

Tab 1	SB 12 by Garcia (CO-INTRODUCERS) Galvano, Ring; (Compare to CS/CS/CS/H 0439) Mental Health and Substance Abuse					
821992	PCS	S	RCS	AP		02/18 05:12 PM
654058	PCS:D	S	RCS	AP, Garcia	Delete everything after	02/18 05:12 PM
Tab 2	CS/SB 122 by CJ, Joyner, Bradley; (Similar to CS/H 0331) Compensation of Victims of Wrongful Incarceration					
Tab 3	SB 394 by Hays; (Identical to H 0303) Unlicensed Activity Fees					
Tab 4	SB 422 by Benacquisto; (Similar to CS/H 0363) Health Insurance Coverage For Opioids					
Tab 5	SB 444 by Montford; (Identical to H 0525) Small Community Sewer Construction Assistance Act					
Tab 6	CS/SB 548 by BI, Richter; (Similar to CS/CS/H 0413) Title Insurance					
517060	PCS	S	RCS	AP, AGG		02/18 05:42 PM
Tab 7	CS/SB 580 by HP, Grimsley; (Similar to CS/H 0595) Reimbursement to Health Access Settings for Dental Hygiene Services for Children					
Tab 8	CS/SB 636 by CJ, Benacquisto (CO-INTRODUCERS) Flores, Joyner; (Identical to CS/CS/H 0179) Evidence Collected in Sexual Offense Investigations					
763638	A	S	RCS	AP, Benacquisto	Delete L.84 - 87:	02/18 05:31 PM
Tab 9	CS/CS/SB 676 by BI, HP, Grimsley; (Compare to H 0423) Access to Health Care Services					
243646	A	S	RCS	AP, Grimsley	btw L.800 - 801:	02/18 05:02 PM
Tab 10	CS/SB 684 by ED, Gaetz, Stargel; (Compare to CS/H 0031) Choice in Sports					
434300	PCS	S	RCS	AP, AED		02/18 05:16 PM
Tab 11	CS/SB 708 by GO, Joyner; (Compare to CS/CS/H 0533) Arthur G. Dozier School for Boys					
726460	PCS	S	RCS	AP, ATD		02/18 05:07 PM
482384	PCS:A	S	RCS	AP, Joyner	btw L.143 - 144:	02/18 05:07 PM
Tab 12	CS/SB 800 by HE, Brandes; (Compare to CS/H 1053) Private Postsecondary Education					
380416	PCS	S	RCS	AP, AED		02/18 05:18 PM
Tab 13	SB 806 by Legg; (Similar to H 0585) Instruction for Homebound and Hospitalized Students					
Tab 14	SB 834 by Detert; (Compare to CS/CS/1ST ENG/H 7029) Minimum Term School Funding					
Tab 15	CS/SB 894 by ED, Detert; (Similar to CS/CS/H 0719) Education Personnel					
237190	A	S	RCS	AP, Simmons	Delete L.61 - 69.	02/18 05:06 PM
Tab 16	SB 922 by Montford; (Similar to CS/H 0987) Solid Waste Management					
622386	PCS	S	RCS	AP, AGG		02/18 05:25 PM

Tab 17 **CS/SB 966** by **BI, Benacquisto (CO-INTRODUCERS) Gaetz, Brandes, Negron, Bean, Hutson, Richter, Detert**; (Compare to H 1041) Unclaimed Property

Tab 18 **CS/SB 992** by **BI, Brandes**; (Similar to CS/CS/CS/H 0651) Department of Financial Services

841824	PCS	S	RCS	AP, AGG		02/18 05:20 PM
432618	PCS:A	S	RCS	AP, Benacquisto	Delete L.374 - 386:	02/18 05:20 PM
702190	PCS:A	S	RCS	AP, Benacquisto	btw L.508 - 509:	02/18 05:20 PM

Tab 19 **SB 994** by **Negron (CO-INTRODUCERS) Sobel, Flores**; (Similar to H 0819) Sunset Review of Medicaid Dental Services

Tab 20 **CS/SB 1026** by **ED, Simmons**; (Compare to CS/H 0031) High School Athletics

356798	PCS	S	RCS	AP, AED		02/18 05:43 PM
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Tab 21 **CS/CS/SB 1118** by **JU, BI, Simmons**; (Compare to CS/CS/1ST ENG/H 0509) Transportation Network Company Insurance

107054	A	S	L	WD	AP, Simmons	Delete L.162 - 316:	02/18 05:40 PM
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Tab 22 **CS/SB 1176** by **EP, Diaz de la Portilla**; (Similar to H 0795) Dredge and Fill Activities

Tab 23 **CS/SB 1426** by **CA, Stargel (CO-INTRODUCERS) Gaetz**; (Similar to CS/H 1155) Membership Associations

Tab 24 **CS/SB 1584** by **TR, Smith (CO-INTRODUCERS) Thompson, Joyner**; (Similar to H 0787) Suspended Driver Licenses

Tab 25 **SB 7058** by **ED**; (Similar to CS/1ST ENG/H 7053) Child Care and Development Block Grant Program

447038	D	S	RCS	AP, Galvano	Delete everything after	02/18 05:07 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Lee, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, February 18, 2016
TIME: 1:00—5:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Lee, Chair; Senator Benacquisto, Vice Chair; Senators Altman, Flores, Gaetz, Galvano, Garcia, Grimsley, Hays, Hukill, Joyner, Latvala, Margolis, Montford, Negron, Richter, Ring, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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A proposed committee substitute for the following bill (SB 12) is available:

1	SB 12 Garcia (Compare CS/CS/CS/H 439, CS/H 979, CS/H 7097, S 1336)	Mental Health and Substance Abuse; Including services provided to treatment-based mental health programs within case management funded from state revenues as an element of the state courts system; specifying certain persons who are prohibited from being appointed as a person's guardian advocate; authorizing county or circuit courts to enter ex parte orders for involuntary examinations; revising the criteria for involuntary admissions due to substance abuse or co-occurring mental health disorders, etc. CF 01/14/2016 Favorable AHS 01/26/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
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With subcommittee recommendation – Health and Human Services

2	CS/SB 122 Criminal Justice / Joyner / Bradley (Similar CS/H 331)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 11/02/2015 Fav/CS JU 01/20/2016 Favorable ACJ 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
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With subcommittee recommendation – Criminal and Civil Justice

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 394 Hays (Identical H 303)	Unlicensed Activity Fees; Prohibiting the Department of Business and Professional Regulation from imposing a specified fee in certain circumstances, etc. RI 11/18/2015 Favorable AGG 01/13/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 14 Nays 0
With subcommittee recommendation – General Government			
4	SB 422 Benacquisto (Similar CS/H 363)	Health Insurance Coverage For Opioids; Providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim, etc. BI 11/02/2015 Favorable HP 12/01/2015 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
5	SB 444 Montford (Identical H 525)	Small Community Sewer Construction Assistance Act; Redefining the term “financially disadvantaged small community” to include counties and special districts; defining the term “special district”, etc. CA 01/19/2016 Favorable AGG 01/26/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – General Government			
A proposed committee substitute for the following bill (CS/SB 548) is available:			
6	CS/SB 548 Banking and Insurance / Richter (Similar CS/CS/H 413)	Title Insurance; Increasing a title insurer’s limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; revising an exception to the limit, etc. BI 11/17/2015 Fav/CS AGG 01/13/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation – General Government			

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 580 Health Policy / Grimsley (Similar CS/H 595)	Reimbursement to Health Access Settings for Dental Hygiene Services for Children; Authorizing reimbursement for children's dental services provided by licensed dental hygienists in certain circumstances, etc. HP 12/01/2015 Fav/CS AHS 01/13/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 14 Nays 0
With subcommittee recommendation – Health and Human Services			
8	CS/SB 636 Criminal Justice / Benacquisto (Identical CS/CS/H 179, Compare H 167, H 1331, S 368, S 1614)	Evidence Collected in Sexual Offense Investigations; Requiring that a sexual offense evidence kit or other DNA evidence be submitted to a member of the statewide criminal analysis laboratory system within a specified timeframe after specified occurrences; requiring a medical provider or law enforcement agency to inform an alleged victim of a sexual offense of certain information relating to sexual offense evidence kits; requiring the testing of sexual offense evidence kits within a specified timeframe after submission to a member of the statewide criminal analysis laboratory, etc. CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
9	CS/CS/SB 676 Banking and Insurance / Health Policy / Grimsley (Similar S 210, S 428, Compare H 423, H 471, CS/H 977, S 586, CS/S 1250)	Access to Health Care Services; Expanding the categories of persons who may prescribe brand name drugs under the prescription drug program when medically necessary; requiring a hospital to provide specified advance notice to certain obstetrical physicians before it closes its obstetrical department or ceases to provide obstetrical services; requiring the Board of Nursing to establish a committee to recommend a formulary of controlled substances that may not be prescribed, or may be prescribed only on a limited basis, by an advanced registered nurse practitioner; requiring that certain health insurers that do not already use a certain form use only a prior authorization form approved by the Financial Services Commission, etc. HP 01/11/2016 Fav/CS BI 01/26/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

A proposed committee substitute for the following bill (CS/SB 684) is available:

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 684 Education Pre-K - 12 / Gaetz / Stargel (Compare CS/H 31, CS/CS/CS/H 669, H 7039, S 886, CS/S 1026)	Choice in Sports; Revising public school choice options available to students to include CAPE digital tools, CAPE industry certifications, and collegiate high school programs; requiring each district school board and charter school governing board to authorize a parent to have his or her child participate in controlled open enrollment; requiring the Florida High School Athletic Association to allow a private school to maintain full membership in the association or to join by sport, etc. ED 01/14/2016 Fav/CS AED 01/25/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 14 Nays 0
With subcommittee recommendation – Education			
A proposed committee substitute for the following bill (CS/SB 708) is available:			
11	CS/SB 708 Governmental Oversight and Accountability / Joyner (Compare CS/CS/H 533)	Arthur G. Dozier School for Boys; Directing the Department of State to preserve historical resources, records, archives, and artifacts; directing the department to reimburse the next of kin of children whose bodies are buried and exhumed at the Dozier School or to pay directly to a provider for the costs associated with funeral services, reinterment, and grave marker expenses; establishing a task force to make recommendations regarding a memorial and a location of a site for the reinterment of unidentified or unclaimed remains, etc. GO 01/26/2016 Fav/CS ATD 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			
A proposed committee substitute for the following bill (CS/SB 800) is available:			
12	CS/SB 800 Higher Education / Brandes (Compare CS/H 1053)	Private Postsecondary Education; Requiring certain institutions to provide a student with a written disclosure of all fees and costs that the student will incur to complete his or her program; revising the membership of the Commission for Independent Education; revising the criteria for licensure by means of accreditation; revising the institutions included in the Student Protection Fund to include licensed institutions, etc. HE 01/25/2016 Fav/CS AED 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 14 Nays 0

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Appropriations

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation – Education			
13	SB 806 Legg (Similar H 585)	Instruction for Homebound and Hospitalized Students; Requiring school districts to provide instruction to homebound or hospitalized students; requiring the State Board of Education to adopt rules related to student eligibility, methods of providing instruction to homebound or hospitalized students, and the initiation of services; requiring each school district to enter into an agreement with certain hospitals within its district by a specified date, etc. ED 01/20/2016 Favorable AED 01/28/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – Education			
14	SB 834 Detert (Compare CS/CS/H 7029, CS/S 830, S 1136)	Minimum Term School Funding; Revising the term “full-time student” to delete references to membership in a double-session school or a school that uses a specified experimental calendar; clarifying how “full time equivalency” is calculated for students in schools that operate for less than the minimum term, etc. ED 01/27/2016 Favorable AED 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – Education			
15	CS/SB 894 Education Pre-K - 12 / Detert (Similar CS/CS/H 719, Compare H 5003, CS/H 7043)	Education Personnel; Authorizing certain information to be used for educator certification discipline and review; authorizing certain employees or agents of the Department of Education to have access to certain reports and records; authorizing rather than requiring the Department of Education to sponsor a job fair meeting certain criteria; providing requirements regarding liability insurance for students performing clinical field experience, etc. ED 01/20/2016 Fav/CS AED 02/11/2016 Favorable AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation – Education			

A proposed committee substitute for the following bill (SB 922) is available:

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	SB 922 Montford (Similar CS/H 987, Compare CS/S 1052)	Solid Waste Management; Providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; authorizing waste tire abatement programs under the small county consolidated grant program, etc. EP 01/20/2016 Favorable AGG 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
With subcommittee recommendation – General Government			
17	CS/SB 966 Banking and Insurance / Benacquisto (Compare H 1041)	Unclaimed Property; Revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing the circumstances under which a policy, a contract, or an account is deemed to be in force, etc. BI 01/11/2016 Temporarily Postponed BI 01/19/2016 Fav/CS AGG 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – General Government			
A proposed committee substitute for the following bill (CS/SB 992) is available:			
18	CS/SB 992 Banking and Insurance / Brandes (Similar CS/CS/H 651, Compare CS/CS/H 593, CS/CS/H 879, CS/CS/S 686)	Department of Financial Services; Authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; revising firefighter and volunteer firefighter certification requirements, etc. BI 01/19/2016 Fav/CS AGG 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation – General Government			
19	SB 994 Negron (Similar H 819)	Sunset Review of Medicaid Dental Services; Providing for the future removal of dental services as a minimum benefit of managed care plans; requiring the agency to implement a statewide Medicaid prepaid dental health program upon the occurrence of certain conditions; specifying requirements for the program and the selection of providers, etc. HP 01/11/2016 Favorable AHS 01/26/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – Health and Human Services			
A proposed committee substitute for the following bill (CS/SB 1026) is available:			
20	CS/SB 1026 Education Pre-K - 12 / Simmons (Compare CS/H 31, H 7039, CS/S 684)	High School Athletics; Providing requirements regarding fees and contest receipts collected by the Florida High School Athletic Association (FHSAA); requiring the FHSAA to allow a school to join the FHSAA as a full-time member or on a per-sport basis; providing a process for resolving student eligibility disputes, etc. ED 01/14/2016 Fav/CS AED 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 13 Nays 0
With subcommittee recommendation – Education			
21	CS/CS/SB 1118 Judiciary / Banking and Insurance / Simmons (Compare CS/CS/H 509)	Transportation Network Company Insurance; Requiring a statement in certain crash reports as to whether any driver at the time of the accident was providing a prearranged ride or logged into a digital network of a transportation network company; requiring a transportation network company driver, or the transportation network company on the driver's behalf, to maintain certain primary automobile insurance under certain circumstances; requiring a transportation network company to maintain certain insurance and obligate the insurer to defend a certain claim if specified insurance by the driver lapses or does not provide the required coverage, etc. BI 01/19/2016 Fav/CS JU 02/09/2016 Fav/CS AP 02/18/2016 Favorable	Favorable Yeas 11 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	CS/SB 1176 Environmental Preservation and Conservation / Diaz de la Portilla (Similar H 795)	Dredge and Fill Activities; Revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; deleting certain conditions limiting when the department may assume federal permitting programs for the discharge of dredged or fill material, etc. EP 01/27/2016 Fav/CS AGG 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – General Government			
23	CS/SB 1426 Community Affairs / Stargel (Similar CS/H 1155)	Membership Associations; Requiring membership associations to file an annual report with the Legislature; prohibiting a membership association from using public funds for certain litigation; requiring the Auditor General to conduct certain audits annually, etc. CA 01/26/2016 Fav/CS ED 02/02/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 14 Nays 1
24	CS/SB 1584 Transportation / Smith (Similar H 787)	Suspended Driver Licenses; Establishing a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles, etc. TR 01/27/2016 Fav/CS ACJ 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
25	SB 7058 Education Pre-K - 12 (Similar CS/H 7053)	Child Care and Development Block Grant Program; Providing an exception from a prohibition against the use of information in the Department of Children and Families central abuse hotline for employment screening of certain child care personnel; revising the definition of the term “screening” for purposes of child care licensing requirements; requiring the Department of Children and Families and local licensing agencies to electronically post certain information relating to child care and school readiness providers; revising the prioritization of participation in school readiness programs, etc. AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, February 18, 2016, 1:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

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 Appropriations

BILL: PCS/SB 12 (821992)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Senator Garcia and others

SUBJECT: Mental Health and Substance Abuse

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	Brown	Pigott	AHS	Recommend: Fav/CS
3.	Brown	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 12 addresses Florida's system for the delivery of behavioral health services. The bill provides for mental health services for children, parents, and others seeking custody of children involved in dependency court proceedings. The bill creates a coordinated system of care to be provided either by a community or a region for those suffering from mental illness or substance use disorder through a "No Wrong Door" system of single access points.

