Health Care Administration

The Department of Children and Families (DCF) posted all information and reports regarding the Gabriel Myers case, including what was presented to the Work Group, on the DCF Web site (<http://www.dcf.state.fl.us/admin/GMWorkgroup/index.shtml>) in order to be open and accountable to the public and to fulfill the commitment of the Department of Children and Families of transparency. The Work Group identified 148 findings in ten areas related to the case of Gabriel Myers and the use of psychotropic medication for children in out-of-home foster care. The Work Group determined that a detailed framework of safeguards for Florida's foster children exists and is articulated in statute, administrative rule, and operating procedures. The core failures in the system, however, stem from lack of compliance with this framework and with failures in communication, advocacy, supervision, monitoring, and oversight.

As the Report notes, it is essential that all participants in Florida's child welfare system understand that each foster child should be cared for and treated as we would our own children. The primary issue to be addressed is not whether psychotropic medications are over-prescribed or under-prescribed in treating our children. Instead, it is whether such medications are necessary and properly prescribed, approved, administered, monitored, and as soon as practical, concluded for a child in care.

The Work Group submitted this Report with these findings to the Task Force for Fostering Success, chaired by former DCF Secretary Bob Butterworth, for review and action. The recommendations that will ultimately result should guide the State of Florida, the Department of Children and Families, and its community-based partners in needed changes to the culture, policy and procedures within Florida's child welfare system.

REPORT OF GABRIEL MYERS WORK GROUP

Table of Contents

Introduction

Members of the Work Group and Designated Advisors

Charge to the Work Group

Meetings of the Work Group

Findings of the Gabriel Myers Work Group

 The Case of Gabriel Myers

 The Use of Psychotropic Medications to Treat
 Children in Foster Care

 Comprehensive Behavioral Health Assessments

 Information contained in the Florida Safe Families
 Network (FSFN)

 Informed Consent and Judicial Review

 Information Sharing

 Behavioral Health Care

 Individual and Agency Accountability

 Implementation of the “*Red Item Report on
 Psychotropic Drug Use in Foster Care*”

 Ensuring Best Practices

Recommended Future Actions

Report of the Gabriel Myers Work Group

Introduction

On April 29, 2009, Department of Children and Families (DCF) Secretary George H. Sheldon designated a work group to determine the facts and circumstances surrounding the death of 7-year-old Gabriel Myers on April 16, 2009. The initial police report indicated he apparently hanged himself in the shower of his foster parents' Margate home. Gabriel was brought into care on June 29, 2008, and, during the subsequent 10 months, was in foster care. He was prescribed psychotropic medications at the time of his death.

Members of the Work Group and Designated Advisors

As originally established by Secretary Sheldon, the Work Group is composed of five members:

- Dr. James D. Sewell, Assistant Commissioner (Retired), Florida Department of Law Enforcement, Chair
- Bill Janes, Assistant Secretary for Substance Abuse and Mental Health, Department of Children and Families
- Robin Rosenberg, Deputy Director, Florida's Children First
- Dr. Rajiv Tandon, Professor of Psychiatry, University of Florida College of Medicine
- Dr. Anne Wells, Chief, Medicaid Pharmacy Services, Agency for Health Care Administration

Secretary Sheldon also identified a number of advisors to assist the Work Group during the course of its efforts:

- Betty Busbee, former Chair, Florida Statewide Advocacy Council
- Theresa A. Flury, Executive Director, Statewide Guardian ad Litem Office
- Judge John Frusciante, Seventeenth Judicial Circuit
- Dr. Mike Haney, Director, Prevention and Intervention, Children's Medical Services, Department of Health

Personnel from the Department of Children and Families and the Governor's Office of Drug Control provided staff support for the Work Group.

Charge to the Work Group

The Work Group established by Secretary Sheldon was charged with examining three issues:

- The specific case of Gabriel Myers;
- The use of psychotropic drugs to treat children in foster care; and
- Child-on-child sexual abuse

In delivering his remarks to the Work Group at its first session, Secretary Sheldon asked the Work Group to:

- Take an independent look at this case and its implications on the way in which DCF does business throughout the State.
- Make a comprehensive examination of this case, including closely examining what went right and what went wrong.
- Draw on any necessary resources in performing this study, including members of DCF Operations and Program staffs, the Guardian ad Litem Program, ChildNet, Broward County Sheriff's Office, Margate Police Department, State Child Protection Team, Agency for Health Care Administration and necessary health care practitioners, and members of the Judiciary.
- Consider existing documentation, including the Florida Supreme Court report prepared by Judge Steven Leifman, reports submitted previously by the Florida Statewide Advocacy Council, and material previously provided to former Secretary Butterworth and Secretary Sheldon by Florida YouthShine.
- Provide a comprehensive analysis of the issues involved which would allow the Task Force for Fostering Success, chaired by General Butterworth, and the Department of Children and Families to identify and implement improvements to the system in order to reduce the chances of such a horrible event from occurring in the future.
- Complete its tasks with the sense of urgency that is expected in this agency and by Florida's children.

Meetings of the Work Group

The Work Group held six public meetings:

- On May 14, 2009, in Ft. Lauderdale at the DCF Regional Office
- On June 8, 2009, in Tampa at the DCF Regional Office
- On June 18, 2009, in Ft. Lauderdale at the DCF Regional Office

- On July 6, 2009, in Tallahassee at the offices of the Big Bend Community Based Care Lead Agency
- On July 24 , 2009, in Tampa at the DCF Regional Office
- On August 5, 2009, in Tampa at the DCF Regional Office

Based on sign-in rosters completed for each session, an estimated 175 individuals attended these six meetings. The Work Group heard presentations and testimony from 32 individuals who were invited or requested the opportunity to speak.

