

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 998

INTRODUCER: Senator Ring

SUBJECT: Treatment Programs

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 998 establishes licensure, regulatory, operational, and administrative standards for residential treatment programs and outdoor youth programs. A residential treatment program offers room and board, and provides specialized treatment and rehabilitation or habilitation services for individuals with emotional, psychological, developmental, or behavioral problems or disorders or chemical dependencies. An outdoor youth program offers wilderness hiking and camping experiences as a form of rehabilitation treatment and services for youth with emotional, psychological, developmental, or behavioral problems or disorders or chemical dependencies. Both programs are intended to assist clients in acquiring the social and behavioral skills necessary for living independently in the community.

II. Present Situation:

Current law provides for a variety of residential programs for persons with emotional maladies, substance abuse dependencies, and developmental disabilities. Multiple state agencies have responsibility for establishing and enforcing regulatory standards for these programs, including the Department of Children and Families (department), the Agency for Health Care Administration (agency), and the Agency for Persons with Disabilities (APD).

Mental health residential treatment centers are licensed under s. 394.875, F.S. Long-term residential facilities include facilities for residential treatment [for adults] and residential treatment centers for children and adolescents.¹

The purpose of a residential treatment facility is to be part of a comprehensive treatment program for mentally ill individuals in a community-based residential setting.² A mental health residential

¹ “Child” means a person from birth until the person’s 13th birthday. *See* s. 394.492(3), F.S. “Adolescent” means a person who is at least 13 years of age but under 18 years of age. *See* s. 394.492(1), F.S.

² Section 394.875(1)(b), F.S.

treatment facility must provide a long term, homelike residential environment that provides care, support, assistance and limited supervision in daily living to adults diagnosed with a serious and persistent major mental illness who do not have another primary residence. The average length of stay must be 60 days or longer. Residential treatment centers are divided into five licensure classifications, referred to as levels. The level designation depends upon the functional capabilities of the residents and the care and supervision needed by those residents. Different regulatory standards apply to each level.³

The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services to children and adolescents who are experiencing an acute mental or emotional crisis, have a serious emotional disturbance or mental illness,⁴ or have an emotional disturbance.^{5,6} Children may be admitted through the mental health system or through the protective custody provisions in ch. 39, F.S.⁷ Similar residential settings include therapeutic group homes. The department, in consultation with the agency, has adopted rules governing residential treatment centers for children and adolescents which specify licensure standards for: admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, time-out; rights of patients; use of psychotropic medications; and standards for the operation of such facilities.⁸

A license issued by the agency is required in order to operate or act as a residential treatment center or a residential treatment center for children and adolescents in this state.⁹ In addition to other documentation required for licensure, applicants must provide proof of liability insurance coverage in amounts set by the department and the agency by rule.¹⁰ The agency and the department may enter and inspect any licensed facility and access clinical records of any client to determine compliance with applicable laws and rules and the agency and the department may also inspect an unlicensed premises either with the permission of the person in charge or pursuant to a warrant.¹¹

Residential facilities also exist for persons with developmental disabilities. For example, a group home facility is a residential facility which provides a family living environment including the

³ Rule 65E-4.016(1), F.A.C.

⁴ “Child or adolescent who has a serious emotional disturbance or mental illness” means a person under 18 years of age who is diagnosed as having a mental, emotional, or behavioral disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and exhibits behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community, which behaviors are not considered to be a temporary response to a stressful situation. The term includes a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1), F.S.

⁵ “Child or adolescent who has an emotional disturbance” means a person under 18 years of age who is diagnosed with a mental, emotional, or behavioral disorder of sufficient duration to meet one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, but who does not exhibit behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community. The emotional disturbance must not be considered to be a temporary response to a stressful situation. The term does not include a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1), 394.492(5), F.S.

⁶ Section 394.875(1)(c), F.S.

⁷ Rule chapter 65E-9, F.A.C.

⁸ See Section 394.875(8), F.S., and Rule chapter 65E-9, F.A.C.

⁹ Section 394.875(2), F.S.

¹⁰ Section 394.876(2), F.S.

¹¹ Section 394.90(1) and (2), F.S.

care necessary to meet the physical, emotional, and social needs of its residents.¹² The capacity of a group home facility is between 4 and 15 residents.

An intermediate care facility for the developmentally disabled (ICF/DD) is a residential facility licensed and certified under state law and also certified by the Federal Government, pursuant to the Social Security Act, as a provider of Medicaid services to persons who have developmental disabilities.¹³

The APD provides through its licensing authority and by rule license application procedures, provider qualifications, facility and client care standards, requirements for client records, requirements for staff qualifications and training, and requirements for monitoring foster care facilities, group home facilities, residential habilitation centers,¹⁴ and comprehensive transitional education programs that serve APD clients.¹⁵

III. Effect of Proposed Changes:

Residential Treatment Program

Section 394.88, F.S., is created to establish a residential treatment program (RTP) within the statutory chapter relating to mental health. The purpose of the new program is to offer room and board and to provide, or arrange for the provision of, specialized treatment and rehabilitation or habilitation services for individuals with emotional, psychological, developmental, or behavioral problems or disorders or chemical dependencies. The RTP may be available to adults, children, and youth. The goal of the RTP is to assist these individuals in acquiring the social and behavioral skills necessary for living independently in the community.