The Agency for Health Care Administration (AHCA) and the Department of Children and Families (DCF) are directed to modify licensure requirements to create an option for a single, consolidated license to provide both mental health and substance use disorder services. Additionally, the AHCA and the DCF are directed to develop a plan to increase federal funding for behavioral health care.

To the extent possible, the bill aligns the legal processes, timelines, and processes for assessment, evaluation, and receipt of available services of the Baker Act (mental illness) and Marchman Act (substance abuse) to assist individuals in recovery and reduce readmission to the system.

The duties and responsibilities of the DCF are revised to set performance measures and standards for managing entities¹ and to enter into contracts with the managing entities that support efficient and effective administration of the behavioral health system and ensure accountability for performance. The duties and responsibilities of managing entities are revised accordingly.

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Mental Health and Substance Abuse

Mental illness creates enormous social and economic costs.² Unemployment rates for persons with mental disorders are high relative to the overall population.³ People with severe mental illness have exceptionally high rates of unemployment, between 60 percent and 100 percent.⁴ Mental illness increases a person's risk of homelessness in America threefold.⁵ Studies show that approximately 33 percent of our nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are not receiving treatment.⁶ Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future re-offenses.⁷

According to the National Alliance on Mental Illness (NAMI), approximately 50 percent of individuals with severe mental health disorders are affected by substance abuse.⁸ NAMI also estimates that 29 percent of all people diagnosed as mentally ill abuse alcohol or other drugs.⁹ When mental health disorders are left untreated, substance abuse is likely to increase. When substance abuse increases, mental health symptoms often increase as well or new symptoms may be triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.¹⁰

¹ See s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida which is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.

² Mental Illness: The Invisible Menace, *Economic Impact* <http://www.mentalmenace.com/economicimpact.php>

³ Mental Illness: The Invisible Menace, *More impacts and facts* <http://www.mentalmenace.com/impactsfacts.php>

⁴ *Id.*

⁵ Family Guidance Center, *How does Mental Illness Impact Rates of Homelessness?* (February 4, 2014) available at <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/>

⁶ *Id.*

⁷ *Id.*

⁸ Donna M. White, LPCI, CACP, Psych Central.com, *Living with Co-Occurring Mental & Substance Abuse Disorders*, (October 2, 2013) available at <http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance-abuse-disorders/>

⁹ *Id.*

¹⁰ *Id.*

Behavioral Health Managing Entities

In 2008, the Legislature required the Department of Children and Families (DCF) to implement a system of behavioral health managing entities that would serve as regional agencies to manage and pay for mental health and substance abuse services.¹¹ Prior to this time, the DCF, through its regional offices, contracted directly with behavioral health service providers. The Legislature found that a management structure that places the responsibility for publicly-financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level, would promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. There are currently seven managing entities across the state.¹²

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹³ The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.¹⁴

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same

¹¹ See s. 394.9082, F.S., as created by Chapter 2008-243, Laws of Fla.

¹² Department of Children and Families website, <http://www.myflfamilies.com/service-programs/substance-abuse/managing-entities>, (last visited Jan. 11, 2016).

¹³ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

¹⁴ Section 397.6795, F.S.

manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.¹⁵

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.¹⁶ However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.¹⁷

Involuntary Admission to a Facility

Criteria for Involuntary Admission

The Marchman Act provides that a person meets the criteria for involuntary admission if a good-faith reason exists to believe that the person is substance-impaired and, because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
 - Has inflicted, threatened to or attempted to inflict self-harm; or
 - Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.¹⁸

Protective Custody

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.¹⁹ The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.²⁰ If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.²¹

Time Limits

A critical 72-hour period applies under both the Marchman Act and the Baker Act. Under the Marchman Act, a person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.²²

The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.²³ Within that 72-hour examination period, or, if the 72

¹⁵ Section 394.462(1)(f) and (g), F.S.

¹⁶ Section 397.6772(1), F.S.

¹⁷ Section 394.459(1), F.S.

¹⁸ Section 397.675, F.S.

¹⁹ Section 397.677, F.S.

²⁰ Section 397.6771, F.S.

²¹ Section 397.6772(1), F.S.

²² Section 397.6773(1) and (2), F.S.

²³ Section 394.463(2)(f), F.S.

hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.²⁴

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of five days to a facility for involuntary assessment and stabilization.²⁵ If the facility needs more time, the facility may request a seven-day extension from the court.²⁶ Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.²⁷

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.²⁸ The petitioner must show, by clear and convincing evidence, all available less-restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect that poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 29.004, F.S., to allow courts to use state revenue to provide case management services such as service referral, monitoring, and tracking for mental health programs under s. 394, F.S.

Section 2 amends s. 39.001(6), F.S., to include mental health treatment in dependency court services and directs the state to contract with mental health service providers for such services.

Section 3 amends s. 39.507(10), F.S., to allow a dependency court to order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation, require participation of such person in a mental health program or a treatment-based drug court program, and to oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

²⁴ Section 394.463(2)(i)4., F.S.

²⁵ Section 397.6811, F.S.

²⁶ Section 397.6821, F.S.

²⁷ Section 397.6822, F.S.

²⁸ Sections 394.4655(6) and 394.467(6), F.S.

²⁹ Section 394.467(1), F.S.

Section 4 amends s. 39.521(1)(b), F.S., to authorize a court, with jurisdiction of a child that has been adjudicated dependent, to require the person who has custody or is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation, to require the person to participate in and comply with the mental health program or drug court program, and to oversee the progress and compliance by the person who has custody or is requesting custody of a child.

Section 5 amends s. 394.455, F.S., to add, update, or revise definitions as appropriate.

Section 6 amends s. 394.4573, F.S., to create a coordinated system of care in the context of the No Wrong Door model which is defined as a delivery system of health care services to persons with mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the system.

The bill also defines a coordinated system of care to mean the full array of behavioral and related services in a region or community offered by all service providers, whether under contract with the managing entity or another method of community partnership or mutual agreement.

Additionally, the Department of Children and Families (DCF) is required to submit, on or before October 1 of each year, an annual assessment of the behavioral health services in the state to the Governor and the Legislature. The assessment must include comparison of the status and performance of behavioral health systems, the capacity of contracted services providers to meet estimated needs, the degree to which services are offered in the least restrictive and most appropriate therapeutic environment, and the scope of system-wide accountability activities used to monitor patient outcomes and measure continuous improvement of the behavioral health system.

The bill authorizes the DCF, subject to a specific appropriation, to award system improvement grants to managing entities based on the submission of detailed plans to enhance services, coordination of services, or a performance measurement in accordance with the No Wrong Door model. The grants must be awarded through a performance-based contract that links payments to documented and measurable system improvements.

The essential elements of a coordinated system of care under the bill must include community interventions, a designated receiving system that consists of one or more facilities serving a defined geographic area, transportation, crisis services, case management, including intensive case management, and various other services.

Section 7 amends s. 394.4597(2)(d) and (e), F.S., to specify the persons who are prohibited from being named as a patient's representative.

Section 8 amends s. 394.4598(2) through (7), F.S., to specify the persons who are prohibited from appointment as a patient's guardian advocate when a court has determined that a person is incompetent to consent to treatment but the person has not been adjudicated incapacitated. The bill also sets out the training requirements for persons appointed as guardian advocates.

Section 9 amends s. 394.462, F.S., to direct that a transportation plan must be developed and implemented in each county or, if applicable, counties that intend to share a transportation plan. The plan must specify methods of transport to a facility within the designated receiving system and may delegate responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that persons meeting the criteria for involuntary assessment and evaluation pursuant to s. 394.463 and 397.675 will be transported. For the transportation of a voluntary or involuntary patient to a treatment facility, the plan must specify how the hospitalized patient will be transported to, from, and between facilities.

Section 10 amends s. 394.463(2), F.S., to allow a circuit or county court to enter an ex parte order stating that a person appears to meet the criteria for involuntary examination. The ex parte order must be based on written or oral sworn testimony that includes specific facts supporting the findings. Facilities accepting patients based on ex parte orders must send a copy of the order to the managing entity in its region the next working day. A facility admitting a person for involuntary examination who is not accompanied by an ex parte order must notify the DCF and the managing entity the next working day.

The bill also adds language that a person may not be held for involuntary examination for more than 72 hours without specified actions being taken.

Section 11 amends s. 394.4655, F.S., to allow a court to order a person to involuntary outpatient services, upon a finding by clear and convincing evidence, that the person meets the criteria specified. The recommendation by the administrator of a facility of a person for involuntary outpatient services must be supported by two qualified professionals, both of whom have personally examined the person within the preceding 72 hours. A court may not order services in a proposed treatment plan which are not available. The service provider must notify the managing entity as to the availability of the requested services, and the managing entity must document its efforts to obtain the requested services.

Section 12 amends s. 394.467, F.S., to add to the criteria for involuntary inpatient placement for mental illness the present threat of substantial physical or mental harm to a person's well-being. The bill prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility.

Section 13 amends s. 394.46715, F.S., to provide the DCF rulemaking authority.

Section 14 creates s. 394.761, F.S., to direct the DCF, in coordination with the managing entities, to compile detailed documentation of the cost and reimbursements for Medicaid-covered services provided to Medicaid-eligible individuals by providers of behavioral health services that are also funded through the DCF. The DCF's documentation, along with a report of general revenue funds supporting behavioral health services that are not spent as matching funds for federal programs or otherwise required under federal regulations, must be submitted to the Agency for Health Care Administration (AHCA) by December 31, 2016. Copies of the report must also be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If the report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the AHCA and the DCF will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal

year to draw additional federal funding to increase Medicaid funding for behavioral health service providers receiving the unmatched general revenue. Such payments must be made to providers in accordance with federal law and regulations.

Section 15 amends s. 394.875, F.S., to direct the DCF and the AHCA, by January 1, 2017, to modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under chs. 394 and 397, F.S.

Section 16 amends s. 394.9082, F.S., to revise and update the duties and responsibilities of the managing entities and the DCF and to provide definitions, contracting requirements, and accountability measures.

The DCF's duties and responsibilities are revised to include the designation of facilities into the receiving system developed by one or more counties; contract with the managing entities; specify data reporting and use of shared data systems; develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice system; support the development and implementation of a coordinated system of care to require providers receiving state funds through a direct contract with the DCF to work with the managing entity to coordinate the provision of behavioral health services; set performance measures and standards for managing entities; develop a unique identifier for clients receiving services; and coordinate procedures for referral and admission of patients to, and discharge from, state treatment facilities.

This section sets out the DCF's duties regarding its contracts with the managing entities. The contracts must support efficient and effective administration of the behavioral health system and ensure accountability for performance. The managing entities' contracts are subject to performance review beginning July 1, 2018. The review must include analysis of the managing entities' performance measures, the results of the DCF's contract monitoring, and related performance and compliance issues. Based on a satisfactory performance review, the DCF may negotiate with the managing entity for a four-year contract pursuant to s. 287.057(3)(e), F.S. If a managing entity does not meet the requirements of the performance review, the DCF must create a corrective action plan. If the corrective action plan is not satisfactorily completed by the managing entity, the DCF will terminate the contract at the end of the contract term and initiate a competitive procurement process to select a new managing entity.

The revised and updated duties and responsibilities of the managing entities under the bill include conducting an assessment of community behavioral health care needs in each managing entity's geographic area. The assessment must be updated annually and include, at a minimum, information the DCF needs for its annual report to the Governor and Legislature. Managing entities must also develop local resources by pursuing third-party payments for services, applying for grants, and other methods to ensure services are available and accessible; provide assistance to counties to develop a designated receiving system and a transportation plan; enter into cooperative agreements with local homeless councils and organizations to address the homelessness of persons suffering from a behavioral health crisis; provide or contract for case management; and collaborate with local criminal and juvenile justice systems to divert persons

with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

Section 17 amends s. 397.311, F.S., to create a definition for involuntary services and revise the definition of qualified professional.

Section 18 amends s. 397.675, F.S., to revise the criteria for assessment, stabilization, and involuntary treatment for persons with a substance abuse or co-occurring mental health disorder to include that without care or treatment, the person is likely to suffer from neglect or to refuse to care for himself or herself and that neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or is likely to inflict, physical harm on himself or herself, or another.

Section 19 amends s. 397.679, F.S., to expand the types of professionals who may execute a certificate for application for emergency admission of a person to a hospital or licensed detoxification facility to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's level certified addictions professional if the certification is specific to substance abuse disorders.

Section 20 amends s. 397.6791, F.S., to expand the types of professionals who may initiate a certificate for emergency assessment or admission of a person who may meet the criteria for substance abuse disorder to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's level certified addictions professional if the certification is specific to substance abuse disorders

Section 21 amends s. 397.6793, F.S., to revise the criteria for a person to be examined or assessed to include a reasonable belief that without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being. The professional's certificate authorizing the involuntary admission of a person is valid for seven days after issuance.

Section 22 amends s. 397.6795, F.S., to allow a person's spouse or guardian, or a law enforcement officer, to deliver a person named in a professional's certificate for emergency admission to a hospital or licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 23 amends s. 397.681, F.S., to specify that a court clerk may not charge a filing fee for the filing of a petition for involuntary assessment and stabilization.

Section 24 amends s. 397.6811(1), F.S., to allow a petition for assessment and stabilization to be filed by a person who has direct personal knowledge of a person's substance abuse disorder.

Section 25 amends s. 397.6814, F.S., to remove the requirement that a petition for involuntary assessment and stabilization contain a statement regarding the person's ability to afford an attorney. This section also directs that a fee may not be charged for the filing of a petition pursuant to this section.

Section 26 amends s. 397.6819, F.S., to allow a licensed service provider to admit a person for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated pending further order of the court.

Section 27 amends s. 397.695, F.S., to provide for the filing of a petition for involuntary outpatient services and the professionals that must support such a recommendation. If the person has been stabilized and no longer meets the criteria for involuntary assessment and stabilization, he or she must be released while waiting for the hearing. The service provider must prepare certain reports and a treatment plan, including certification to the court that the recommended services are available. If the services are unavailable, the petition may not be filed with the court.

Section 28 amends s. 397.6951, F.S., to amend the content requirements of the petition for involuntary outpatient services to include the person's history of failure to comply with treatment requirements, a factual allegation that the person is unlikely to voluntarily participate in the recommended services, and a factual allegation that the person is in need of the involuntary outpatient services.

Section 29 amends s. 397.6955, F.S., to update the duties of the court upon the filing of a petition for involuntary outpatient services by including the requirement to schedule a hearing within five days unless a continuance is granted.

Section 30 amends s. 397.6957, F.S., to update the requirements of the court to hear and review all relevant evidence at a hearing for involuntary outpatient services, including the requirement that the petitioner has the burden of proving by clear and convincing evidence that the respondent has a history of lack of compliance with treatment for substance abuse, is unlikely to voluntarily participate in the recommended treatment, and that, without services, is likely to suffer from neglect or to refuse to care for himself or herself. One of the qualified professionals that executed the involuntary outpatient services certificate must be a witness at the hearing.

Section 31 amends s. 397.697, F.S., to allow courts to order involuntary outpatient services when the court finds the conditions have been proven by clear and convincing evidence; however, the court cannot order involuntary outpatient services if the recommended services are not available.

Section 32 amends s. 397.6971, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary outpatient services.

Section 33 amends s. 397.6975, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary outpatient services.

Section 34 amends s. 397.6977, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary outpatient services.