In addition to information presented at its formal meetings, members of the Work Group reviewed myriad materials, including reports, statutes and operating procedures, and model policies, related to the issue of psychotropic medications. Copies of this material are maintained on the website created to support this Work Group (www.dcf.state.fl.us/admin.GMWorkgroup/index).

Findings of the Gabriel Myers Work Group

This Report documents 148 findings resulting from the Work Group’s public hearings and discussions about the issues with which it is charged. These findings fall into ten general areas:

- The Case of Gabriel Myers
- The Use of Psychotropic Medications to Treat Children in Foster Care
- Comprehensive Behavioral Health Assessments
- Information Contained in the Florida Safe Families Network
- Informed Consent and Judicial Review
- Information Sharing
- Behavioral Health Care
- Individual and Agency Accountability
- Implementation of the *Red Item Report on Psychotropic Drug Use in Foster Care*
- Ensuring Best Practices

Issue: The Case of Gabriel Myers

On April 16, 2009, 7-year-old Gabriel Myers apparently hanged himself in the residence of his foster parents. Gabriel had been adjudicated dependent on September 2, 2008, following the arrest of his mother and the filing of the abuse report that brought him into care on June 29, 2008. During the subsequent ten months, Gabriel was initially sheltered in a licensed foster home, then, after a positive home study, placed with relatives. When that placement broke down, he was returned to the licensed home in which he was initially placed. When that placement also broke down, he was sent to the licensed home in which he resided when he died. That home had previously served as a respite for Gabriel, and he was familiar with those surroundings. While in care, he received numerous mental health and behavioral assessments and underwent regular treatment from a psychiatrist and two therapists, one of whom documented that “it is clear that this child is overwhelmed with change and possibly re-experiencing trauma.”

Gabriel demonstrated a number of incidents of destructive behavior and conduct problems and was treated with counseling and several psychotropic medications. In February and March 2009, Gabriel experienced a number of significant events in life, including changes in foster homes, therapists, after-school programs, loss of privileges at home, and visitation arrangements with his mother, all of which may have contributed to his mental status at the time of his death.

Findings:

- It is clear that, throughout his placement in foster care and although he was attended by many well-meaning professionals, Gabriel Myers was “no one’s child.” No individual or agency became a champion to ensure that he was understood and that his needs were identified and met in a timely manner.
- Specific responsibility for the treatment and care of Gabriel Myers was not clearly fixed or effectively carried out.
- There appeared to be no sense of urgency driving the agencies and individuals responsible for Gabriel’s welfare.
- The case itself was replete with missed opportunities to more effectively serve the needs of this child. Numerous “red flags” signaling problems in Gabriel Myers’ life were evident but were not addressed adequately or in a timely manner.
- Individuals and agencies responsible for Gabriel’s welfare did not communicate regularly or effectively. Reports on his behavior, medication, and life changes were not fully and regularly shared among those charged with ensuring his welfare. Members of his treatment team did not adequately staff recommendations for Gabriel’s case, nor did they exchange information with the treating psychiatrist.
- Individuals and agencies responsible for Gabriel’s welfare did not communicate regularly or effectively coordinate their efforts at caring for his needs.
- Responsible parties failed to follow established law and operating procedures governing the administration of psychotropic medication, the appropriate obtaining of either informed parental consent or judicial authorization, and the notification of all involved parties.

- ChildNet is the Community Based Care Lead Agency providing services to foster children in Broward County, which includes the city of Margate. In the case of Gabriel Myers, the ChildNet case manager failed to adequately carry out his responsibilities.
- There was inadequate supervision of the assigned ChildNet case manager.
- There was inadequate oversight of the involved agencies by Department of Children and Families personnel.
- There was inadequate, incomplete, repetitive, and at times inaccurate documentation in Gabriel's case files.
- There was no documented effort to gather and disseminate all available information on Gabriel's background and case history.
- Appropriate agencies failed to respond when the foster parent clearly indicated by e-mail a number of behavioral issues and that Gabriel's foster care placement was in jeopardy. No action was taken to deal with the evident stress of the foster parent or his lack of success in managing behavior with punishment.
- No one followed up with Ohio authorities concerning Gabriel's medical and welfare history, and, specifically, his claims of sexual abuse were not investigated in a timely manner.
- Recommendations contained in the Comprehensive Behavioral Health Assessment and in reports by other therapists, including the Family Services Planning Team, were not effectively followed.
- The treatment team did not provide Gabriel Myers specific and upfront therapy to deal with identified trauma, possible post-traumatic stress disorder, and depression. The only intensive therapy was directed at the prevention of sexual behaviors.
- The case manager and supervisor did not ensure that recommended training to prepare the foster parents to deal with Gabriel Myers' unique background and behavior was provided.
- Parents and treatment team members apparently accepted discipline and punishment as the solution to Gabriel Myers' behaviors. There is little evidence of any behavioral assessment or behavioral analysis services beyond the initial Comprehensive Behavioral Health Assessment or of positive efforts to support Gabriel and encourage his success. The case demonstrated a

critical shortcoming in addressing the need for a behavioral analyst to support the foster parents and more effectively address Gabriel's behaviors.

- No signed consent form was maintained in the medical records.
- Too many changes occurred in Gabriel's life and environment in a short period of time, with poor communication among and without a coordinated assessment or response by those charged with his care.
- Despite the earnest efforts of ChildNet to ensure stability, there was no true placement stability, and Gabriel Myers' final placement was with working parents who were not always available or prepared for his unique needs.
- Gabriel Myers was left with an unauthorized caretaker on at least one occasion.
- The Work Group was not able to obtain sufficient information from the Broward County Schools to ascertain the school's role in Gabriel's care. From the information provided to the Work Group, however, it appears that school staff were not aware or sufficiently involved in resolving problems/concerns with Gabriel Myers. We defer reporting on this specific issue until such time as we can review appropriate records.
- As a result of the death of Gabriel Myers, the Broward County child welfare community has identified a number of measures which, if vigorously implemented, monitored, and institutionalized, should ensure more effective and comprehensive treatment of children in the future.
- Findings and corrective actions related to Gabriel's case have and will continue to impact children across this State.