Rehabilitative services are described within the definition of “mental health services” and “substance abuse services” in the part IV of ch. 394, F.S.,¹⁶ so the definition is applicable to the new residential treatment program created in this bill. Within the definition of mental health services rehabilitative services are described as services which are intended to reduce or eliminate the disability that is associated with mental illness. Rehabilitative services may include assessment of personal goals and strengths, readiness preparation, specific skill training, and assistance in designing environments that enable individuals to maximize their functioning and community participation.¹⁷ Within the definition of substance abuse services, rehabilitation services are described as including residential, outpatient, day or night, case management, in-home, psychiatric, and medical treatment, and methadone or medication management.¹⁸

Habilitation services are not defined or used in ch. 394, F.S. However, habilitation is defined in ch. 393, F.S., relating to developmental disabilities to mean the process by which a client is

¹² Section 393.063(17), F.S.

¹³ Section 400.960(6), F.S.

¹⁴ A residential habilitation center is a community residential facility licensed under this ch. 393, F.S., which provides habilitation services. The capacity these facilities may not be fewer than nine residents. However, licensure of new After October 1, 1989, new residential habilitation centers created after October 1, 1989.

¹⁵ Section 393.067(1), F.S.

¹⁶ Part IV of ch. 394, F.S., Community Substance Abuse and Mental Health Services.

¹⁷ Section 394.67(15)(b), F.S.

¹⁸ Section 394.67(24)(d), F.S.

assisted to acquire and maintain those life skills which enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. Habilitation includes, but is not limited to, programs of formal structured education and treatment.

A RTP is defined in the bill as a 24-hour group living environment for four or more individuals unrelated to the owner or provider. A RTP must be licensed by the agency. The department, in consultation with the agency, shall establish by rule requirements for licensure, administration, and operation of RTPs.¹⁹

The program manager who is responsible for the operation of the program, the program facility, and the day-to-day supervision of the residents may be a psychologist. Similar programs currently authorized in statute require the program manager to be a psychiatrist.²⁰

The bill provides for screening residents prior to admission. A program that provides services to residents with substance abuse problems may not admit a person who is experiencing convulsions or delirium tremens or who is in shock, in a coma, or unconscious. Both staff and residents must be tested for tuberculosis prior to hiring or admission and at least annually thereafter.

A program that provides services to children and youth must:

- Provide a curriculum approved by the Department of Education. If the program provides its own school, it must be approved by the State Board of Education, the Southern Association of Colleges and Schools, or another educational accreditation organization.
- Conduct counseling sessions or other appropriate treatment, including skills development therapy. These services must be documented in each resident's individual record.
- Store and account for the child or youth's personal funds, including signatures for purchases that exceed \$20 per item.

A program that provides services to residents with disabilities must:

- Establish rules and policies governing the daily operations and activities, that are applicable to residents, staff, and family members.
- Ensure the resident has an individual plan that addresses day to day treatment.
- Maintain a monthly schedule of activities that is shared with residents and visitors.
- Maintain a record of all earned and unearned income as well as resident consumer service fees.
- Apply for unearned income benefits for the resident, in conjunction with the resident's parent or legal guardian and the APD.

The bill provides extensive detail with respect to requirements for program management, staffing, facilities, and operational functions such as food service, medication management, and educational and treatment responsibilities. These requirements include:

- Staffing –

¹⁹ Typically, when the agency is responsible for licensure of similar residential programs, the authority for rulemaking relating to this function is assigned to the agency, in consultation with the department that has operational responsibility.

²⁰ See Rule 65E-9.007(3), F.A.C., Licensure of Residential Treatment Centers, Staffing.

- Physicians, psychologists, mental health counselors, and advanced registered nurse practitioners who have been trained in providing medical services and treatment to individuals diagnosed with mental health and substance abuse problems, to individuals with disabilities, and to children and youth if the program services these populations must be on staff;
 - Two staff members must be on duty at all times with staffing ratios of at least 1 to 4 during awake hours and if the resident population is mixed gender, at least one staff member of each gender must be on duty at all times;
 - A person trained and certified in first aid and cardiopulmonary resuscitation must on duty at all times;
 - Student and volunteers may be used if adequately screened and trained; and
 - Additional requirements exist for programs providing services to children and youth and to residents with disabilities.
- Treatment and Education Requirements –
 - Preparing and updating a treatment plan for each resident; and
 - Maintaining and providing or administering medications as prescribed, with documentation of administration;
 - Facility requirements –
 - Maintaining documentation of compliance with local requirements including zoning ordinances, business licenses, building code, fire safety codes, and health codes;
 - If services are provided to residents with disabilities, the facility must be located where schools, churches, recreation, and other community facilities are available;
 - Maintaining a safe physical environment;
 - Maintaining the premises with respect to appearance and cleanliness;
 - Ensuring adequate space exists for business operations, activities, privacy, staff living and accommodations;
 - Providing at least the minimal resident density, living, sleeping, hygiene, and privacy spaces; and
 - Providing and maintaining appropriate quality, quantity, and variety of furniture and equipment, including laundry equipment and supplies;
 - Operational –
 - Employing a food service manager with specified credentialing or ensuring regular consultations with a licensed dietitian or nutritionist;
 - Providing nutritional and dietary meals and counseling in accordance with resident needs;
 - Maintaining kitchens, food service equipment, and dining spaces in accordance with the specifications in the bill; and
 - Implementing procedures for allowing residents to do laundry, prepare meals, and other chores.