Section 35 creates s. 397.6978, F.S., to allow for the appointment of a guardian advocate for a person determined incompetent to consent to treatment. The bill lists the persons prohibited from being appointed the patient's guardian advocate.

Section 36 amends s. 39.407, F.S., to correct cross-references.

Section 37 amends s. 212.055, F.S., to correct cross-references.

Section 38 amends s. 394.4599, F.S., to correct cross-references.

Section 39 amends s. 394.495(3), F.S., to correct cross-references.

Section 40 amends s. 394.496(5), F.S., to correct cross-references.

Section 41 amends s. 394.9085(6), F.S., to correct cross-references.

Section 42 amends s. 397.405(8), F.S., to correct cross-references.

Section 43 amends s. 397.407(1) and (5), F.S., to correct cross-references.

Section 44 amends s. 397.416, F.S., to correct cross-references.

Section 45 amends s. 409.972(1)(b), F.S., to correct cross-references.

Section 46 amends s. 440.102(1)(d) and (g), F.S., to correct cross-references.

Section 47 amends s. 744.704(7), F.S., to correct cross-references.

Section 48 amends s. 790.065(2)(a), F.S., to correct cross-references.

Section 49 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since the bill requires a transportation plan to be developed and implemented in each county or, if applicable, in counties that intend to share a transportation plan, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact." The fiscal impact of this requirement is indeterminate because the number of rides needed by residents cannot be predicted. If the costs exceed the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

PCS/SB 12 prohibits a filing fee being charged for Marchman Act petitions; however, this does not create a fiscal impact on the clerks of court or the state court system because no fees are currently assessed.³⁰

B. Private Sector Impact:

Persons appointed by the court as guardian advocates for individuals in need of behavioral health services will have increased training requirements under the bill.

Behavioral health managing entities that have satisfactory contract performance will benefit from the provisions that allow the DCF to negotiate a new four-year contract using the exemption provided in s. 287.057(3)(e), F.S.

C. Government Sector Impact:

State

To the extent that the bill encourages the use of involuntary outpatient services rather than inpatient placement, the state would experience a positive fiscal impact. The cost of care in state treatment facilities is more expensive than community based behavioral health care. The amount of this potential cost savings is indeterminate.

Under the bill, the DCF has revised duties to review local behavioral health care plans, write or revise rules, and award any grants for implementation of the No Wrong Door policy. Similar administrative duties are currently performed by the DCF so these revised duties are not expected to create a fiscal impact.

Local

Local governments must revise their transportation plans for acute behavioral health care under the Baker Act and Marchman Act. The bill requires that as part of the transportation plan for the No Wrong Door policy, transportation must be provided between the single point of entry for behavioral health care and other treatment providers

³⁰ E-mail received from Florida Court Clerks & Comptroller, Nov. 6, 2015, and on file in the Senate Committee on Children, Families & Elder Affairs.

or settings as appropriate. This may create an indeterminate fiscal impact as such services are not currently provided in all areas of the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 29.004, 39.001, 39.507, 39.521, 394.455, 394.4573, 394.4597, 394.4598, 394.462, 394.463, 394.4655, 394.467, 394.46715, 394.761, 394.875, 394.9082, 397.311, 397.675, 397.679, 397.6791, 397.6793, 397.6795, 397.681, 397.6811, 397.6814, 397.6819, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, 397.6977, 397.6978, 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.972, 440.102, 744.704, and 790.065.

This bill creates the following sections of the Florida Statutes: 394.761 and 397.6978.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on January 26, 2016:

The CS:

- Removes the provision in the original bill authorizing a service provider to petition a county court for continued involuntary outpatient services;
- Prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility;
- Revises the bill's provisions for the Department of Children and Families and the Agency for Health Care Administration to seek to maximize the amount of federal Medicaid funds available in the state for behavioral health services; and
- Makes technical terminology revisions throughout the bill.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (e) is added to subsection (10) of
section 29.004, Florida Statutes, to read:

29.004 State courts system.—For purposes of implementing s.
14, Art. V of the State Constitution, the elements of the state
courts system to be provided from state revenues appropriated by
general law are as follows:



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11 (10) Case management. Case management includes:
12 (e) Service referral, coordination, monitoring, and
13 tracking for mental health programs under chapter 394.
14

15 Case management may not include costs associated with the
16 application of therapeutic jurisprudence principles by the
17 courts. Case management also may not include case intake and
18 records management conducted by the clerk of court.

19 Section 2. Subsection (6) of section 39.001, Florida
20 Statutes, is amended to read:

21 39.001 Purposes and intent; personnel standards and
22 screening.—

23 (6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

24 (a) The Legislature recognizes that early referral and
25 comprehensive treatment can help combat mental illness and
26 substance abuse disorders in families and that treatment is
27 cost-effective.

28 (b) The Legislature establishes the following goals for the
29 state related to mental illness and substance abuse treatment
30 services in the dependency process:

31 1. To ensure the safety of children.
32 2. To prevent and remediate the consequences of mental
33 illness and substance abuse disorders on families involved in
34 protective supervision or foster care and reduce the occurrences
35 of mental illness and substance abuse disorders, including
36 alcohol abuse or other related disorders, for families who are
37 at risk of being involved in protective supervision or foster
38 care.

39 3. To expedite permanency for children and reunify healthy,



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40 intact families, when appropriate.

41 4. To support families in recovery.

42 (c) The Legislature finds that children in the care of the
43 state's dependency system need appropriate health care services,
44 that the impact of mental illnesses and substance abuse on
45 health indicates the need for health care services to include
46 treatment for mental health and substance abuse disorders for
47 ~~services to~~ children and parents where appropriate, and that it
48 is in the state's best interest that such children be provided
49 the services they need to enable them to become and remain
50 independent of state care. In order to provide these services,
51 the state's dependency system must have the ability to identify
52 and provide appropriate intervention and treatment for children
53 with personal or family-related mental illness and substance
54 abuse problems.

55 (d) It is the intent of the Legislature to encourage the
56 use of the mental health programs established under chapter 394
57 and the drug court program model established under ~~by~~ s. 397.334
58 and authorize courts to assess children and persons who have
59 custody or are requesting custody of children where good cause
60 is shown to identify and address mental illnesses and substance
61 abuse disorders ~~problems~~ as the court deems appropriate at every
62 stage of the dependency process. Participation in treatment,
63 including a treatment-based mental health court program or a
64 treatment-based drug court program, may be required by the court
65 following adjudication. Participation in assessment and
66 treatment before ~~prior to~~ adjudication is ~~shall be~~ voluntary,
67 except as provided in s. 39.407(16).

68 (e) It is therefore the purpose of the Legislature to



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69 provide authority for the state to contract with mental health
70 service providers and community substance abuse treatment
71 providers for the development and operation of specialized
72 support and overlay services for the dependency system, which
73 will be fully implemented and used as resources permit.

74 (f) Participation in a treatment-based mental health court
75 program or a ~~the~~ treatment-based drug court program does not
76 divest any public or private agency of its responsibility for a
77 child or adult, but is intended to enable these agencies to
78 better meet their needs through shared responsibility and
79 resources.

80 Section 3. Paragraph (c) of subsection (6) of section
81 39.407, Florida Statutes, is amended to read:

82 39.407 Medical, psychiatric, and psychological examination
83 and treatment of child; physical, mental, or substance abuse
84 examination of person with or requesting child custody.—

85 (6) Children who are in the legal custody of the department
86 may be placed by the department, without prior approval of the
87 court, in a residential treatment center licensed under s.
88 394.875 or a hospital licensed under chapter 395 for residential
89 mental health treatment only pursuant to this section or may be
90 placed by the court in accordance with an order of involuntary
91 examination or involuntary placement entered pursuant to s.
92 394.463 or s. 394.467. All children placed in a residential
93 treatment program under this subsection must have a guardian ad
94 litem appointed.

95 (c) Before a child is admitted under this subsection, the
96 child shall be assessed for suitability for residential
97 treatment by a qualified evaluator who has conducted a personal



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98 examination and assessment of the child and has made written
99 findings that:

100 1. The child appears to have an emotional disturbance
101 serious enough to require residential treatment and is
102 reasonably likely to benefit from the treatment.

103 2. The child has been provided with a clinically
104 appropriate explanation of the nature and purpose of the
105 treatment.

106 3. All available modalities of treatment less restrictive
107 than residential treatment have been considered, and a less
108 restrictive alternative that would offer comparable benefits to
109 the child is unavailable.

110
111 A copy of the written findings of the evaluation and suitability
112 assessment must be provided to the department, ~~and~~ to the
113 guardian ad litem, and, if the child is a member of a Medicaid
114 Managed Health Care Plan, to the plan that is financially
115 responsible for the child's care in residential treatment, any
116 of whom must be provided ~~who shall have~~ the opportunity to
117 discuss the findings with the evaluator.

118 Section 4. Subsection (10) of section 39.507, Florida
119 Statutes, is amended to read:

120 39.507 Adjudicatory hearings; orders of adjudication.-

121 (10) After an adjudication of dependency, or a finding of
122 dependency in which ~~where~~ adjudication is withheld, the court
123 may order a person who has, ~~custody~~ or is requesting, custody of
124 the child to submit to a mental health or substance abuse
125 disorder assessment or evaluation. The order may be made only
126 upon good cause shown and pursuant to notice and procedural



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127 requirements provided under the Florida Rules of Juvenile
128 Procedure. The assessment or evaluation must be administered by
129 an appropriate a qualified professional, as defined in s.
130 394.455 or s. 397.311. The court may also require such person to
131 participate in and comply with treatment and services identified
132 as necessary, including, when appropriate and available,
133 participation in and compliance with a mental health program
134 established under chapter 394 or a treatment-based drug court
135 program established under s. 397.334. In addition to supervision
136 by the department, the court, including a treatment-based mental
137 health court program or a ~~the~~ treatment-based drug court
138 program, may oversee the progress and compliance with treatment
139 by a person who has custody or is requesting custody of the
140 child. The court may impose appropriate available sanctions for
141 noncompliance upon a person who has custody or is requesting
142 custody of the child or make a finding of noncompliance for
143 consideration in determining whether an alternative placement of
144 the child is in the child's best interests. Any order entered
145 under this subsection may be made only upon good cause shown.
146 This subsection does not authorize placement of a child with a
147 person seeking custody, other than the parent or legal
148 custodian, who requires mental health or substance abuse
149 disorder treatment.

150 Section 5. Paragraph (b) of subsection (1) of section
151 39.521, Florida Statutes, is amended to read:

152 39.521 Disposition hearings; powers of disposition.—

153 (1) A disposition hearing shall be conducted by the court,
154 if the court finds that the facts alleged in the petition for
155 dependency were proven in the adjudicatory hearing, or if the



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156 parents or legal custodians have consented to the finding of
157 dependency or admitted the allegations in the petition, have
158 failed to appear for the arraignment hearing after proper
159 notice, or have not been located despite a diligent search
160 having been conducted.

161 (b) When any child is adjudicated by a court to be
162 dependent, the court having jurisdiction of the child has the
163 power by order to:

164 1. Require the parent and, when appropriate, the legal
165 custodian and the child to participate in treatment and services
166 identified as necessary. The court may require the person who
167 has custody or who is requesting custody of the child to submit
168 to a mental illness or substance abuse disorder assessment or
169 evaluation. The order may be made only upon good cause shown and
170 pursuant to notice and procedural requirements provided under
171 the Florida Rules of Juvenile Procedure. The assessment or
172 evaluation must be administered by an appropriate a qualified
173 professional, as defined in s. 394.455 or s. 397.311. The court
174 may also require such person to participate in and comply with
175 treatment and services identified as necessary, including, when
176 appropriate and available, participation in and compliance with
177 a mental health program established under chapter 394 or a
178 treatment-based drug court program established under s. 397.334.
179 In addition to supervision by the department, the court,
180 including a treatment-based mental health court program or a ~~the~~
181 treatment-based drug court program, may oversee the progress and
182 compliance with treatment by a person who has custody or is
183 requesting custody of the child. The court may impose
184 appropriate available sanctions for noncompliance upon a person



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185 who has custody or is requesting custody of the child or make a
186 finding of noncompliance for consideration in determining
187 whether an alternative placement of the child is in the child's
188 best interests. Any order entered under this subparagraph may be
189 made only upon good cause shown. This subparagraph does not
190 authorize placement of a child with a person seeking custody of
191 the child, other than the child's parent or legal custodian, who
192 requires mental health or substance abuse treatment.

193 2. Require, if the court deems necessary, the parties to
194 participate in dependency mediation.

195 3. Require placement of the child either under the
196 protective supervision of an authorized agent of the department
197 in the home of one or both of the child's parents or in the home
198 of a relative of the child or another adult approved by the
199 court, or in the custody of the department. Protective
200 supervision continues until the court terminates it or until the
201 child reaches the age of 18, whichever date is first. Protective
202 supervision shall be terminated by the court whenever the court
203 determines that permanency has been achieved for the child,
204 whether with a parent, another relative, or a legal custodian,
205 and that protective supervision is no longer needed. The
206 termination of supervision may be with or without retaining
207 jurisdiction, at the court's discretion, and shall in either
208 case be considered a permanency option for the child. The order
209 terminating supervision by the department must ~~shall~~ set forth
210 the powers of the custodian of the child and ~~shall~~ include the
211 powers ordinarily granted to a guardian of the person of a minor
212 unless otherwise specified. Upon the court's termination of
213 supervision by the department, ~~no~~ further judicial reviews are



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214 not required ~~if, so long as~~ permanency has been established for
215 the child.

216 Section 6. Section 394.455, Florida Statutes, is amended to
217 read:

218 394.455 Definitions.—As used in this part, ~~unless the~~
219 ~~context clearly requires otherwise,~~ the term:

220 (1) "Access center" means a facility staffed by medical,
221 behavioral, and substance abuse professionals which provides
222 emergency screening and evaluation for mental health or
223 substance abuse disorders and may provide transportation to an
224 appropriate facility if an individual is in need of more
225 intensive services.

226 (2) "Addictions receiving facility" is a secure, acute care
227 facility that, at a minimum, provides emergency screening,
228 evaluation, detoxification and stabilization services; is
229 operated 24 hours per day, 7 days per week; and is designated by
230 the department to serve individuals found to have substance
231 abuse impairment who qualify for services under this part.

232 (3) ~~(1)~~ "Administrator" means the chief administrative
233 officer of a receiving or treatment facility or his or her
234 designee.

235 (4) "Adult" means an individual who is 18 years of age or
236 older or who has had the disability of nonage removed under
237 chapter 743.

238 (5) "Advanced registered nurse practitioner" means any
239 person licensed in this state to practice professional nursing
240 who is certified in advanced or specialized nursing practice
241 under s. 464.012.

242 (6) ~~(2)~~ "Clinical psychologist" means a psychologist as



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243 defined in s. 490.003(7) with 3 years of postdoctoral experience
244 in the practice of clinical psychology, inclusive of the
245 experience required for licensure, or a psychologist employed by
246 a facility operated by the United States Department of Veterans
247 Affairs that qualifies as a receiving or treatment facility
248 under this part.

249 (7)~~(3)~~ "Clinical record" means all parts of the record
250 required to be maintained and includes all medical records,
251 progress notes, charts, and admission and discharge data, and
252 all other information recorded by a facility staff which
253 pertains to the patient's hospitalization or treatment.

254 (8)~~(4)~~ "Clinical social worker" means a person licensed as
255 a clinical social worker under s. 491.005 or s. 491.006 ~~chapter~~
256 ~~491~~.

257 (9)~~(5)~~ "Community facility" means a ~~any~~ community service
258 provider that contracts ~~contracting~~ with the department to
259 furnish substance abuse or mental health services under part IV
260 of this chapter.

261 (10)~~(6)~~ "Community mental health center or clinic" means a
262 publicly funded, not-for-profit center that ~~which~~ contracts with
263 the department for the provision of inpatient, outpatient, day
264 treatment, or emergency services.

265 (11)~~(7)~~ "Court," unless otherwise specified, means the
266 circuit court.

267 (12)~~(8)~~ "Department" means the Department of Children and
268 Families.