Issue: The Use of Psychotropic Medications to Treat Children in Foster Care

Data presented to this Work Group indicates that, nationally, some 5% of all children are treated through the use of psychotropic medications. In Florida's foster care system, 15.2% of its children receive at least one such medication, according to a report dated August 14, 2009. In addition to actions of psychiatrists, many of these prescriptions are written by pediatricians and other primary care physicians. Because it is often asserted that psychotherapeutic medications in the general population of children are sometimes being used to help parents, teachers, and other caregivers to calm and manage, rather than treat children, this Work Group believes that the Department of Children and Families

has a higher requirement for due diligence prior to seeking approval for administering these drugs.

While this Work Group recognizes the difficulty in assisting our children, safeguards within the State's child welfare system must ensure that children are neither needlessly medicated nor denied access to potentially beneficial treatments, including medications. In treating our children in foster care, we must recognize that they are victims who have been abused, neglected, or abandoned, and whose lives require the attention and appropriate intervention of the State.

Currently, the Department of Children and Families requires a pre-consent review for all psychotropic medications prescribed to children between the ages of birth through five (5) years who are in out-of-home care when: a prescribing practitioner is initiating a psychotropic medication treatment plan; a proposed dosage change exceeds the previously anticipated range as specified in the psychotropic medication treatment plan; or a new psychotropic medication treatment plan is to be initiated. The Department of Children and Families contracts with the Department of Psychiatry within the University of Florida College Of Medicine to provide medical consultation via the MedConsult Line for these mandatory pre-consent reviews.

The Department of Children and Families also contracts with the University of Florida to make available the latest information on psychotropic medications to parents, foster parents, case managers, Guardians Ad Litem and the courts. The service is designed to provide callers with information to assist in giving express and informed consent for proposed medication for children in out-of-home care or enrolled in Behavioral Health Network (BNET). There were a total of 761 calls for consultation during the FY 2008-2009. Due to the increased focus on this issue, that number is anticipated to increase to approximately 2,000 in FY 2009-2010; consequently, the DCF has amended the contract to ensure timely, statewide response.

There is confusion within the child welfare and psychiatric communities about the use of the term "psychotropic medications" vs. "psychotherapeutic medications." Existing Florida statutes and DCF rules, policies, and procedures, however, utilize the term "psychotropic medication," and the Report of this Work Group will continue that practice.

Findings:

- It is essential that all participants in Florida's child welfare system understand that each foster child should be cared for and treated as we would our own children.
- The primary issue is not whether psychotropic medications are over-prescribed or whether they are under-prescribed; instead, it is whether

such medications are necessary and properly prescribed, administered, and monitored for a child in care.

- A framework for safeguards exists and is defined by statute, administrative rule, and operating procedures. The core failures in the system, however, stem from lack of compliance with this framework and with failures in communication, supervision, monitoring, and oversight.
- Current laws, rule, procedures, and practices do not clearly articulate the standard of psychiatric or behavioral health care expected for children in state foster care.
- Administrative requirements placed on those involved in the system with meeting the needs of the child are duplicative, excessive, and often not followed.
- The contract between DCF and the University of Florida College of Medicine currently does not include pre-consent authorization if the psychotropic medication prescribed for children five years of age and under is used solely for non-psychotherapeutic purposes.
- Pre-authorization requirements for psychotropic medications must allow for a timely response (within 24 hours) and specify emergency exceptions.
- As children move between residential placements their primary care and behavioral health providers often change, impacting the continuity and quality of care.
- There exists no requirement for either the foster parent or case worker to attend physician appointments with the child; on many occasions, the child may be accompanied only by a “transporter.”
- The designation of a health care advocate for each foster child could ensure on-going review, communication, and responsiveness to the medical needs of each child.
- Prescribing physicians often lack medical history and behavioral assessment recommendations, including basic information about the child, when writing prescriptions.
- All children should have a current physical examination which must be considered by the prescribing practitioner prior to the initiation of psychotropic medication, and physicians should ensure diligent, on-

going monitoring, including appropriate tests, for children receiving such medication.

- Physicians should commit sufficient time with each child patient to adequately evaluate and ensure proper follow-up, with necessary frequency, for their needs.
- Physicians should screen all children for traumatic brain injury before the initiation of psychotropic medication.
- The child's height and weight should be recorded in the records of the prescribing doctor and clinically considered during each visit.
- There appears to be no standardized requirement for the development and use of a medication discontinuation plan for a child receiving psychotropic medications.
- There is no coordinated statewide system of updating medical education, including on pharmacological issues, for physicians treating the State's foster children.
- The Department of Children and Families has developed no systematic involvement of Florida's medical community in addressing issues such as psychotropic medications for children.
- There are no regularly promulgated State guidelines for the use of psychotropic medications or the identification of best clinical practices to treat Florida's foster children.
- Each child should have an up-to-date, consolidated medical record, containing all health records of the child, capable of being electronically communicated and accessed by all appropriate caregivers, and preferably maintained by the primary care provider.
- There is no requirement for the reporting of adverse consequences of a psychotropic medication, nor is there adequate data collection documenting effects, side-effects, and adverse reactions.
- The intent of the 2005 statutory revisions requires informed consent when either the purpose or the effect of the medication is to alter brain functions. Policies on the use of psychotropic medications for non-psychotherapeutic purposes and the use of traditionally non-psychotropic medications for psychotherapeutic purposes are not clear.
- The administration of psychotropic medications cannot be viewed as an action separate and apart from the child's treatment plan and without the consideration of other therapeutic interventions.
- When medication is indicated, a combination of evidence-based therapy and medication produces better outcomes in changing the behavior of children. Consideration should be given to requiring

children who are prescribed medication for symptoms associated with mental health or substance abuse diagnoses to receive other services and supports, including psychotherapy or behavior therapy, in addition to medication management.