Outdoor youth program

Section 394.89, F.S., is created to establish an outdoor youth program (OYP) within the statutory chapter relating to mental health. The purpose of the new program is to offer wilderness hiking and camping experiences through field group activities and expeditions as a form of

rehabilitation treatment and services for youth with emotional, psychological, developmental, or behavioral problems or disorders or chemical dependencies. The goal of the OYP is to assist these youth in acquiring the social and behavioral skills necessary for living independently in the community. A participant must be at least 13 and less than 18 years of age to enroll in a program.

The bill defines:

- “Field office” as the office in which all coordination of field operations for the OYP takes place; and
- “Participant” as the youth who is provided the service by the OYP. The term does not include the parent or contracting agent that enrolls the youth in the program.

An OYP must be licensed by the agency. The department, in consultation with the agency, shall establish by rule requirements for licensure, administration, and operation of OYPs.²¹ The executive director of an OYP may be a psychologist, with specified maturity, training and experience with OYPs.

Field Group activities and expeditions may not exceed 16 individuals, including staff members and must maintain a staff-to-participant ratio of at least 1 to 4.

The bill requires an OYP to comply with all local, state, and federal regulations as well as professional licensing requirements. The bill includes detailed requirements pertaining to staffing; recordkeeping; clothing and equipment; screening of youth participants; composition of the group activity or expedition; facility requirements, if a fixed location is maintained by the program; hydration and nutritional standards; and emergency procedures. Additional requirements include:

- The agency approving the program’s training plan which must include provisions governing a participant’s conduct and the consequences for his or her conduct while enrolled in the program;
- Ensuring all information provided to parents and external recipients is factually correct;
- Providing an educational component that is approved by the Department of Education to any participant who is absent from school or another educational setting for more than 1 month;
- Coordinating with the local school board to provide an educational component and offer educational credit to participants;
- Having a governing board and an executive director with responsibility for policies and activities of the OYP;
- Having adequate staff including, a field director, field support staff, senior field staff members, and other staff members. Each of these positions have specified maturity, education, training, and experience prerequisites as well as specified duties and responsibilities;
- Having a multidisciplinary team of licensed clinical professionals accessible to participants which include, at a minimum, a physician and at least one of the following: psychologist, clinical social worker, mental health counselor, marriage and family therapist, or certified school counselor. The program may also use interns and volunteers;
- Maintaining a current list and enrollment records of all participants;

²¹ Typically, when the agency is responsible for licensure of similar residential programs, the authority for rulemaking relating to this function is assigned to the agency, in consultation with the department that has operational responsibility.

- Developing a written plan for each field group activity and expedition that has been approved by the governing board;
- Maintaining an inventory of personal items belonging to the participant which must be returned upon completion of the program activity;
- Providing specified clothing and equipment to protect the participant from the environment, and staff responsibilities if the participant is unable or unwilling to carry these items;
- Conditions for hiking at various temperatures;
- Maintaining detailed logs and records of conditions, maps, incidents, medications, and physical and behavioral concerns;
- Procedures for delivering mail;
- Maintaining field offices within specified distances of field group activities and expeditions;
- Supervising field group activities or expeditions, including gender considerations;
- Screening participants before enrollment in a program which includes a health history, physical examination, and a psycho-social screening by a licensed clinical professional;
- Facility requirements if the OYP maintains a designated location for the housing of participants, including a fire safety inspection and an inspection by the local county health department relating to food, water supply, and sewage disposal;
- Maintaining a safety support system and emergency management plan;
- Providing for safe and comfortable transportation;
- Providing debriefings after the activities;
- Handling any suspected incidents of child abuse or neglect; and
- Establishing and following policies and procedures for solo experiences, if offered.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As drafted, private resources will be used to cover the costs for the residential treatment program and the outdoor youth program. At this time these costs are indeterminate.

C. Government Sector Impact:

The agency will incur costs for licensing, inspecting and enforcing the two programs. The agency, department, and APD will incur costs for rulemaking; however these costs should be minimal given the specificity in the bill.

VI. Technical Deficiencies:

The bill does not include fees to cover the costs of licensing, inspecting, and enforcing the provisions of the two programs.

VII. Related Issues:

The two programs created in the bill overlap and may conflict with existing programs and responsibilities of the affected state agencies. Also, certain terms used in the bill are not defined. For example, “habilitation” is not defined in ch. 394, F.S.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 394.88 and 394.89.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.