269 (13) "Designated receiving facility" means a facility
270 approved by the department which may be a public or private
271 hospital, crisis stabilization unit, addictions receiving



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272 facility and provides, at a minimum, emergency screening,
273 evaluation, and short-term stabilization for mental health or
274 substance abuse disorders, and which may have an agreement with
275 a corresponding facility for transportation and services.

276 (14) "Detoxification facility" means a facility licensed to
277 provide detoxification services under chapter 397.

278 (15) "Electronic means" is a form of telecommunication
279 which requires all parties to maintain visual as well as audio
280 communication when being used to conduct an examination by a
281 qualified professional.

282 (16)-(9) "Express and informed consent" means consent
283 voluntarily given in writing, by a competent person, after
284 sufficient explanation and disclosure of the subject matter
285 involved to enable the person to make a knowing and willful
286 decision without any element of force, fraud, deceit, duress, or
287 other form of constraint or coercion.

288 (17)-(10) "Facility" means any hospital, community facility,
289 public or private facility, or receiving or treatment facility
290 providing for the evaluation, diagnosis, care, treatment,
291 training, or hospitalization of persons who appear to have a
292 mental illness or who have been diagnosed as having a mental
293 illness or substance abuse impairment. The term "Facility" does
294 not include a any program or an entity licensed under pursuant
295 to chapter 400 or chapter 429.

296 (18) "Governmental facility" means a facility owned,
297 operated, or administered by the Department of Corrections or
298 the United States Department of Veterans Affairs.

299 (19)-(11) "Guardian" means the natural guardian of a minor,
300 or a person appointed by a court to act on behalf of a ward's



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301 person if the ward is a minor or has been adjudicated
302 incapacitated.

303 (20)~~(12)~~ "Guardian advocate" means a person appointed by a
304 court to make decisions regarding mental health or substance
305 abuse treatment on behalf of a patient who has been found
306 incompetent to consent to treatment pursuant to this part. ~~The~~
307 ~~guardian advocate may be granted specific additional powers by~~
308 ~~written order of the court, as provided in this part.~~

309 (21)~~(13)~~ "Hospital" means a hospital ~~facility as defined in~~
310 ~~s. 395.002 and~~ licensed under chapter 395 and part II of chapter
311 408.

312 (22)~~(14)~~ "Incapacitated" means that a person has been
313 adjudicated incapacitated pursuant to part V of chapter 744 and
314 a guardian of the person has been appointed.

315 (23)~~(15)~~ "Incompetent to consent to treatment" means a
316 state in which ~~that~~ a person's judgment is so affected by a ~~his~~
317 ~~or her~~ mental illness or a substance abuse impairment, that he
318 or she ~~the person~~ lacks the capacity to make a well-reasoned,
319 willful, and knowing decision concerning his or her medical, ~~or~~
320 mental health, or substance abuse treatment.

321 (24) "Involuntary examination" means an examination
322 performed under s. 394.463 or s. 397.675 to determine whether a
323 person qualifies for involuntary services.

324 (25) "Involuntary services" in this part means court-
325 ordered outpatient services or inpatient placement for mental
326 health treatment pursuant to s. 394.4655 or s. 394.467.

327 (26)~~(16)~~ "Law enforcement officer" has the same meaning as
328 provided ~~means a law enforcement officer as defined in s.~~
329 943.10.



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330 (27) "Marriage and family therapist" means a person
331 licensed to practice marriage and family therapy under s.
332 491.005 or s. 491.006.

333 (28) "Mental health counselor" means a person licensed to
334 practice mental health counseling under s. 491.005 or s.
335 491.006.

336 (29)~~(17)~~ "Mental health overlay program" means a mobile
337 service that ~~which~~ provides an independent examination for
338 voluntary admission ~~admissions~~ and a range of supplemental
339 onsite services to persons with a mental illness in a
340 residential setting such as a nursing home, an assisted living
341 facility, or an adult family-care home, or a nonresidential
342 setting such as an adult day care center. Independent
343 examinations provided ~~pursuant to this part~~ through a mental
344 health overlay program must only be provided under contract with
345 the department ~~for this service~~ or be attached to a public
346 receiving facility that is also a community mental health
347 center.

348 (30)~~(18)~~ "Mental illness" means an impairment of the mental
349 or emotional processes that exercise conscious control of one's
350 actions or of the ability to perceive or understand reality,
351 which impairment substantially interferes with the person's
352 ability to meet the ordinary demands of living. For the purposes
353 of this part, the term does not include a developmental
354 disability as defined in chapter 393, intoxication, or
355 conditions manifested only by antisocial behavior or substance
356 abuse ~~impairment~~.

357 (31) "Minor" means an individual who is 17 years of age or
358 younger and who has not had the disability of nonage removed



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359 pursuant to s. 743.01 or s. 743.015.

360 (32)-(19) "Mobile crisis response service" means a
361 nonresidential crisis service attached to a public receiving
362 facility and available 24 hours a day, 7 days a week, through
363 which provides immediate intensive assessments and
364 interventions, including screening for admission into a mental
365 health receiving facility, an addictions receiving facility, or
366 a detoxification facility, take place for the purpose of
367 identifying appropriate treatment services.

368 (33)-(20) "Patient" means any person, with or without a co-
369 occurring substance abuse disorder who is held or accepted for
370 mental health treatment.

371 (34)-(21) "Physician" means a medical practitioner licensed
372 under chapter 458 or chapter 459 who has experience in the
373 diagnosis and treatment of mental and nervous disorders or a
374 physician employed by a facility operated by the United States
375 Department of Veterans Affairs or the United States Department
376 of Defense which qualifies as a receiving or treatment facility
377 under this part.

378 (35) "Physician assistant" means a person licensed under
379 chapter 458 or chapter 459 who has experience in the diagnosis
380 and treatment of mental disorders.

381 (36)-(22) "Private facility" means any hospital or facility
382 operated by a for-profit or not-for-profit corporation or
383 association which that provides mental health or substance abuse
384 services and is not a public facility.

385 (37)-(23) "Psychiatric nurse" means an advanced registered
386 nurse practitioner certified under s. 464.012 who has a master's
387 or doctoral degree in psychiatric nursing, holds a national



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388 advanced practice certification as a psychiatric mental health
389 advanced practice nurse, and has 2 years of post-master's
390 clinical experience under the supervision of a physician.

391 ~~(38)-(24)~~ "Psychiatrist" means a medical practitioner
392 licensed under chapter 458 or chapter 459 ~~who has primarily~~
393 ~~diagnosed and treated mental and nervous disorders~~ for at least
394 ~~a period of not less than~~ 3 years, inclusive of psychiatric
395 residency.

396 ~~(39)-(25)~~ "Public facility" means a ~~any~~ facility that has
397 contracted with the department to provide mental health services
398 to all persons, regardless of ~~their~~ ability to pay, and is
399 receiving state funds for such purpose.

400 (40) "Qualified professional" means a physician or a
401 physician assistant licensed under chapter 458 or chapter 459; a
402 professional licensed under chapter 490.003(7) or chapter 491; a
403 psychiatrist licensed under chapter 458 or chapter 459; or a
404 psychiatric nurse as defined in subsection (37).

405 ~~(41)-(26)~~ "Receiving facility" means any public or private
406 facility or hospital designated by the department to receive and
407 hold or refer, as appropriate, involuntary patients under
408 emergency conditions ~~or~~ for mental health or substance abuse
409 ~~psychiatric~~ evaluation and to provide ~~short-term~~ treatment or
410 transportation to the appropriate service provider. The term
411 does not include a county jail.

412 ~~(42)-(27)~~ "Representative" means a person selected to
413 receive notice of proceedings during the time a patient is held
414 in or admitted to a receiving or treatment facility.

415 ~~(43)-(28)~~ (a) "Restraint" means: a physical device, method,
416 ~~or drug used to control behavior.~~



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417 (a) A physical restraint, including ~~is~~ any manual method or
418 physical or mechanical device, material, or equipment attached
419 or adjacent to ~~an~~ ~~the~~ individual's body so that he or she cannot
420 easily remove the restraint and which restricts freedom of
421 movement or normal access to one's body. Physical restraint
422 includes the physical holding of a person during a procedure to
423 forcibly administer psychotropic medication. Physical restraint
424 does not include physical devices such as orthopedically
425 prescribed appliances, surgical dressings and bandages,
426 supportive body bands, or other physical holding when necessary
427 for routine physical examinations and tests or for purposes of
428 orthopedic, surgical, or other similar medical treatment, when
429 used to provide support for the achievement of functional body
430 position or proper balance, or when used to protect a person
431 from falling out of bed.

432 (b) A drug or ~~used as a restraint is a~~ medication used to
433 control a ~~the~~ person's behavior or to restrict his or her
434 freedom of movement which ~~and~~ is not part of the standard
435 treatment regimen of a person with a diagnosed mental illness
436 ~~who is a client of the department. Physically holding a person~~
437 ~~during a procedure to forcibly administer psychotropic~~
438 ~~medication is a physical restraint.~~

439 ~~(c) Restraint does not include physical devices, such as~~
440 ~~orthopedically prescribed appliances, surgical dressings and~~
441 ~~bandages, supportive body bands, or other physical holding when~~
442 ~~necessary for routine physical examinations and tests; or for~~
443 ~~purposes of orthopedic, surgical, or other similar medical~~
444 ~~treatment; when used to provide support for the achievement of~~
445 ~~functional body position or proper balance; or when used to~~



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446 ~~protect a person from falling out of bed.~~

447 (44) "School psychologist" has the same meaning as in s.
448 490.003.

449 (45)~~(29)~~ "Seclusion" means the physical segregation ~~of a~~
450 ~~person in any fashion~~ or involuntary isolation of a person in a
451 room or area from which the person is prevented from leaving.
452 The prevention may be by physical barrier or by a staff member
453 who is acting in a manner, or who is physically situated, so as
454 to prevent the person from leaving the room or area. For
455 purposes of this part ~~chapter~~, the term does not mean isolation
456 due to a person's medical condition or symptoms.

457 (46)~~(30)~~ "Secretary" means the Secretary of Children and
458 Families.

459 (47) "Service provider" means a receiving facility, any
460 facility licensed under chapter 397, a treatment facility, an
461 entity under contract with the department to provide mental
462 health or substance abuse services, a community mental health
463 center or clinic, a psychologist, a clinical social worker, a
464 marriage and family therapist, a mental health counselor, a
465 physician, a psychiatrist, an advanced registered nurse
466 practitioner, a psychiatric nurse, or a qualified professional
467 as defined in this section.

468 (48) "Substance abuse impairment" means a condition
469 involving the use of alcoholic beverages or any psychoactive or
470 mood-altering substance in such a manner that a person has lost
471 the power of self-control and has inflicted or is likely to
472 inflict physical harm on himself or herself or others.

473 (49)~~(31)~~ "Transfer evaluation" means the process by which~~7~~
474 ~~as approved by the appropriate district office of the~~



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475 ~~department, whereby~~ a person who is being considered for
476 placement in a state treatment facility is ~~first~~ evaluated for
477 appropriateness of admission to a state treatment ~~the~~ facility
478 ~~by a community-based public receiving facility or by a community~~
479 ~~mental health center or clinic if the public receiving facility~~
480 ~~is not a community mental health center or clinic.~~

481 (50) ~~(32)~~ "Treatment facility" means a any state-owned,
482 state-operated, or state-supported hospital, center, or clinic
483 designated by the department for extended treatment and
484 hospitalization, beyond that provided for by a receiving
485 facility, of persons who have a mental illness, including
486 facilities of the United States Government, and any private
487 facility designated by the department when rendering such
488 services to a person pursuant to the provisions of this part.
489 Patients treated in facilities of the United States Government
490 shall be solely those whose care is the responsibility of the
491 United States Department of Veterans Affairs.

492 (51) "Triage center" means a facility that is designated by
493 the department and has medical, behavioral, and substance abuse
494 professionals present or on call to provide emergency screening
495 and evaluation of individuals transported to the center by a law
496 enforcement officer.

497 ~~(33)~~ "Service provider" means ~~any public or private~~
498 ~~receiving facility, an entity under contract with the Department~~
499 ~~of Children and Families to provide mental health services, a~~
500 ~~clinical psychologist, a clinical social worker, a marriage and~~
501 ~~family therapist, a mental health counselor, a physician, a~~
502 ~~psychiatric nurse as defined in subsection (23), or a community~~
503 ~~mental health center or clinic as defined in this part.~~



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504 ~~(34) "Involuntary examination" means an examination~~
505 ~~performed under s. 394.463 to determine if an individual~~
506 ~~qualifies for involuntary inpatient treatment under s.~~
507 ~~394.467(1) or involuntary outpatient treatment under s.~~
508 ~~394.4655(1).~~

509 ~~(35) "Involuntary placement" means either involuntary~~
510 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~
511 ~~inpatient treatment pursuant to s. 394.467.~~

512 ~~(36) "Marriage and family therapist" means a person~~
513 ~~licensed as a marriage and family therapist under chapter 491.~~

514 ~~(37) "Mental health counselor" means a person licensed as a~~
515 ~~mental health counselor under chapter 491.~~

516 ~~(38) "Electronic means" means a form of telecommunication~~
517 ~~that requires all parties to maintain visual as well as audio~~
518 ~~communication.~~

519 Section 7. Section 394.4573, Florida Statutes, is amended
520 to read:

521 394.4573 Coordinated system of care; annual assessment;
522 essential elements ~~Continuity of care management system;~~
523 measures of performance; system improvement grants; reports. ~~On~~
524 or before October 1 of each year, the department shall submit to
525 the Governor, the President of the Senate, and the Speaker of
526 the House of Representatives an assessment of the behavioral
527 health services in this state in the context of the No-Wrong-
528 Door model and standards set forth in this section. The
529 department's assessment shall be based on both quantitative and
530 qualitative data and must identify any significant regional
531 variations. The assessment must include information gathered
532 from managing entities; service providers; facilities performing



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533 acute behavioral health care triage functions for the community;
534 crisis stabilization units; detoxification units; addictions
535 receiving facilities and hospitals, both public and private; law
536 enforcement; judicial officials; local governments; behavioral
537 health consumers and their family members; and the public.

538 (1) As used in ~~For the purposes of~~ this section:

539 (a) "Case management" means those direct services provided
540 to a client in order to assess his or her activities aimed at
541 assessing client needs, plan or arrange planning services,
542 coordinate service providers, link linking the service system to
543 a client, monitor coordinating the various system components,
544 monitoring service delivery, and evaluate patient outcomes
545 evaluating the effect of service delivery.

546 (b) "Case manager" means an individual who works with
547 clients, and their families and significant others, to provide
548 case management.

549 (c) "Client manager" means an employee of the managing
550 entity or entity under contract with the managing entity
551 department who is assigned to specific provider agencies and
552 geographic areas to ensure that the full range of needed
553 services is available to clients.

554 (d) "Coordinated system Continuity of care management
555 system" means ~~a system that assures, within available resources,~~
556 ~~that clients have access to~~ the full array of behavioral and
557 related services in a region or community offered by all service
558 providers, whether participating under contract with the
559 managing entity or another method of community partnership or
560 mutual agreement ~~within the mental health services delivery~~
561 ~~system.~~



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562 (e) "No-Wrong-Door model" means a model for the delivery of
563 acute care services to persons who have mental health or
564 substance abuse disorders, or both, which optimizes access to
565 care, regardless of the entry point to the behavioral health
566 care system.

567 (2) The essential elements of a coordinated system of care
568 include:

569 (a) Community interventions, such as prevention, primary
570 care for behavioral health needs, therapeutic and supportive
571 services, crisis response services, and diversion programs.