- Psychotropic medications are at times being used to help parents, teachers, and other caregivers calm and manage, rather than treat, children.
- Section 1006.0625 of Florida Statutes prohibits school district personnel from compelling a parent to place his or her child on medication. While, following changes in the law in 2005, the Department of Education promulgated a memorandum to district school superintendents regarding the role of district personnel in sharing observations of academic and behavioral performance and offering interventions to address concerns, anecdotal information indicates the need for further communication between the Department of Education and local school districts concerning this critical topic and the proper role of school personnel.
- Children receiving medications are not adequately monitored, nor are those involved in the process adequately informed regarding the long-term implications of these medications or alternative or adjunct treatments. This is particularly troubling for children on medications with “Black Box” warnings.
- The Department of Children and Families lacks a plan for the monitoring of psychotropic medication. A proven solution has been the response to the State’s forensic bed crisis with a daily report and weekly review by senior leadership. This critical issue should be elevated to the same level of attention by DCF senior leadership.
- The frequency and amount of psychotropic medications prescribed for children varies significantly among DCF regions.
- There is currently no standardized, comprehensive, on-going statewide program to train case workers and caregivers on issues related to psychotropic medications, including requirements relating to informed consent, monitoring of “Black Box” medications, and on-going responsibilities of members of the treatment team.
- Department training on psychotropic medications in 2004-05 was not comprehensive and has not been systematically sustained for newly hired personnel within the child welfare system.
- Participants in the child welfare system do not appear to have a comprehensive understanding of psychotropic medications, the approval process, and their specific role in that process.

- Participants in the child welfare system do not appear to have a comprehensive understanding of evidence-based practices that are known to effectively treat behavior disorders and psychiatric symptoms.
- It does not appear that prescribing physicians are regularly engaging age-appropriate children in the prescription process.
- It does not appear that prescribing physicians regularly document the child's perspective and position in the treatment visit notes.
- Concurrent Quality Assurance reports show that existing assessments and records are not being provided to prescribing physician.
- While the child's Guardian ad Litem is responsible for ascertaining and informing the court of the child's position, it is not clear that this is happening on a regular and consistent basis. Furthermore, not all foster children have a Guardian ad Litem.
- Any child who objects to the administration of medication, at any point in time, should be appointed counsel to directly represent his or her position.
- The Work Group heard a number of advocates express their view that the court should appoint an attorney for each child whose mental health needs suggest use of psychotropic medication. Further, many proffered that the best practice is for all children in dependency to be appointed an attorney (with sufficient training and experience to provide meaningful and effective assistance of counsel).
- There is no process to ensure coordination of care between therapeutic service providers and psychotropic medication prescribers.
- It is not clear whether existing Medicaid funding will support more active involvement by a prescriber in therapeutic treatment of children (in contrast to payment for medication management visits).
- Given recent Food and Drug Administration (FDA) rulings using the age of 10 for the cut-off on approval for many psychotropic medications, the current third-party review age limitation of under six should be raised to all children under the age of 11.
- Third party review should occur for all psychotropic medication of children in foster care.

Issue: Comprehensive Behavioral Health Assessments

The Comprehensive Behavioral Health Assessment (CBHA) is a psycho-social assessment that allows a comprehensive look at a child's behavioral health needs. Required within 30 days in all shelter cases and allowed under other circumstances, the purpose of the Comprehensive Behavioral Health Assessment is to integrate and interpret existing information and provide functional information to decision-makers in determining:

- The most appropriate out-of-home placement;
- Intervention strategies to accomplish family preservation, reunification, or re-entry and permanency planning; and
- Comprehensive service plans and behavioral health services that, when indicated, are incorporated into the child's case plan.

CBHAs must be performed by a licensed mental health practitioner or under the supervision of such a practitioner. Each must include direct observation of the child in three settings: home, school, and community. Children who are enrolled in Medicaid who meet specific criteria may have a CBHA performed once a year, and a CBHA may be requested when a child faces significant changes in his life or environment.

Findings:

- The goal of the Department of Children and Families is that all children 17 or younger entering out of home care who are Medicaid eligible are provided a Comprehensive Behavioral Health Assessment (CBHA). Testimony before this Work Group, however, indicated that not every child in foster care is eligible for or receives the Comprehensive Behavioral Health Assessment. The Department's goal should be a Comprehensive Behavioral Health Assessment on all children coming into foster care.
- Children currently entering state care who do not always receive Comprehensive Behavioral Health Assessments include children who are not Medicaid eligible (primarily immigrant children); children who do not enter via or remain in "shelter status" long enough for a CBHA to be ordered; and children who are placed in unlicensed settings (relative or non-relative placements).
- While often used early in a foster child's involvement with DCF, the Comprehensive Behavioral Health Assessment is not used on a regular basis to indicate progress of the child within the system unless there are clear emotional disturbances and a follow-up is requested.
- While subsequent CBHAs may be performed in certain circumstances, this Work Group received no evidence that CBHAs are routinely ordered for all children whose behaviors are deteriorating and whose emotional needs are escalating.

- Prescribing physicians may lack a comprehensive psychosocial history, yet still prescribe medications for psychotherapeutic purposes.
- Case plans too often show a gap between those services identified in the CBHA and those reflected in the child's case plan.
- Case plans too often reflect a gap between services identified in the CBHA and those actually being provided to the child.

Issue: Information contained in the Florida Safe Families Network (FSFN)

On April 20, 2009, Florida Safe Families Network (FSFN) records reflected that 1,949 of Florida's 20,453 children in out-of-home care were being treated with psychotropic medications. Subsequently, following increased attention on the issue and with additional training for child welfare personnel, an August 10, 2009, report indicated that 3,020 of 19,761 children in out-of-home care were actually receiving psychotropic medications.

In addition to the appointment of the Gabriel Myers Work Group, Secretary Sheldon ordered a special quality assurance (QA) review of every child in out-of-home care on psychotropic medications. As of July 30, 2009, the Department's quality assurance division has reviewed 1,022 cases and issued 2,222 corrective action requests to provider agencies. These action requests address deficiencies with legal informed consent, court orders, treatment plans, and data entry errors in the FSFN data system. Corrective actions are being tracked at the local level and progress is reported via on-going conference calls. To date, the Department has completed the review of children ages 0-11 and began case file reviews of children ages 12-13 on August 4, 2009.

The Gabriel Myers Work Group has received on-going briefings on the progress of these quality assurance reviews, which clearly identify deficiencies in data contained in FSFN and specify corrective action needed. Each of these reports has been included on the Gabriel Myers Web site reflecting the activities of this Work Group.

Findings:

- FSFN data are frequently incomplete and inaccurate. The information contained in FSFN is only as good as the information entered from the field; errors in input, regardless of the reasons for such errors, will continue to yield faulty information.
- DCF and Community Based Care Lead Agencies staff indicated that, as currently structured, FSFN is a data capture system that provides little support for effective case management.

- The pilot project being conducted by OurKids, the Community Based Care Lead Agency for Miami-Dade/Monroe Counties, is an outstanding application of MindShare as a platform for better analytical and case management applications of FSFN data.
- Case managers are required to enter medical information into FSFN, yet often do not understand the information and cannot verify its accuracy.
- FSFN has too many “free text” and “other” sections which complicate timely and effective use of the data system as an adequate monitoring device.
- The list of psychotropic medications in FSFN, while extensive, does not include all drugs used for such purposes. Testimony indicated that the purpose of the list is unclear to child welfare system participants and prescribing physicians.
- It must be recognized that FSFN is only a data system; by itself, it does not replace adequate supervision and monitoring.

Issue: Informed Consent and Judicial Review

Section 39.407, Florida Statutes, describes in detail the process for obtaining express and informed consent for the administration of psychotropic medications to children in the custody of the department. Subsection (3)(a) of that statute requires that any physician prescribing such medications to a child in the custody of the department must attempt to obtain “express and informed consent” as defined in s. 394.455(9), F.S. and described in s. 394.459(3)(a), F.S. For children whose parents’ rights have not been terminated, the prescribing physician must attempt to obtain written express and informed consent from the child’s parent or legal guardian.

Before giving express and informed consent, the following information must be provided and explained in plain language to the child’s parent or legal guardian and to the child, if age appropriate:

- the reason for admission or treatment;
- the proposed treatment;
- the purpose of the treatment to be provided;
- the common risks, benefits, and side effects thereof;
- the specific dosage range for the medication, when applicable;
- alternative treatment modalities;
- the approximate length of care;
- the potential effects of stopping treatment;
- how treatment will be monitored; and
- that any consent given for treatment may be revoked orally or in writing before or during the treatment period by the parent.

To assist the physician with securing the express and informed consent of the parent or legal guardian, the Department of Children and Families or its local partners must take steps necessary to facilitate the inclusion of the parent or legal guardian in the child's consultation with the physician.

If the parent is unavailable or unwilling to give express and informed consent, if the parent is unknown, or if the parent's parental rights have been terminated, a court order authorizing the administration of psychotropic medication must be requested. Except in defined emergency situations, that judicial review and court authorization must be obtained prior to the administration of the medication.

The motion requesting authorization for the administration of the medication must be filed by attorneys representing the State and be accompanied by a written report signed by the prescribing physician. The required elements of the medical report are outlined in the statute and closely track the requirements for express and informed consent, above. The prescribing physician is not required to testify in any hearing on the motion unless the court orders attendance or a party subpoenas the physician. Any objection to the motion must be filed within 2 working days of receipt of the motion by a party. If an objection is received, the court must schedule a hearing on the motion "as soon as possible."

Findings:

- The on-going analysis of data contained within the Florida Safe Families Network (FSFN) clearly showed that a significant portion of cases involving the administration of psychotropic medications to foster children did not meet the legal requirements relating to express and informed consent.
- The on-going analysis of data contained within the Florida Safe Families Network (FSFN) clearly showed that a significant portion of cases involving the administration of psychotropic medications to foster children did not meet the legal requirements relating to judicial review.
- Psychotropic medication is routinely administered to children in Florida without express and informed consent.
- The prescribing physician's report/affidavit varies among circuits; there is no common, statewide form. Information on these forms is often repetitive and/or unnecessary for the action requested.
- Prescriptions do not include a "when will medications stop" consideration in the informed consent process.
- Informed consent for use of psychotropic medications is a systemic problem. It appears that, too often, parents and/or the court are

unaware of critical issues involving medications, procedures are not followed, and documentation requirements are ignored.