572 (b) A designated receiving system shall consist of one or
573 more facilities serving a defined geographic area and
574 responsible for assessment and evaluation, both voluntary and
575 involuntary, and treatment or triage for patients who present
576 with mental illness, substance abuse disorder, or co-occurring
577 disorders. A county or several counties shall plan the
578 designated receiving system through an inclusive process,
579 approved by the managing entity, and documented through written
580 memoranda of agreement or other binding arrangements. The
581 designated receiving system may be organized in any of the
582 following ways so long as it functions as a No-Wrong-Door model
583 that responds to individual needs and integrates services among
584 various providers:

585 1. A central receiving system, which consists of a
586 designated central receiving facility that serves as a single
587 entry point for persons with mental health or substance abuse
588 disorders, or both. The central receiving facility must be
589 capable of assessment, evaluation, and triage or treatment for
590 various conditions and circumstances.



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591 2. A coordinated receiving system, which consists of
592 multiple entry points that are linked by shared data systems,
593 formal referral agreements, and cooperative arrangements for
594 care coordination and case management. Each entry point must be
595 a designated receiving facility and must provide or arrange for
596 necessary services following an initial assessment and
597 evaluation.

598 3. A tiered receiving system, which consists of multiple
599 entry points, some of which offer only specialized or limited
600 services. Each service provider must be classified according to
601 its capabilities as either a designated receiving facility, or
602 another type of service provider such as a residential
603 detoxification center, triage center, or an access center. All
604 participating service providers must be linked by methods to
605 share data that are compliant with both state and federal
606 patient privacy and confidentiality laws, formal referral
607 agreements, and cooperative arrangements for care coordination
608 and case management. An accurate inventory of the participating
609 service providers which specifies the capabilities and
610 limitations of each provider must be maintained and made
611 available at all times to all first responders in the service
612 area.

613 (c) Transportation in accordance with a plan developed
614 under s. 394.462.

615 (d) Crisis services, including mobile response teams,
616 crisis stabilization units, addiction receiving facilities, and
617 detoxification facilities.

618 (e) Case management, including intensive case management
619 for individuals determined to be high-need or high-utilization



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620 individuals under s. 394.9082(2)(e).
621 (f) Outpatient services.
622 (g) Residential services.
623 (h) Hospital inpatient care.
624 (i) Aftercare and other post-discharge services.
625 (j) Medication Assisted Treatment and medication
626 management.
627 (k) Recovery support, including housing assistance and
628 support for competitive employment, educational attainment,
629 independent living skills development, family support and
630 education, and wellness management and self-care.
631 (3) The department's annual assessment must compare the
632 status and performance of the extant behavioral health system
633 with the following standards and any other standards or measures
634 that the department determines to be applicable.
635 (a) The capacity of the contracted service providers to
636 meet estimated need when such estimates are based on credible
637 evidence and sound methodologies.
638 (b) The extent to which the behavioral health system uses
639 evidence-informed practices and broadly disseminates the results
640 of quality improvement activities to all service providers.
641 (c) The degree to which services are offered in the least
642 restrictive and most appropriate therapeutic environment.
643 (d) The scope of system-wide accountability activities used
644 to monitor patient outcomes and measure continuous improvement
645 in the behavioral health system.
646 (4) Subject to a specific appropriation by the Legislature,
647 the department may award system improvement grants to managing
648 entities based on the submission of a detailed plan to enhance



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649 services, coordination, or performance measurement in accordance
650 with the model and standards specified in this section. Such a
651 grant must be awarded through a performance-based contract that
652 links payments to the documented and measurable achievement of
653 system improvements ~~The department is directed to implement a~~
654 ~~continuity of care management system for the provision of mental~~
655 ~~health care, through the provision of client and case~~
656 ~~management, including clients referred from state treatment~~
657 ~~facilities to community mental health facilities. Such system~~
658 ~~shall include a network of client managers and case managers~~
659 ~~throughout the state designed to:~~

660 ~~(a) Reduce the possibility of a client's admission or~~
661 ~~readmission to a state treatment facility.~~

662 ~~(b) Provide for the creation or designation of an agency in~~
663 ~~each county to provide single intake services for each person~~
664 ~~seeking mental health services. Such agency shall provide~~
665 ~~information and referral services necessary to ensure that~~
666 ~~clients receive the most appropriate and least restrictive form~~
667 ~~of care, based on the individual needs of the person seeking~~
668 ~~treatment. Such agency shall have a single telephone number,~~
669 ~~operating 24 hours per day, 7 days per week, where practicable,~~
670 ~~at a central location, where each client will have a central~~
671 ~~record.~~

672 ~~(c) Advocate on behalf of the client to ensure that all~~
673 ~~appropriate services are afforded to the client in a timely and~~
674 ~~dignified manner.~~

675 ~~(d) Require that any public receiving facility initiating a~~
676 ~~patient transfer to a licensed hospital for acute care mental~~
677 ~~health services not accessible through the public receiving~~



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678 ~~facility shall notify the hospital of such transfer and send all~~
679 ~~records relating to the emergency psychiatric or medical~~
680 ~~condition.~~

681 ~~(3) The department is directed to develop and include in~~
682 ~~contracts with service providers measures of performance with~~
683 ~~regard to goals and objectives as specified in the state plan.~~
684 ~~Such measures shall use, to the extent practical, existing data~~
685 ~~collection methods and reports and shall not require, as a~~
686 ~~result of this subsection, additional reports on the part of~~
687 ~~service providers. The department shall plan monitoring visits~~
688 ~~of community mental health facilities with other state, federal,~~
689 ~~and local governmental and private agencies charged with~~
690 ~~monitoring such facilities.~~

691 Section 8. Paragraphs (d) and (e) of subsection (2) of
692 section 394.4597, Florida Statutes, are amended to read:

693 394.4597 Persons to be notified; patient's representative.-

694 (2) INVOLUNTARY PATIENTS.-

695 (d) When the receiving or treatment facility selects a
696 representative, first preference shall be given to a health care
697 surrogate, if one has been previously selected by the patient.
698 If the patient has not previously selected a health care
699 surrogate, the selection, except for good cause documented in
700 the patient's clinical record, shall be made from the following
701 list in the order of listing:

- 702 1. The patient's spouse.
- 703 2. An adult child of the patient.
- 704 3. A parent of the patient.
- 705 4. The adult next of kin of the patient.
- 706 5. An adult friend of the patient.



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707 ~~6. The appropriate Florida local advocacy council as~~
708 ~~provided in s. 402.166.~~

709 (e) The following persons are prohibited from selection as
710 a patient's representative:

711 1. A professional providing clinical services to the
712 patient under this part.

713 2. The licensed professional who initiated the involuntary
714 examination of the patient, if the examination was initiated by
715 professional certificate.

716 3. An employee, an administrator, or a board member of the
717 facility providing the examination of the patient.

718 4. An employee, an administrator, or a board member of a
719 treatment facility providing treatment for the patient.

720 5. A person providing any substantial professional services
721 to the patient, including clinical services.

722 6. A creditor of the patient.

723 7. A person subject to an injunction for protection against
724 domestic violence under s. 741.30, whether the order of
725 injunction is temporary or final, and for which the patient was
726 the petitioner.

727 8. A person subject to an injunction for protection against
728 repeat violence, stalking, sexual violence, or dating violence
729 under s. 784.046, whether the order of injunction is temporary
730 or final, and for which the patient was the petitioner A

731 ~~licensed professional providing services to the patient under~~
732 ~~this part, an employee of a facility providing direct services~~
733 ~~to the patient under this part, a department employee, a person~~
734 ~~providing other substantial services to the patient in a~~
735 ~~professional or business capacity, or a creditor of the patient~~



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736 ~~shall not be appointed as the patient's representative.~~

737 Section 9. Present subsections (2) through (7) of section
738 394.4598, Florida Statutes, are redesignated as subsections (3)
739 through (8), respectively, a new subsection (2) is added to that
740 section, and present subsections (3) and (4) of that section are
741 amended, to read:

742 394.4598 Guardian advocate.—

743 (2) The following persons are prohibited from appointment
744 as a patient's guardian advocate:

745 (a) A professional providing clinical services to the
746 patient under this part.

747 (b) The licensed professional who initiated the involuntary
748 examination of the patient, if the examination was initiated by
749 professional certificate.

750 (c) An employee, an administrator, or a board member of the
751 facility providing the examination of the patient.

752 (d) An employee, an administrator, or a board member of a
753 treatment facility providing treatment of the patient.

754 (e) A person providing any substantial professional
755 services, excluding public and professional guardians, to the
756 patient, including clinical services.

757 (f) A creditor of the patient.

758 (g) A person subject to an injunction for protection
759 against domestic violence under s. 741.30, whether the order of
760 injunction is temporary or final, and for which the patient was
761 the petitioner.

762 (h) A person subject to an injunction for protection
763 against repeat violence, stalking, sexual violence, or dating
764 violence under s. 784.046, whether the order of injunction is



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765 temporary or final, and for which the patient was the
766 petitioner.

767 (4)(3) In lieu of the training required of guardians
768 appointed pursuant to chapter 744, Prior to a guardian advocate
769 must, at a minimum, participate in a 4-hour training course
770 approved by the court before exercising his or her authority,
771 the guardian advocate shall attend a training course approved by
772 the court. At a minimum, this training course, of not less than
773 4 hours, must include, at minimum, information about the patient
774 rights, psychotropic medications, the diagnosis of mental
775 illness, the ethics of medical decisionmaking, and duties of
776 guardian advocates. This training course shall take the place of
777 the training required for guardians appointed pursuant to
778 chapter 744.

779 (5)(4) The required training course and the information to
780 be supplied to prospective guardian advocates before prior to
781 their appointment and the training course for guardian advocates
782 must be developed and completed through a course developed by
783 the department, and approved by the chief judge of the circuit
784 court, and taught by a court-approved organization, which-
785 Court-approved organizations may include, but is are not limited
786 to, a community college community or junior colleges, a
787 guardianship organization guardianship organizations, a and the
788 local bar association, or The Florida Bar. The training course
789 may be web-based, provided in video format, or other electronic
790 means but must be capable of ensuring the identity and
791 participation of the prospective guardian advocate. The court
792 may, in its discretion, waive some or all of the training
793 requirements for guardian advocates or impose additional



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794 requirements. The court shall make its decision on a case-by-
795 case basis and, in making its decision, shall consider the
796 experience and education of the guardian advocate, the duties
797 assigned to the guardian advocate, and the needs of the patient.

798 Section 10. Section 394.462, Florida Statutes, is amended
799 to read:

800 394.462 Transportation.—A transportation plan must be
801 developed and implemented by each county in accordance with this
802 section. A county may enter into a memorandum of understanding
803 with the governing boards of nearby counties to establish a
804 shared transportation plan. When multiple counties enter into a
805 memorandum of understanding for this purpose, the managing
806 entity must be notified and provided a copy of the agreement.
807 The transportation plan must describe methods of transport to a
808 facility within the designated receiving system and may identify
809 responsibility for other transportation to a participating
810 facility when necessary and agreed to by the facility. The plan
811 must describe how individuals who meet the criteria for
812 involuntary assessment and evaluation pursuant to ss. 394.463
813 and 397.675 will be transported. The plan may rely on emergency
814 medical transport services or private transport companies as
815 appropriate.

816 (1) TRANSPORTATION TO A RECEIVING FACILITY.—

817 (a) Each county shall designate a single law enforcement
818 agency within the county, or portions thereof, to take a person
819 into custody upon the entry of an ex parte order or the
820 execution of a certificate for involuntary examination by an
821 authorized professional and to transport that person to an
822 appropriate facility within the designated receiving system ~~the~~



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823 ~~nearest receiving facility~~ for examination.

824 **(b)1.** The designated law enforcement agency may decline to
825 transport the person to a receiving facility only if:

826 **a.1.** ~~The jurisdiction designated by the county has~~
827 ~~contracted on an annual basis with an emergency medical~~
828 ~~transport service or private transport company for~~
829 ~~transportation of persons to receiving facilities pursuant to~~
830 ~~this section at the sole cost of the county; and~~

831 **b.2.** The law enforcement agency and the emergency medical
832 transport service or private transport company agree that the
833 continued presence of law enforcement personnel is not necessary
834 for the safety of the person or others.

835 **2.3.** ~~The entity providing transportation jurisdiction~~
836 ~~designated by the county~~ may seek reimbursement for
837 transportation expenses. The party responsible for payment for
838 such transportation is the person receiving the transportation.
839 The county shall seek reimbursement from the following sources
840 in the following order:

841 a. From ~~a private or public third-party payor an insurance~~
842 ~~company, health care corporation, or other source~~, if the person
843 receiving the transportation ~~has applicable coverage is covered~~
844 ~~by an insurance policy or subscribes to a health care~~
845 ~~corporation or other source for payment of such expenses.~~

846 b. From the person receiving the transportation.

847 c. From a financial settlement for medical care, treatment,
848 hospitalization, or transportation payable or accruing to the
849 injured party.

850 **(c)(b)** ~~A~~ Any company that transports a patient pursuant to
851 this subsection is considered an independent contractor and is



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852 solely liable for the safe and dignified transport
853 ~~transportation~~ of the patient. Such company must be insured and
854 provide no less than \$100,000 in liability insurance with
855 respect to the transport ~~transportation~~ of patients.

856 (d) ~~(e)~~ Any company that contracts with a governing board of
857 a county to transport patients shall comply with the applicable
858 rules of the department to ensure the safety and dignity of ~~the~~
859 patients.

860 (e) ~~(d)~~ When a law enforcement officer takes custody of a
861 person pursuant to this part, the officer may request assistance
862 from emergency medical personnel if such assistance is needed
863 for the safety of the officer or the person in custody.

864 (f) ~~(e)~~ When a member of a mental health overlay program or
865 a mobile crisis response service is a professional authorized to
866 initiate an involuntary examination pursuant to s. 394.463 or s.
867 397.675 and that professional evaluates a person and determines
868 that transportation to a receiving facility is needed, the
869 service, at its discretion, may transport the person to the
870 facility or may call on the law enforcement agency or other
871 transportation arrangement best suited to the needs of the
872 patient.

873 (g) ~~(f)~~ When any law enforcement officer has custody of a
874 person based on either noncriminal or minor criminal behavior
875 that meets the statutory guidelines for involuntary examination
876 under this part, the law enforcement officer shall transport the
877 person to an appropriate ~~the nearest receiving~~ facility within
878 the designated receiving system for examination.

879 (h) ~~(g)~~ When any law enforcement officer has arrested a
880 person for a felony and it appears that the person meets the



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881 statutory guidelines for involuntary examination or placement
882 under this part, such person must ~~shall~~ first be processed in
883 the same manner as any other criminal suspect. The law
884 enforcement agency shall thereafter immediately notify the
885 appropriate nearest public receiving facility within the
886 designated receiving system, which shall be responsible for
887 promptly arranging for the examination and treatment of the
888 person. A receiving facility is not required to admit a person
889 charged with a crime for whom the facility determines and
890 documents that it is unable to provide adequate security, but
891 shall provide ~~mental health~~ examination and treatment to the
892 person where he or she is held.

893 (i) ~~(h)~~ If the appropriate law enforcement officer believes
894 that a person has an emergency medical condition as defined in
895 s. 395.002, the person may be first transported to a hospital
896 for emergency medical treatment, regardless of whether the
897 hospital is a designated receiving facility.

898 (j) ~~(i)~~ The costs of transportation, evaluation,
899 hospitalization, and treatment incurred under this subsection by
900 persons who have been arrested for violations of any state law
901 or county or municipal ordinance may be recovered as provided in
902 s. 901.35.

903 (k) ~~(j)~~ The ~~nearest receiving facility within the designated~~
904 receiving system must accept, pursuant to this part, persons
905 brought by law enforcement officers, an emergency medical
906 transport service, or a private transport company for
907 involuntary examination.

908 (l) ~~(k)~~ Each law enforcement agency designated pursuant to
909 paragraph (a) shall establish a policy that ~~develop a memorandum~~



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910 ~~of understanding with each receiving facility within the law~~
911 ~~enforcement agency's jurisdiction which~~ reflects a single set of
912 protocols approved by the managing entity for the safe and
913 secure transportation ~~of the person~~ and transfer of custody of
914 the person. ~~These protocols must also address crisis~~
915 ~~intervention measures.~~

916 (m) ~~(l)~~ When a jurisdiction has entered into a contract with
917 an emergency medical transport service or a private transport
918 company for transportation of persons to ~~receiving~~ facilities
919 within the designated receiving system, such service or company
920 shall be given preference for transportation of persons from
921 nursing homes, assisted living facilities, adult day care
922 centers, or adult family-care homes, unless the behavior of the
923 person being transported is such that transportation by a law
924 enforcement officer is necessary.