- There is often insufficient exchange of information for parents or judges to make an informed decision involving psychotropic medications.
- There is no evidence that children are routinely provided notice of the proposed treatment with information on how to object in a timely fashion.
- The pre-consent process is unclear, particularly if a child is already taking a medication.
- The pre-consent age requirement is not understood (under 5 or under 6?)
- The prescribing physician too often fails to meet the legal and ethical duty to obtain informed consent before psychotropic medication is administered.
- Informed consent cannot be obtained without a direct conversation between the prescriber or a trained designee, and the person with authority to provide the consent, whether the parent or the judge. An exchange of paper can never substitute for the oral interchange and visual cues required for the prescriber (or designee) to ascertain that the "consenter" understands the decision being made.
- Informed intermediaries can be used as a tool to ensure effective communication and facilitate the obtaining of informed consent. Such an approach is not currently utilized in Florida's child welfare system.
- A true informed consent document should be signed by the parent in the presence of the prescribing physician who has explained all components of informed consent, including treatment alternatives.
- Child welfare workers do not currently have sufficient training to understand and obtain informed consent.
- There are numerous barriers to arranging a personal meeting between the "prescriber" and "consenter" - whether that be the parent or the court (e.g., it may be difficult for parents working full-time at low wage jobs to leave work for a physician's appointment, and frequently physicians do not have time to appear before the judge).
- Courts lack what was referred to as the "intimacy of daily association" with the affected foster children. Consequently, in determining the appropriateness of psychotropic medication, they must rely on information provided by a variety of other individuals, including the

case manager, foster parent, Guardian ad Litem, behavior analyst, therapist, and physician.

- As a general principle, courts will be able to render better decisions for children if judges sitting on the dependency bench have experience either as jurists or practitioners. Judges should not be placed in dependency unless they want to be there. Courts with strict rotation schedules should be encouraged to retain experienced dependency judges to work on behalf of children.
- Judges can more effectively meet the needs of children in foster care if:
 - They receive more education on treatment alternatives available to address behavior disorders and psychiatric symptoms.
 - They receive more education on the types of psychotropic medications and the illness they are designed to treat.
 - They are advised on best practices for obtaining informed consent.
 - They are provided with a judge's desk reference that would enable them to quickly access important information about each drug.
 - They are provided with a bench card to give them an at-a-glance guide on what they need to know or what evidence they need to take in order to render a decision.
 - There is a uniform statewide affidavit, developed with the input of physicians and other participants within the process, which will provide the information the court needs to make a decision.
 - There is an easier way to obtain a true second opinion (not just a consultation on the MedConsult Line).
- Children should be fully involved in and allowed to participate in court hearings involving their welfare and treatment.
- Court orders approving the use of psychotropic medications do not always contain other specific medical follow-up steps, such as blood and other appropriate tests, necessary to ensure the child's well-being.
- Medical ethics and best practices require that the "informed consent" process include an effort by the physician to obtain assent from children who lack the capacity to provide informed consent. Assent is a process by which a provider of medical services helps the patient achieve a developmentally appropriate awareness of the nature of his or her condition; informs the patient of what can be expected with tests and treatment; makes a clinical assessment of the patient's understanding of the situation and the factors influencing how he or she is responding; and solicits an expression of the patient's willingness to accept the proposed care.

- The American Academy of Child and Adolescent Psychiatry (AACAP) has promulgated a list of specific questions that decision makers should have answered before the child begins taking psychiatric medication. This list of questions is more tailored to the unique needs of children than the current “informed consent” guidelines in statute and may be appropriate for further review.

Issue: Information Sharing

Florida’s foster care system requires the involvement of a number of agencies, both governmental and private, and myriad individuals to successfully manage the care of these children. When they have unique behavioral or medical needs, the involvement of other professionals becomes even more necessary. In such cases, it is vitally important that all participants in a child’s welfare regularly exchange critical information and continually communicate with other involved caregivers. Especially in complex cases, the use of multidisciplinary teams fosters the focus of a variety of professional expertise and viewpoints on the solution of that child’s specific issues.

Findings:

- The sharing of information, whether through interpersonal contact or data exchange, must ensure integrated care for Florida’s foster children and eliminate fragmentation of efforts.
- Data available through a number of systems (e.g., FSFN, AHCA Medicare, and MedConsult Line) are not regularly reviewed to indicate anomalies in the number of children receiving psychotropic medications or to ensure accuracy of data.
- The results of the Comprehensive Behavioral Health Assessment are not always transmitted to and shared among others involved in the child’s treatment, including the treating psychiatrist.
- The results of the Comprehensive Behavioral Health Assessment do not replace a functional behavior assessment.
- There is a need for a Web-based information system which, with proper security safeguards, allows access by all designated members of a foster child’s treatment team.
- Florida lacks data on children aging out of foster care and their continued use of psychotropic medication. Anecdotal evidence suggests that many youth discontinue medications after reaching adulthood without suffering adverse effects.

- Child fatality reviews have consistently identified the need for multidisciplinary staffings on complex cases. Currently, multidisciplinary staffings are not routinely conducted.
- Prescribing physicians do not always have access to all of the information about the child's medical, therapeutic and behavioral history that is available in the child welfare system.
- Sharing of information is primarily affected by two Federal laws, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which governs the use and disclosure of private health information, and the Family Education Rights and Privacy Act of 1974 (FERPA, also known as the Buckley Amendment), which protects the privacy of student educational records. It appears that misunderstandings concerning the intent and requirements of these laws foster artificial barriers to the sharing of information among foster children in care, especially with and between schools and between treating personnel.
- The current system requires numerous pieces of paper, necessitating duplication of information entries and creating a burden for all involved, and may result in inaccurate or incomplete information going to the persons who need it.
- Technology and technological solutions to many of the problems identified in this report can be better employed to: eliminate the duplication of entries; catalogue the treatments and medications of children; track the status of a prescribed medication in the prescription/consent/administration process and monitor any changes in prescriptions; allow all parties (and counsel) to view and confirm the accuracy of information; generate a “stop” or flag when system requirements, such as informed consent, do not occur; and facilitate and document information exchanges between therapists and prescribers.
- Prescribing physicians lack financial incentive to participate in multidisciplinary treatment teams.
- All persons with daily contact with a child (caregiver, school, day care) should have access to pertinent information concerning symptoms, medication side effects, expected changes in behavior, when to contact prescriber or an emergency room, and necessary ongoing monitoring.