925 (n) ~~(m)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed
926 to limit emergency examination and treatment of incapacitated
927 persons provided in accordance with ~~the provisions of~~ s.
928 401.445.

929 (2) TRANSPORTATION TO A TREATMENT FACILITY.—

930 (a) If neither the patient nor any person legally obligated
931 or responsible for the patient is able to pay for the expense of
932 transporting a voluntary or involuntary patient to a treatment
933 facility, the transportation plan established by the governing
934 board of the county or counties must specify how in which the
935 hospitalized patient will be transported to, from, and between
936 facilities in a is hospitalized shall arrange for such required
937 transportation and shall ensure the safe and dignified manner
938 transportation of the patient. The governing board of each



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939 ~~county is authorized to contract with private transport~~
940 ~~companies for the transportation of such patients to and from a~~
941 ~~treatment facility.~~

942 (b) A ~~Any~~ company that transports a patient pursuant to
943 this subsection is considered an independent contractor and is
944 solely liable for the safe and dignified transportation of the
945 patient. Such company must be insured and provide no less than
946 \$100,000 in liability insurance with respect to the transport
947 ~~transportation~~ of patients.

948 (c) A ~~Any~~ company that contracts with one or more counties
949 ~~the governing board of a county~~ to transport patients in
950 accordance with this section shall comply with the applicable
951 rules of the department to ensure the safety and dignity of ~~the~~
952 patients.

953 (d) County or municipal law enforcement and correctional
954 personnel and equipment may ~~shall~~ not be used to transport
955 patients adjudicated incapacitated or found by the court to meet
956 the criteria for involuntary placement pursuant to s. 394.467,
957 except in small rural counties where there are no cost-efficient
958 alternatives.

959 (3) TRANSFER OF CUSTODY.—Custody of a person who is
960 transported pursuant to this part, along with related
961 documentation, shall be relinquished to a responsible individual
962 at the appropriate receiving or treatment facility.

963 ~~(4) EXCEPTIONS. An exception to the requirements of this~~
964 ~~section may be granted by the secretary of the department for~~
965 ~~the purposes of improving service coordination or better meeting~~
966 ~~the special needs of individuals. A proposal for an exception~~
967 ~~must be submitted by the district administrator after being~~



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968 ~~approved by the governing boards of any affected counties, prior~~
969 ~~to submission to the secretary.~~

970 ~~(a) A proposal for an exception must identify the specific~~
971 ~~provision from which an exception is requested; describe how the~~
972 ~~proposal will be implemented by participating law enforcement~~
973 ~~agencies and transportation authorities; and provide a plan for~~
974 ~~the coordination of services such as case management.~~

975 ~~(b) The exception may be granted only for:~~

976 ~~1. An arrangement centralizing and improving the provision~~
977 ~~of services within a district, which may include an exception to~~
978 ~~the requirement for transportation to the nearest receiving~~
979 ~~facility;~~

980 ~~2. An arrangement by which a facility may provide, in~~
981 ~~addition to required psychiatric services, an environment and~~
982 ~~services which are uniquely tailored to the needs of an~~
983 ~~identified group of persons with special needs, such as persons~~
984 ~~with hearing impairments or visual impairments, or elderly~~
985 ~~persons with physical frailties; or~~

986 ~~3. A specialized transportation system that provides an~~
987 ~~efficient and humane method of transporting patients to~~
988 ~~receiving facilities, among receiving facilities, and to~~
989 ~~treatment facilities.~~

990 ~~(c) Any exception approved pursuant to this subsection~~
991 ~~shall be reviewed and approved every 5 years by the secretary.~~

992 Section 11. Subsection (2) of section 394.463, Florida
993 Statutes, is amended to read:

994 394.463 Involuntary examination.—

995 (2) INVOLUNTARY EXAMINATION.—

996 (a) An involuntary examination may be initiated by any one



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997 of the following means:

998 1. A circuit or county court may enter an ex parte order
999 stating that a person appears to meet the criteria for
1000 involuntary examination and specifying,~~giving~~ the findings on
1001 which that conclusion is based. The ex parte order for
1002 involuntary examination must be based on written or oral sworn
1003 testimony that includes specific facts that support the
1004 findings,~~written or oral~~. If other, less restrictive, means are
1005 not available, such as voluntary appearance for outpatient
1006 evaluation, a law enforcement officer, or other designated agent
1007 of the court, shall take the person into custody and deliver him
1008 or her to an appropriate ~~the nearest receiving~~ facility within
1009 the designated receiving system for involuntary examination. The
1010 order of the court shall be made a part of the patient's
1011 clinical record. A ~~No~~ fee may not ~~shall~~ be charged for the
1012 filing of an order under this subsection. Any ~~receiving~~ facility
1013 accepting the patient based on this order must send a copy of
1014 the order to the managing entity in the region ~~Agency for Health~~
1015 ~~Care Administration~~ on the next working day. The order may be
1016 submitted electronically through existing data systems, if
1017 available. The order shall be valid only until the person is
1018 delivered to the appropriate facility ~~executed~~ or, ~~if not~~
1019 ~~executed,~~ for the period specified in the order itself,
1020 whichever comes first. If no time limit is specified in the
1021 order, the order shall be valid for 7 days after the date that
1022 the order was signed.

1023 2. A law enforcement officer shall take a person who
1024 appears to meet the criteria for involuntary examination into
1025 custody and deliver the person or have him or her delivered to



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1026 the appropriate nearest receiving facility within the designated
1027 receiving system for examination. The officer shall execute a
1028 written report detailing the circumstances under which the
1029 person was taken into custody, which must ~~and the report shall~~
1030 be made a part of the patient's clinical record. Any ~~receiving~~
1031 facility accepting the patient based on this report must send a
1032 copy of the report to the department and the managing entity
1033 ~~Agency for Health Care Administration on~~ the next working day.

1034 3. A physician, clinical psychologist, psychiatric nurse,
1035 mental health counselor, marriage and family therapist, or
1036 clinical social worker may execute a certificate stating that he
1037 or she has examined a person within the preceding 48 hours and
1038 finds that the person appears to meet the criteria for
1039 involuntary examination and stating the observations upon which
1040 that conclusion is based. If other, less restrictive means, such
1041 as voluntary appearance for outpatient evaluation, are not
1042 available, ~~such as voluntary appearance for outpatient~~
1043 ~~evaluation,~~ a law enforcement officer shall take into custody
1044 the person named in the certificate ~~into custody~~ and deliver him
1045 or her to the appropriate nearest receiving facility within the
1046 designated receiving system for involuntary examination. The law
1047 enforcement officer shall execute a written report detailing the
1048 circumstances under which the person was taken into custody. The
1049 report and certificate shall be made a part of the patient's
1050 clinical record. Any ~~receiving~~ facility accepting the patient
1051 based on this certificate must send a copy of the certificate to
1052 the managing entity ~~Agency for Health Care Administration on~~ the
1053 next working day. The document may be submitted electronically
1054 through existing data systems, if applicable.



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1055 (b) A person may ~~shall~~ not be removed from any program or
1056 residential placement licensed under chapter 400 or chapter 429
1057 and transported to a receiving facility for involuntary
1058 examination unless an ex parte order, a professional
1059 certificate, or a law enforcement officer's report is first
1060 prepared. If the condition of the person is such that
1061 preparation of a law enforcement officer's report is not
1062 practicable before removal, the report shall be completed as
1063 soon as possible after removal, but in any case before the
1064 person is transported to a receiving facility. A ~~receiving~~
1065 facility admitting a person for involuntary examination who is
1066 not accompanied by the required ex parte order, professional
1067 certificate, or law enforcement officer's report shall notify
1068 the managing entity ~~Agency for Health Care Administration~~ of
1069 such admission by certified mail or by e-mail, if available, by
1070 ~~no later than~~ the next working day. The provisions of this
1071 paragraph do not apply when transportation is provided by the
1072 patient's family or guardian.

1073 (c) A law enforcement officer acting in accordance with an
1074 ex parte order issued pursuant to this subsection may serve and
1075 execute such order on any day of the week, at any time of the
1076 day or night.

1077 (d) A law enforcement officer acting in accordance with an
1078 ex parte order issued pursuant to this subsection may use such
1079 reasonable physical force as is necessary to gain entry to the
1080 premises, and any dwellings, buildings, or other structures
1081 located on the premises, and to take custody of the person who
1082 is the subject of the ex parte order.

1083 (e) The managing entity and the department ~~Agency for~~



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1084 ~~Health Care Administration~~ shall receive and maintain the copies
1085 of ex parte petitions and orders, involuntary outpatient
1086 services placement orders issued pursuant to s. 394.4655,
1087 involuntary inpatient placement orders issued pursuant to s.
1088 394.467, professional certificates, and law enforcement
1089 officers' reports. These documents shall be considered part of
1090 the clinical record, governed by the provisions of s. 394.4615.
1091 These documents shall be used to ~~The agency shall~~ prepare annual
1092 reports analyzing the data obtained from these documents,
1093 without information identifying patients, and shall provide
1094 copies of reports to the department, the President of the
1095 Senate, the Speaker of the House of Representatives, and the
1096 minority leaders of the Senate and the House of Representatives.

1097 (f) A patient shall be examined by a physician or, a
1098 clinical psychologist, or by a psychiatric nurse performing
1099 within the framework of an established protocol with a
1100 psychiatrist at a ~~receiving~~ facility without unnecessary delay
1101 to determine if the criteria for involuntary services are met.
1102 Emergency treatment may be provided ~~and may~~, upon the order of a
1103 physician, if the physician determines ~~be given emergency~~
1104 ~~treatment if it is determined~~ that such treatment is necessary
1105 for the safety of the patient or others. The patient may not be
1106 released by the receiving facility or its contractor without the
1107 documented approval of a psychiatrist or a clinical psychologist
1108 or, ~~if the receiving facility is owned or operated by a hospital~~
1109 ~~or health system, the release may also be approved by a~~
1110 psychiatric nurse performing within the framework of an
1111 established protocol with a psychiatrist, or an attending
1112 emergency department physician with experience in the diagnosis



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1113 and treatment of mental illness ~~and nervous disorders~~ and after
1114 completion of an involuntary examination pursuant to this
1115 subsection. A psychiatric nurse may not approve the release of a
1116 patient if the involuntary examination was initiated by a
1117 psychiatrist unless the release is approved by the initiating
1118 psychiatrist. ~~However, a patient may not be held in a receiving~~
1119 ~~facility for involuntary examination longer than 72 hours.~~

1120 (g) A person may not be held for involuntary examination
1121 for more than 72 hours from the time of his or her arrival at
1122 the facility unless one of the following actions is taken at the
1123 end of the 72-hour examination period or the next business day,
1124 if the examination period ends on a weekend or holiday:

1125 1. The person must be released with the approval of a
1126 physician, psychiatrist, psychiatric nurse, or clinical
1127 psychologist. However, if the examination is conducted in a
1128 hospital, an attending emergency department physician with
1129 experience in the diagnosis and treatment of mental illness may
1130 approve the release.

1131 2. The person must be asked to give express and informed
1132 consent for voluntary admission if a physician, psychiatrist,
1133 psychiatric nurse, or clinical psychologist has determined that
1134 the individual is competent to consent to treatment.

1135 3. A petition for involuntary services must be completed
1136 and filed in the circuit court by the facility administrator. If
1137 electronic filing of the petition is not available in the county
1138 and the 72-hour period ends on a weekend or legal holiday, the
1139 petition must be filed by the next working day. If involuntary
1140 services are deemed necessary, the least restrictive treatment
1141 consistent with the optimum improvement of the person's



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1142 condition must be made available.

1143 (h) An individual discharged from a facility who is
1144 currently charged with a crime shall be released to the custody
1145 of a law enforcement officer, unless the individual has been
1146 released from law enforcement custody by posting of a bond, by a
1147 pretrial conditional release, or by other judicial release.

1148 (i) ~~(g)~~ A person for whom an involuntary examination has
1149 been initiated who is being evaluated or treated at a hospital
1150 for an emergency medical condition specified in s. 395.002 must
1151 be examined by an appropriate ~~a receiving~~ facility within 72
1152 hours. The 72-hour period begins when the patient arrives at the
1153 hospital and ceases when the attending physician documents that
1154 the patient has an emergency medical condition. If the patient
1155 is examined at a hospital providing emergency medical services
1156 by a professional qualified to perform an involuntary
1157 examination and is found as a result of that examination not to
1158 meet the criteria for involuntary outpatient services ~~placement~~
1159 pursuant to s. 394.4655(1) or involuntary inpatient placement
1160 pursuant to s. 394.467(1), the patient may be offered voluntary
1161 services or placement, if appropriate, or released directly from
1162 the hospital providing emergency medical services. The finding
1163 by the professional that the patient has been examined and does
1164 not meet the criteria for involuntary inpatient placement or
1165 involuntary outpatient services ~~placement~~ must be entered into
1166 the patient's clinical record. ~~Nothing in~~ This paragraph is not
1167 intended to prevent a hospital providing emergency medical
1168 services from appropriately transferring a patient to another
1169 hospital before ~~prior to~~ stabilization if, provided the
1170 requirements of s. 395.1041(3)(c) have been met.



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1171 ~~(j)-(h)~~ One of the following must occur within 12 hours
1172 after the patient's attending physician documents that the
1173 patient's medical condition has stabilized or that an emergency
1174 medical condition does not exist:

1175 1. The patient must be examined by an appropriate a
1176 ~~designated receiving~~ facility and released; or

1177 2. The patient must be transferred to a designated
1178 ~~receiving~~ facility in which appropriate medical treatment is
1179 available. However, the ~~receiving~~ facility must be notified of
1180 the transfer within 2 hours after the patient's condition has
1181 been stabilized or after determination that an emergency medical
1182 condition does not exist.

1183 ~~(i) Within the 72-hour examination period or, if the 72~~
1184 ~~hours ends on a weekend or holiday, no later than the next~~
1185 ~~working day thereafter, one of the following actions must be~~
1186 ~~taken, based on the individual needs of the patient:~~

1187 1. ~~The patient shall be released, unless he or she is~~
1188 ~~charged with a crime, in which case the patient shall be~~
1189 ~~returned to the custody of a law enforcement officer;~~

1190 2. ~~The patient shall be released, subject to the provisions~~
1191 ~~of subparagraph 1., for voluntary outpatient treatment;~~

1192 3. ~~The patient, unless he or she is charged with a crime,~~
1193 ~~shall be asked to give express and informed consent to placement~~
1194 ~~as a voluntary patient, and, if such consent is given, the~~
1195 ~~patient shall be admitted as a voluntary patient; or~~

1196 4. ~~A petition for involuntary placement shall be filed in~~
1197 ~~the circuit court when outpatient or inpatient treatment is~~
1198 ~~deemed necessary. When inpatient treatment is deemed necessary,~~
1199 ~~the least restrictive treatment consistent with the optimum~~



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1200 ~~improvement of the patient's condition shall be made available.~~
1201 ~~When a petition is to be filed for involuntary outpatient~~
1202 ~~placement, it shall be filed by one of the petitioners specified~~
1203 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~
1204 ~~placement shall be filed by the facility administrator.~~

1205 Section 12. Section 394.4655, Florida Statutes, is amended
1206 to read:

1207 394.4655 Involuntary outpatient services placement.—

1208 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES
1209 PLACEMENT.—A person may be ordered to involuntary outpatient
1210 services placement upon a finding of the court, by clear and
1211 convincing evidence, that the person meets all of the following
1212 criteria by clear and convincing evidence:

1213 (a) The person is 18 years of age or older.†

1214 (b) The person has a mental illness.†

1215 (c) The person is unlikely to survive safely in the
1216 community without supervision, based on a clinical
1217 determination.†

1218 (d) The person has a history of lack of compliance with
1219 treatment for mental illness.†

1220 (e) The person has:

1221 1. At least twice within the immediately preceding 36
1222 months been involuntarily admitted to a receiving or treatment
1223 facility as defined in s. 394.455, or has received mental health
1224 services in a forensic or correctional facility. The 36-month
1225 period does not include any period during which the person was
1226 admitted or incarcerated; or

1227 2. Engaged in one or more acts of serious violent behavior
1228 toward self or others, or attempts at serious bodily harm to



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1229 himself or herself or others, within the preceding 36 months.~~†~~

1230 (f) The person is, as a result of his or her mental
1231 illness, unlikely to voluntarily participate in the recommended
1232 treatment plan and ~~either he or she~~ has refused voluntary
1233 services placement for treatment after sufficient and
1234 conscientious explanation and disclosure of why the services are
1235 necessary purpose of placement for treatment or he or she is
1236 unable to determine for himself or herself whether services are
1237 placement is necessary.†

1238 (g) In view of the person's treatment history and current
1239 behavior, the person is in need of involuntary outpatient
1240 services placement in order to prevent a relapse or
1241 deterioration that would be likely to result in serious bodily
1242 harm to himself or herself or others, or a substantial harm to
1243 his or her well-being as set forth in s. 394.463(1).~~†~~

1244 (h) It is likely that the person will benefit from
1245 involuntary outpatient services. ~~placement; and~~

1246 (i) All available, less restrictive alternatives that would
1247 offer an opportunity for improvement of his or her condition
1248 have been judged to be inappropriate or unavailable.

1249 (2) INVOLUNTARY OUTPATIENT SERVICES PLACEMENT.-

1250 (a)1. A patient who is being recommended for involuntary
1251 outpatient services placement by the administrator of the
1252 ~~receiving~~ facility where the patient has been examined may be
1253 retained by the facility after adherence to the notice
1254 procedures provided in s. 394.4599. The recommendation must be
1255 supported by the opinion of two qualified professionals a
1256 ~~psychiatrist and the second opinion of a clinical psychologist~~
1257 ~~or another psychiatrist~~, both of whom have personally examined



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1258 the patient within the preceding 72 hours, that the criteria for
1259 involuntary outpatient services placement are met. ~~However, in a~~
1260 ~~county having a population of fewer than 50,000, if the~~
1261 ~~administrator certifies that a psychiatrist or clinical~~
1262 ~~psychologist is not available to provide the second opinion, the~~
1263 ~~second opinion may be provided by a licensed physician who has~~
1264 ~~postgraduate training and experience in diagnosis and treatment~~
1265 ~~of mental and nervous disorders or by a psychiatric nurse. Any~~
1266 ~~second opinion authorized in this subparagraph may be conducted~~
1267 ~~through a face-to-face examination, in person or by electronic~~
1268 ~~means.~~ Such recommendation must be entered on an involuntary
1269 outpatient services placement certificate that authorizes the
1270 ~~receiving~~ facility to retain the patient pending completion of a
1271 hearing. The certificate must ~~shall~~ be made a part of the
1272 patient's clinical record.

1273 2. If the patient has been stabilized and no longer meets
1274 the criteria for involuntary examination pursuant to s.
1275 394.463(1), the patient must be released from the ~~receiving~~
1276 facility while awaiting the hearing for involuntary outpatient
1277 services placement. Before filing a petition for involuntary
1278 outpatient services treatment, the administrator of the a
1279 ~~receiving~~ facility or a designated department representative
1280 must identify the service provider that will have primary
1281 responsibility for service provision under an order for
1282 involuntary outpatient services placement, unless the person is
1283 otherwise participating in outpatient psychiatric treatment and
1284 is not in need of public financing for that treatment, in which
1285 case the individual, if eligible, may be ordered to involuntary
1286 treatment pursuant to the existing psychiatric treatment



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1287 relationship.

1288 3. The service provider shall prepare a written proposed
1289 treatment plan in consultation with the patient or the patient's
1290 guardian advocate, if appointed, for the court's consideration
1291 for inclusion in the involuntary outpatient services placement
1292 order. The service provider shall also provide a copy of the
1293 treatment plan that addresses the nature and extent of the
1294 mental illness and any co-occurring substance abuse disorders
1295 that necessitate involuntary outpatient services. The treatment
1296 plan must specify the likely level of care, including the use of
1297 medication, and anticipated discharge criteria for terminating
1298 involuntary outpatient services. The service provider shall also
1299 provide a copy of the proposed treatment plan to the patient and
1300 the administrator of the receiving facility. The treatment plan
1301 must specify the nature and extent of the patient's mental
1302 illness, address the reduction of symptoms that necessitate
1303 involuntary outpatient placement, and include measurable goals
1304 and objectives for the services and treatment that are provided
1305 to treat the person's mental illness and assist the person in
1306 living and functioning in the community or to prevent a relapse
1307 or deterioration. Service providers may select and supervise
1308 other individuals to implement specific aspects of the treatment
1309 plan. The services in the ~~treatment~~ plan must be deemed
1310 clinically appropriate by a physician, clinical psychologist,
1311 psychiatric nurse, mental health counselor, marriage and family
1312 therapist, or clinical social worker who consults with, or is
1313 employed or contracted by, the service provider. The service
1314 provider must certify to the court in the proposed ~~treatment~~
1315 plan whether sufficient services for improvement and



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1316 stabilization are currently available and whether the service
1317 provider agrees to provide those services. If the service
1318 provider certifies that the services in the proposed treatment
1319 plan are not available, the petitioner may not file the
1320 petition. The service provider must notify the managing entity
1321 as to the availability of the requested services. The managing
1322 entity must document such efforts to obtain the requested
1323 services.

1324 (b) If a patient in involuntary inpatient placement meets
1325 the criteria for involuntary outpatient services placement, the
1326 administrator of the ~~treatment~~ facility may, before the
1327 expiration of the period during which the ~~treatment~~ facility is
1328 authorized to retain the patient, recommend involuntary
1329 outpatient services placement. The recommendation must be
1330 supported by the opinion of two qualified professionals a
1331 ~~psychiatrist and the second opinion of a clinical psychologist~~
1332 ~~or another psychiatrist~~, both of whom have personally examined
1333 the patient within the preceding 72 hours, that the criteria for
1334 involuntary outpatient services placement are met. ~~However, in a~~
1335 ~~county having a population of fewer than 50,000, if the~~
1336 ~~administrator certifies that a psychiatrist or clinical~~
1337 ~~psychologist is not available to provide the second opinion, the~~
1338 ~~second opinion may be provided by a licensed physician who has~~
1339 ~~postgraduate training and experience in diagnosis and treatment~~
1340 ~~of mental and nervous disorders or by a psychiatric nurse. Any~~
1341 ~~second opinion authorized in this subparagraph may be conducted~~
1342 ~~through a face-to-face examination, in person or by electronic~~
1343 ~~means.~~ Such recommendation must be entered on an involuntary
1344 outpatient services placement certificate, and the certificate



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1345 must be made a part of the patient's clinical record.

1346 (c)1. The administrator of the treatment facility shall
1347 provide a copy of the involuntary outpatient services placement
1348 certificate and a copy of the state mental health discharge form
1349 to the managing entity ~~a department representative~~ in the county
1350 where the patient will be residing. For persons who are leaving
1351 a state mental health treatment facility, the petition for
1352 involuntary outpatient services placement must be filed in the
1353 county where the patient will be residing.

1354 2. The service provider that will have primary
1355 responsibility for service provision shall be identified by the
1356 designated department representative before ~~prior to~~ the order
1357 for involuntary outpatient services placement and must, before
1358 ~~prior to~~ filing a petition for involuntary outpatient services
1359 placement, certify to the court whether the services recommended
1360 in the patient's discharge plan are available ~~in the local~~
1361 ~~community~~ and whether the service provider agrees to provide
1362 those services. The service provider must develop with the
1363 patient, or the patient's guardian advocate, if appointed, a
1364 treatment or service plan that addresses the needs identified in
1365 the discharge plan. The plan must be deemed to be clinically
1366 appropriate by a physician, clinical psychologist, psychiatric
1367 nurse, mental health counselor, marriage and family therapist,
1368 or clinical social worker, as defined in this chapter, who
1369 consults with, or is employed or contracted by, the service
1370 provider.

1371 3. If the service provider certifies that the services in
1372 the proposed treatment or service plan are not available, the
1373 petitioner may not file the petition. The service provider must



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1374 notify the managing entity as to the availability of the
1375 requested services. The managing entity must document such
1376 efforts to obtain the requested services.

1377 (3) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES
1378 PLACEMENT.—

1379 (a) A petition for involuntary outpatient services
1380 placement may be filed by:

- 1381 1. The administrator of a receiving facility; or
1382 2. The administrator of a treatment facility.

1383 (b) Each required criterion for involuntary outpatient
1384 services placement must be alleged and substantiated in the
1385 petition for involuntary outpatient services placement. A copy
1386 of the certificate recommending involuntary outpatient services
1387 placement completed by two ~~a~~ qualified professionals
1388 ~~professional specified in subsection (2)~~ must be attached to the
1389 petition. A copy of the proposed treatment plan must be attached
1390 to the petition. Before the petition is filed, the service
1391 provider shall certify that the services in the proposed
1392 ~~treatment~~ plan are available. If the necessary services are not
1393 available ~~in the patient's local community to respond to the~~
1394 ~~person's individual needs~~, the petition may not be filed. The
1395 service provider must notify the managing entity as to the
1396 availability of the requested services. The managing entity must
1397 document such efforts to obtain the requested services.

1398 (c) The petition for involuntary outpatient services
1399 placement must be filed in the county where the patient is
1400 located, unless the patient is being placed from a state
1401 treatment facility, in which case the petition must be filed in
1402 the county where the patient will reside. When the petition has



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1403 been filed, the clerk of the court shall provide copies of the
1404 petition and the proposed treatment plan to the department, the
1405 managing entity, the patient, the patient's guardian or
1406 representative, the state attorney, and the public defender or
1407 the patient's private counsel. A fee may not be charged for
1408 filing a petition under this subsection.

1409 (4) APPOINTMENT OF COUNSEL.—

1410 (a) Within 1 court working day after the filing of a
1411 petition for involuntary outpatient services placement, the
1412 court shall appoint the public defender to represent the person
1413 who is the subject of the petition, unless the person is
1414 otherwise represented by counsel. The clerk of the court shall
1415 immediately notify the public defender of the appointment. The
1416 public defender shall represent the person until the petition is
1417 dismissed, the court order expires, or the patient is discharged
1418 from involuntary outpatient services placement. An attorney who
1419 represents the patient must be provided ~~shall have~~ access to the
1420 patient, witnesses, and records relevant to the presentation of
1421 the patient's case and shall represent the interests of the
1422 patient, regardless of the source of payment to the attorney.

1423 (b) The state attorney for the circuit in which the patient
1424 is located shall represent the state as the real party in
1425 interest in the proceeding and must be provided access to the
1426 patient's clinical records and witnesses. The state attorney is
1427 authorized to independently evaluate the sufficiency and
1428 appropriateness of the petition for involuntary outpatient
1429 services.

1430 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
1431 the concurrence of the patient's counsel, to at least one



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1432 continuance of the hearing. The continuance shall be for a
1433 period of up to 4 weeks.

1434 (6) HEARING ON INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

1435 (a)1. The court shall hold the hearing on involuntary
1436 outpatient services ~~placement~~ within 5 working days after the
1437 filing of the petition, unless a continuance is granted. The
1438 hearing must ~~shall~~ be held in the county where the petition is
1439 filed, must ~~shall~~ be as convenient to the patient as is
1440 consistent with orderly procedure, and must ~~shall~~ be conducted
1441 in physical settings not likely to be injurious to the patient's
1442 condition. If the court finds that the patient's attendance at
1443 the hearing is not consistent with the best interests of the
1444 patient and if the patient's counsel does not object, the court
1445 may waive the presence of the patient from all or any portion of
1446 the hearing. The state attorney for the circuit in which the
1447 patient is located shall represent the state, rather than the
1448 petitioner, as the real party in interest in the proceeding.

1449 2. The court may appoint a magistrate ~~master~~ to preside at
1450 the hearing. One of the professionals who executed the
1451 involuntary outpatient services ~~placement~~ certificate shall be a
1452 witness. The patient and the patient's guardian or
1453 representative shall be informed by the court of the right to an
1454 independent expert examination. If the patient cannot afford
1455 such an examination, the court shall ensure that one is
1456 provided, as otherwise provided by law ~~provide for one~~. The
1457 independent expert's report is ~~shall be~~ confidential and not
1458 discoverable, unless the expert is to be called as a witness for
1459 the patient at the hearing. The court shall allow testimony from
1460 individuals, including family members, deemed by the court to be



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1461 relevant under state law, regarding the person's prior history
1462 and how that prior history relates to the person's current
1463 condition. The testimony in the hearing must be given under
1464 oath, and the proceedings must be recorded. The patient may
1465 refuse to testify at the hearing.

1466 (b)1. If the court concludes that the patient meets the
1467 criteria for involuntary outpatient services placement pursuant
1468 to subsection (1), the court shall issue an order for
1469 involuntary outpatient services placement. The court order shall
1470 be for a period of up to 90 days ~~6 months~~. The order must
1471 specify the nature and extent of the patient's mental illness.
1472 The order of the court and the treatment plan must ~~shall~~ be made
1473 part of the patient's clinical record. The service provider
1474 shall discharge a patient from involuntary outpatient services
1475 ~~placement~~ when the order expires or any time the patient no
1476 longer meets the criteria for involuntary services placement.
1477 Upon discharge, the service provider shall send a certificate of
1478 discharge to the court.

1479 2. The court may not order the department or the service
1480 provider to provide services if the program or service is not
1481 available in the patient's local community, if there is no space
1482 available in the program or service for the patient, or if
1483 funding is not available for the program or service. The service
1484 provider must notify the managing entity as to the availability
1485 of the requested services. The managing entity must document
1486 such efforts to obtain the requested services. A copy of the
1487 order must be sent to the managing entity ~~Agency for Health Care~~
1488 ~~Administration~~ by the service provider within 1 working day
1489 after it is received from the court. The order may be submitted



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1490 electronically through existing data systems. After the
1491 ~~placement~~ order for involuntary services is issued, the service
1492 provider and the patient may modify ~~provisions of~~ the treatment
1493 plan. For any material modification of the treatment plan to
1494 which the patient or, if one is appointed, the patient's
1495 guardian advocate agrees, ~~if appointed, does agree,~~ the service
1496 provider shall send notice of the modification to the court. Any
1497 material modifications of the treatment plan which are contested
1498 by the patient or the patient's guardian advocate, if applicable
1499 ~~appointed,~~ must be approved or disapproved by the court
1500 consistent with subsection (2).

1501 3. If, in the clinical judgment of a physician, the patient
1502 has failed or ~~has~~ refused to comply with the treatment ordered
1503 by the court, and, in the clinical judgment of the physician,
1504 efforts were made to solicit compliance and the patient may meet
1505 the criteria for involuntary examination, a person may be
1506 brought to a receiving facility pursuant to s. 394.463. If,
1507 after examination, the patient does not meet the criteria for
1508 involuntary inpatient placement pursuant to s. 394.467, the
1509 patient must be discharged from the ~~receiving~~ facility. The
1510 involuntary outpatient services ~~placement~~ order shall remain in
1511 effect unless the service provider determines that the patient
1512 no longer meets the criteria for involuntary outpatient services
1513 ~~placement~~ or until the order expires. The service provider must
1514 determine whether modifications should be made to the existing
1515 treatment plan and must attempt to continue to engage the
1516 patient in treatment. For any material modification of the
1517 treatment plan to which the patient or the patient's guardian
1518 advocate, if applicable ~~appointed,~~ agrees ~~does agree,~~ the



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1519 service provider shall send notice of the modification to the
1520 court. Any material modifications of the treatment plan which
1521 are contested by the patient or the patient's guardian advocate,
1522 if applicable ~~appointed~~, must be approved or disapproved by the
1523 court consistent with subsection (2).