- Standardized information sheets should be prepared for dissemination on most commonly used medications, and a template provided for new or additional medications being prescribed.
- Complete and accurate medical records are indispensable to safe and effective usage of psychotropic medications.
- Continuity of medical care, to the extent possible, will promote the well-being of children.
- No existing quality assurance review determines whether the child's health records are complete and up to date.
- Information systems and information-sharing practices should be capable of triggering a specific response from designated agencies when a pattern of “red flags” emerges.
- Elimination of needless and duplicative paperwork should result in efficiencies that lead to better care.

Issue: Behavioral Health Care

Coverage of children within the State’s foster care system is provided by a number of mental health plans and a number of funding sources, chiefly Medicaid. The Child Welfare Pre-Paid Mental Health Plan (CWPPMHP) covers children in licensed out of home care in most, but not all of the state. Community Mental Health covers children in licensed out of home care in AHCA Area 1 and 6 (except Hillsborough). A managed care plan covers children in Broward. Children who are not in licensed out of home care (at home under supervision, in relative or non-relative care) are not eligible for the CWPPMHP. Children who move between licensed and unlicensed placements will almost always change therapists. Even within the CWPPMHP, children who move between contracted residential providers often change therapists as the providers employ the therapists.

Findings

- The child welfare system does not maximize outcomes for children when it fails to provide them with consistent therapy provided by persons with whom they have a positive therapeutic relationship.
- The fragmentation of the existing mental health delivery ensures discontinuity of care when a child's residence changes.
- Coverage is fragmented among mental health plans.

- Current mental health coverage does not adequately provide behavioral support to caregivers, a situation frequently due to the lack of available competent and appropriately credentialed providers.
- Medicaid will not pay for non-cognitive behavioral therapy, including applied behavior analysis, for children with cognitive impairments who are not on a waiver from the Agency for Persons with Disabilities.
- Children are enrolled and unenrolled in health care plans without the knowledge and participation of caregivers which can cause discontinuity of care.
- Evidence based practices show improved outcomes for caregivers who receive parent training and direct support when caring for children with problem behaviors, yet those services are not routinely offered and are difficult to obtain when requested.
- Funding for behavioral supports has decreased.
- Caregivers are able to select health care providers for the children; a change of caregiver may result in change in health care provider.
- It is important to leave selection of provider to the caregiver; they will most often choose providers that are convenient and they trust, thus enhancing the likelihood that they will obtain care.
- If children have a "medical home," described by Children's Medical Services (CMS) of the Department of Health as "continual and comprehensive care that is managed and coordinated by a primary health care provider," then their complete record can easily be transferred to a new referral, and caregivers can be required to select providers who meet requirements of providing "medical home" (perhaps using the CMS Network Credentialing Criteria).

Issue: Individual and Agency Accountability

The care of Florida's foster children demands the accountability of those concerned with ensuring their welfare and protecting their interests. To that end, each participating individual and agency in the child welfare system must clearly understand, commit to, and fulfill their defined role. In particular, agencies throughout the State must accept and exercise their responsibility for the accountability of those in their charge, and the Department of Children and Families must effectively exercise its responsibility for the oversight of those who work within this partner-driven system.

Findings:

- The responsibilities for the treatment of a foster child are well established in statute and administrative code. However, in application and particularly within local systems of care, the child welfare system lacks a clear delineation of and education on the roles and responsibilities of all those involved in the treatment of a foster child, including the case worker, foster parent, physician, judge, guardian ad litem, attorney, and contracted providers.
- Within the Department of Children and Families, issues related to the mental health of children fall within the responsibilities of both the Office of Family Safety and the Office of Children's Mental Health, with no clear definition of the responsibilities or coordination required of each.
- The Department of Children and Families lacks a central medical leadership position, such as a Chief Medical Officer, charged with ensuring coordination of all medical and psychiatric efforts of and decisions by the agency.
- Regardless of any other areas of personal skills or expertise, it is critical that the case manager be viewed as the subject matter expert on a single item: each child assigned to his/her care.
- There is a need for enhanced oversight of children in foster care by the judiciary assigned to dependency cases.
- Assigned responsibility, and the subsequent accountability, for ensuring on-going compliance with agreements among agencies (e.g., the Interagency Agreement to Coordinate Services for Children Served by the Florida Child Welfare System) and for action plans resulting from cases such as Rilya Wilson or the Red Item Report, are lacking.
- Performance measures for the Department of Children and Families and their community-based partners should reflect the core issues related to the use of psychotropic medication to treat Florida's foster children, including compliance with statutory safeguards.
- The Department of Children and Families should ensure that its efforts at quality assurance are structured and performed in such a manner and with such regularity to identify and correct in a timely fashion the issues that are the focus of this Report.
- Contractual accountability and performance requirements for community-based care agencies and the providers with whom they

contract appear to be loosely monitored and enforced by the Department of Children and Families

Issue: Implementation of the *Red Item Report on Psychotropic Drug Use in Foster Care*

In its 2003 Report to Governor Jeb Bush, the Statewide Advocacy Council recommended that the State:

- Develop and implement a quality assurance program for monitoring the use of these drugs in children. Such a system would ensure that appropriate attempts at behavior management were implemented and that the prescribing of drugs is a last resort.
- Develop a Plan of Care to include counseling for anger, self-esteem, positive reinforcement, dealing with fear and attitude, and character building traits. Not all foster children will need this counseling but it should be available for those that do.
- Ensure that appropriate standardized written informed consent is obtained prior to starting any child on psychotropic medication. This consent should include information about any risks and expected benefits, including possible side effects and alternative treatments.
- Ensure that everyone who administers psychotropic medications to children in a foster care setting is trained to recognize the side effects of medications.
- Ensure that pediatric psychiatrists perform medical examinations prior to implementation of these drugs. These doctors understand and recognize potential side effects of these drugs when used in children.
- Ensure that foster care records for each child contain organized information and that medical records are easily found.
- Ensure when more than one physician is ordering medications that Medical Passports are current and made available to each physician.

The Statewide Advocacy Council concluded that “It is imperative that the foster care children in the State of Florida receive the necessary medical treatment they need, however, unnecessary dispensing of psychotropic medication remains a threat to them. Until there is more information regarding the safety and efficiency of these drugs, Florida’s foster care children should be monitored closely. The information in this report should be immediately incorporated into an agenda in order to preserve and protect the health, safety, welfare and rights of children in foster care.”

Findings:

- These recommendations offer a common sense approach to protecting those foster children who face the administration of psychotropic medication as a treatment alternative.

- While the Department of Children and Families began implementation of some of these recommendations, their practice has not been institutionalized into the policies, procedures, or performance of the agency or its community-based partners.

Issue: Ensuring Best Practices

In a presentation before the Gabriel Myers Work Group, Dr. Christopher Bellonci offered a number of principles necessary to ensure best practices in screening, assessment, and treatment of mental health issues in child welfare:

Principle 1: In establishing informed consent, information must be given to the child, youth, family (bio-parent, foster parent, or caregiver), and the caseworker/state-assigned decision maker about the treatment options (both medication and non-medication options), the risks/side effects and benefits of the medication, the targeted symptoms, and the course of treatment.

Principle 2: The child welfare agency must document (for example, in the medical passport) the medications the child or youth is taking, the child’s or youth’s response to the medications, risks/side effects and benefits of the medications, and the time-frames for the elicited response. This documentation will follow the child or youth throughout his or her stay in care.

Principle 3: The prescriber should have ongoing communication with the child and caregiver to monitor treatment response and side-effects on a continuing basis, and discuss with the child adherence to medications and any medication changes in the context of an engaged collaborative therapeutic relationship.

Principle 4: Recognized clinical rating scales or other measures should be used to quantify the response of the child’s target symptoms to treatment and the progress made toward treatment goals. In the initial phase of treatment (during the initial three months on a particular medication or regiment), visits should take place on at least a monthly basis, or more frequently if the child’s condition is unstable or worsening.

Principle 5: Caseworkers will know or have training on:

- child and adolescent development
- neuro-developmental effects of prenatal substance exposure
- common mental health disorders in the child welfare population
- effective treatment options for these mental health disorders

Principle 6: Youth and families should be provided ongoing information on the diagnosed mental health disorder, effective treatment options, and managing life with the condition, including:

- what to expect in the future
- how severe the condition is

- can the youth not take medication in the future
- what can be done instead of medication
- how to access help in the future

Principle 7: The agency should ensure transition planning in advance of youth leaving care that includes identification of providers and source of payment for treatment.

Principle 8: The child welfare agency should encourage, support, and monitor the mental health needs and access to psychotherapeutic medications and other mental health services for birth families.

Principle 9: The agency should periodically conduct reviews of patterns of psychotherapeutic medication use within its caseload, on an aggregate- and provider-specific basis, and take necessary action in response to findings of such reviews.

Findings:

- Principles such as those listed above should be accepted and clearly articulated as necessary and appropriate for the treatment of children within Florida’s child welfare system.
- The training reflected in Principle 5 should be extended to all participants in the child welfare system.

Recommended Future Actions

With the submission of these findings to the Task Force for Fostering Success, this Work Group recognizes that several additional steps should be taken:

- At the direction of the Task Force, the Work Group should continue its deliberations and present specific recommendations for system action at the next meeting of the Task Force.
- Upon approval of these recommendations, the Department of Children and Families, in conjunction with appropriate State and community partners, should develop an action plan for their implementation. Monitoring of this action plan should occur through both Departmental management and the Task Force on Fostering Success.
- The Work Group, in conjunction with the established committee of the Task Force, should begin its review of and develop findings regarding issues relating to child-on-child sexual abuse.
- The Department of Children and Families must continue its efforts to ensure the quality of information contained within the Florida Safe Families Network.
- Any other State agency, such as the Department of Juvenile Justice, charged with dealing with foster children should ensure that their

policies, procedures, practices, oversight, and data systems relating to psychotropic medications are adequate, up-to-date, and meet legal standards.

- Sufficient concerns have been expressed to Work Group members to warrant further investigation by appropriate professionals or agencies, such as the Agency for Health Care Administration or the Department of Health, into the prescribing practices of doctors with large volume of psychotropic medication prescriptions. In keeping with this, the Agency for Health Care Administration should continue and expand its efforts conducted in conjunction with the University of South Florida to monitor such practices. Additionally, further review should explore any use of foster children in clinical trials relating to psychotropic medications.
- The State of Florida, through Governor Crist and Secretary Sheldon, should take a leadership role in raising this issue to national prominence in order to develop a comprehensive nationwide approach to the use of medication to treat our children.

As this Report concludes, it should be noted that, in carrying out its charge from Secretary Sheldon in a timely fashion, the Work Group focused on the major issues impacting the care of Gabriel Myers and issues affecting the treatment of foster care children, including the use of psychotropic medications. Other issues, particularly those dealing with management and funding for the recommendations emerging from these findings remain and must be addressed by appropriate Executive and Legislative branch agencies.