1524 (c) If, at any time before the conclusion of the initial
1525 hearing on involuntary outpatient services placement, it appears
1526 to the court that the person does not meet the criteria for
1527 involuntary outpatient services placement under this section
1528 but, instead, meets the criteria for involuntary inpatient
1529 placement, the court may order the person admitted for
1530 involuntary inpatient examination under s. 394.463. If the
1531 person instead meets the criteria for involuntary assessment,
1532 protective custody, or involuntary admission pursuant to s.
1533 397.675, the court may order the person to be admitted for
1534 involuntary assessment for a period of 5 days pursuant to s.
1535 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by
1536 chapter 397.

1537 (d) At the hearing on involuntary outpatient services
1538 ~~placement~~, the court shall consider testimony and evidence
1539 regarding the patient's competence to consent to treatment. If
1540 the court finds that the patient is incompetent to consent to
1541 treatment, it shall appoint a guardian advocate as provided in
1542 s. 394.4598. The guardian advocate shall be appointed or
1543 discharged in accordance with s. 394.4598.

1544 (e) The administrator of the receiving facility or the
1545 designated department representative shall provide a copy of the
1546 court order and adequate documentation of a patient's mental
1547 illness to the service provider for involuntary outpatient



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1548 ~~services placement~~. Such documentation must include any advance
1549 directives made by the patient, a psychiatric evaluation of the
1550 patient, and any evaluations of the patient performed by a
1551 ~~elinical~~ psychologist or a clinical social worker.

1552 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES
1553 PLACEMENT.—

1554 (a)1. If the person continues to meet the criteria for
1555 involuntary outpatient services placement, the service provider
1556 shall, at least 10 days before the expiration of the period
1557 during which the treatment is ordered for the person, file in
1558 the circuit court a petition for continued involuntary
1559 outpatient services placement. The court shall immediately
1560 schedule a hearing on the petition to be held within 15 days
1561 after the petition is filed.

1562 2. The existing involuntary outpatient services placement
1563 order remains in effect until disposition on the petition for
1564 continued involuntary outpatient services placement.

1565 3. A certificate shall be attached to the petition which
1566 includes a statement from the person's physician or clinical
1567 psychologist justifying the request, a brief description of the
1568 patient's treatment during the time he or she was receiving
1569 involuntarily services placed, and an individualized plan of
1570 continued treatment.

1571 4. The service provider shall develop the individualized
1572 plan of continued treatment in consultation with the patient or
1573 the patient's guardian advocate, if applicable appointed. When
1574 the petition has been filed, the clerk of the court shall
1575 provide copies of the certificate and the individualized plan of
1576 continued treatment to the department, the patient, the



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1577 patient's guardian advocate, the state attorney, and the
1578 patient's private counsel or the public defender.

1579 (b) Within 1 court working day after the filing of a
1580 petition for continued involuntary outpatient services
1581 ~~placement~~, the court shall appoint the public defender to
1582 represent the person who is the subject of the petition, unless
1583 the person is otherwise represented by counsel. The clerk of the
1584 court shall immediately notify the public defender of such
1585 appointment. The public defender shall represent the person
1586 until the petition is dismissed or the court order expires or
1587 the patient is discharged from involuntary outpatient services
1588 ~~placement~~. Any attorney representing the patient shall have
1589 access to the patient, witnesses, and records relevant to the
1590 presentation of the patient's case and shall represent the
1591 interests of the patient, regardless of the source of payment to
1592 the attorney.

1593 (c) Hearings on petitions for continued involuntary
1594 outpatient services must ~~placement shall~~ be before the circuit
1595 court. The court may appoint a magistrate ~~master~~ to preside at
1596 the hearing. The procedures for obtaining an order pursuant to
1597 this paragraph must meet the requirements of ~~shall be in~~
1598 ~~accordance with~~ subsection (6), except that the time period
1599 included in paragraph (1) (e) does not apply when ~~is not~~
1600 ~~applicable in~~ determining the appropriateness of additional
1601 periods of involuntary outpatient services ~~placement~~.

1602 (d) Notice of the hearing must ~~shall~~ be provided as set
1603 forth in s. 394.4599. The patient and the patient's attorney may
1604 agree to a period of continued outpatient services ~~placement~~
1605 without a court hearing.



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1606 (e) The same procedure must ~~shall~~ be repeated before the
1607 expiration of each additional period the patient is placed in
1608 treatment.

1609 (f) If the patient has previously been found incompetent to
1610 consent to treatment, the court shall consider testimony and
1611 evidence regarding the patient's competence. Section 394.4598
1612 governs the discharge of the guardian advocate if the patient's
1613 competency to consent to treatment has been restored.

1614 Section 13. Section 394.467, Florida Statutes, is amended
1615 to read:

1616 394.467 Involuntary inpatient placement.-

1617 (1) CRITERIA.-A person may be ordered for ~~placed in~~
1618 involuntary inpatient placement for treatment upon a finding of
1619 the court by clear and convincing evidence that:

1620 (a) He or she has a mental illness ~~is mentally ill~~ and
1621 because of his or her mental illness:

1622 1.a. He or she has refused voluntary inpatient placement
1623 for treatment after sufficient and conscientious explanation and
1624 disclosure of the purpose of inpatient placement for treatment;
1625 or

1626 b. He or she is unable to determine for himself or herself
1627 whether inpatient placement is necessary; and

1628 2.a. He or she is ~~manifestly~~ incapable of surviving alone
1629 or with the help of willing and responsible family or friends,
1630 including available alternative services, and, without
1631 treatment, is likely to suffer from neglect or refuse to care
1632 for himself or herself, and such neglect or refusal poses a real
1633 and present threat of substantial harm to his or her well-being;
1634 or



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1635 b. There is substantial likelihood that in the near future
1636 he or she will inflict serious bodily harm on self or others
1637 ~~himself or herself or another person~~, as evidenced by recent
1638 behavior causing, attempting, or threatening such harm; and

1639 (b) All available less restrictive treatment alternatives
1640 that ~~which~~ would offer an opportunity for improvement of his or
1641 her condition have been judged to be inappropriate.

1642 (2) ADMISSION TO A TREATMENT FACILITY.—A patient may be
1643 retained by a ~~receiving~~ facility or involuntarily placed in a
1644 treatment facility upon the recommendation of the administrator
1645 of the ~~receiving~~ facility where the patient has been examined
1646 and after adherence to the notice and hearing procedures
1647 provided in s. 394.4599. The recommendation must be supported by
1648 the opinion two qualified professionals ~~of a psychiatrist and~~
1649 ~~the second opinion of a clinical psychologist or another~~
1650 ~~psychiatrist~~, both of whom have personally examined the patient
1651 within the preceding 72 hours, that the criteria for involuntary
1652 inpatient placement are met. ~~However, in a county that has a~~
1653 ~~population of fewer than 50,000, if the administrator certifies~~
1654 ~~that a psychiatrist or clinical psychologist is not available to~~
1655 ~~provide the second opinion, the second opinion may be provided~~
1656 ~~by a licensed physician who has postgraduate training and~~
1657 ~~experience in diagnosis and treatment of mental and nervous~~
1658 ~~disorders or by a psychiatric nurse. Any second opinion~~
1659 ~~authorized in this subsection may be conducted through a face-~~
1660 ~~to-face examination, in person or by electronic means. Such~~
1661 recommendation shall be entered on a petition for ~~an~~ involuntary
1662 inpatient placement certificate that authorizes the ~~receiving~~
1663 facility to retain the patient pending transfer to a treatment



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1664 facility or completion of a hearing.

1665 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

1666 (a) The administrator of the facility shall file a petition
1667 for involuntary inpatient placement in the court in the county
1668 where the patient is located. Upon filing, the clerk of the
1669 court shall provide copies to the department, the patient, the
1670 patient's guardian or representative, and the state attorney and
1671 public defender of the judicial circuit in which the patient is
1672 located. A No fee may not shall be charged for the filing of a
1673 petition under this subsection.

1674 (b) A facility filing a petition under this subsection for
1675 involuntary inpatient placement shall send a copy of the
1676 petition to the managing entity in its area.

1677 (4) APPOINTMENT OF COUNSEL.—

1678 (a) Within 1 court working day after the filing of a
1679 petition for involuntary inpatient placement, the court shall
1680 appoint the public defender to represent the person who is the
1681 subject of the petition, unless the person is otherwise
1682 represented by counsel. The clerk of the court shall immediately
1683 notify the public defender of such appointment. Any attorney
1684 representing the patient shall have access to the patient,
1685 witnesses, and records relevant to the presentation of the
1686 patient's case and shall represent the interests of the patient,
1687 regardless of the source of payment to the attorney.

1688 (b) The state attorney for the circuit in which the patient
1689 is located shall represent the state as the real party in
1690 interest in the proceeding and must be provided access to the
1691 patient's clinical records and witnesses. The state attorney is
1692 authorized to independently evaluate the sufficiency and



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1693 appropriateness of the petition for involuntary inpatient
1694 placement.

1695 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
1696 the concurrence of the patient's counsel, to at least one
1697 continuance of the hearing. ~~The continuance shall be for a~~
1698 ~~period of~~ up to 4 weeks.

1699 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

1700 (a)1. The court shall hold the hearing on involuntary
1701 inpatient placement within 5 court working days, unless a
1702 continuance is granted.

1703 2. Except for good cause documented in the court file, the
1704 hearing must ~~shall~~ be held in the county or the facility, as
1705 appropriate, where the patient is located, must ~~and shall~~ be as
1706 convenient to the patient as is ~~may~~ be consistent with orderly
1707 procedure, and shall be conducted in physical settings not
1708 likely to be injurious to the patient's condition. If the court
1709 finds that the patient's attendance at the hearing is not
1710 consistent with the best interests of the patient, and the
1711 patient's counsel does not object, the court may waive the
1712 presence of the patient from all or any portion of the hearing.
1713 The state attorney for the circuit in which the patient is
1714 located shall represent the state, rather than the petitioning
1715 facility administrator, as the real party in interest in the
1716 proceeding.

1717 3.2. The court may appoint a ~~general or special~~ magistrate
1718 to preside at the hearing. One of the two professionals who
1719 executed the petition for involuntary inpatient placement
1720 certificate shall be a witness. The patient and the patient's
1721 guardian or representative shall be informed by the court of the



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1722 right to an independent expert examination. If the patient
1723 cannot afford such an examination, the court shall ensure that
1724 one is provided, as otherwise provided for by law ~~provide for~~
1725 ~~one~~. The independent expert's report is ~~shall be~~ confidential
1726 and not discoverable, unless the expert is to be called as a
1727 witness for the patient at the hearing. The testimony in the
1728 hearing must be given under oath, and the proceedings must be
1729 recorded. The patient may refuse to testify at the hearing.

1730 (b) If the court concludes that the patient meets the
1731 criteria for involuntary inpatient placement, it may ~~shall~~ order
1732 that the patient be transferred to a treatment facility or, if
1733 the patient is at a treatment facility, that the patient be
1734 retained there or be treated at any other appropriate ~~receiving~~
1735 ~~or treatment~~ facility, or that the patient receive services from
1736 such a receiving or treatment facility or service provider, on
1737 an involuntary basis, for a period of up to 90 days ~~6 months~~.
1738 However, any order for involuntary mental health services in a
1739 treatment facility may be for up to 6 months. The order shall
1740 specify the nature and extent of the patient's mental illness.
1741 The facility shall discharge a patient any time the patient no
1742 longer meets the criteria for involuntary inpatient placement,
1743 unless the patient has transferred to voluntary status.

1744 (c) If at any time before ~~prior to~~ the conclusion of the
1745 hearing on involuntary inpatient placement it appears to the
1746 court that the person does not meet the criteria for involuntary
1747 inpatient placement under this section, but instead meets the
1748 criteria for involuntary outpatient services ~~placement~~, the
1749 court may order the person evaluated for involuntary outpatient
1750 services ~~placement~~ pursuant to s. 394.4655. The petition and



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1751 hearing procedures set forth in s. 394.4655 shall apply. If the
1752 person instead meets the criteria for involuntary assessment,
1753 protective custody, or involuntary admission pursuant to s.
1754 397.675, then the court may order the person to be admitted for
1755 involuntary assessment for a period of 5 days pursuant to s.
1756 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by
1757 chapter 397.

1758 (d) At the hearing on involuntary inpatient placement, the
1759 court shall consider testimony and evidence regarding the
1760 patient's competence to consent to treatment. If the court finds
1761 that the patient is incompetent to consent to treatment, it
1762 shall appoint a guardian advocate as provided in s. 394.4598.

1763 (e) The administrator of the petitioning ~~receiving~~ facility
1764 shall provide a copy of the court order and adequate
1765 documentation of a patient's mental illness to the administrator
1766 of a treatment facility if the ~~whenever a~~ patient is ordered for
1767 involuntary inpatient placement, whether by civil or criminal
1768 court. The documentation must ~~shall~~ include any advance
1769 directives made by the patient, a psychiatric evaluation of the
1770 patient, and any evaluations of the patient performed by a
1771 psychiatric nurse, clinical psychologist, a marriage and family
1772 therapist, a mental health counselor, or a clinical social
1773 worker. The administrator of a treatment facility may refuse
1774 admission to any patient directed to its facilities on an
1775 involuntary basis, whether by civil or criminal court order, who
1776 is not accompanied ~~at the same time~~ by adequate orders and
1777 documentation.

1778 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
1779 PLACEMENT.—



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1780 (a) Hearings on petitions for continued involuntary
1781 inpatient placement of an individual placed at any treatment
1782 facility are ~~shall be~~ administrative hearings and must ~~shall~~ be
1783 conducted in accordance with ~~the provisions of~~ s. 120.57(1),
1784 except that any order entered by the administrative law judge is
1785 ~~shall be~~ final and subject to judicial review in accordance with
1786 s. 120.68. Orders concerning patients committed after
1787 successfully pleading not guilty by reason of insanity are ~~shall~~
1788 ~~be~~ governed by ~~the provisions of~~ s. 916.15.

1789 (b) If the patient continues to meet the criteria for
1790 involuntary inpatient placement and is being treated at a
1791 treatment facility, the administrator shall, before ~~prior to~~ the
1792 expiration of the period ~~during which~~ the treatment facility is
1793 authorized to retain the patient, file a petition requesting
1794 authorization for continued involuntary inpatient placement. The
1795 request must ~~shall~~ be accompanied by a statement from the
1796 patient's physician, psychiatrist, psychiatric nurse, or
1797 clinical psychologist justifying the request, a brief
1798 description of the patient's treatment during the time he or she
1799 was involuntarily placed, and an individualized plan of
1800 continued treatment. Notice of the hearing must ~~shall~~ be
1801 provided as provided ~~set forth~~ in s. 394.4599. If a patient's
1802 attendance at the hearing is voluntarily waived, the
1803 administrative law judge must determine that the waiver is
1804 knowing and voluntary before waiving the presence of the patient
1805 from all or a portion of the hearing. Alternatively, if at the
1806 hearing the administrative law judge finds that attendance at
1807 the hearing is not consistent with the best interests of the
1808 patient, the administrative law judge may waive the presence of



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1809 the patient from all or any portion of the hearing, unless the
1810 patient, through counsel, objects to the waiver of presence. The
1811 testimony in the hearing must be under oath, and the proceedings
1812 must be recorded.

1813 (c) Unless the patient is otherwise represented or is
1814 ineligible, he or she shall be represented at the hearing on the
1815 petition for continued involuntary inpatient placement by the
1816 public defender of the circuit in which the facility is located.

1817 (d) If at a hearing it is shown that the patient continues
1818 to meet the criteria for involuntary inpatient placement, the
1819 administrative law judge shall sign the order for continued
1820 involuntary inpatient placement for a period of up to 90 days
1821 ~~not to exceed 6 months~~. However, any order for involuntary
1822 mental health services in a treatment facility may be for up to
1823 6 months. The same procedure shall be repeated prior to the
1824 expiration of each additional period the patient is retained.

1825 (e) If continued involuntary inpatient placement is
1826 necessary for a patient admitted while serving a criminal
1827 sentence, but his or her ~~whose~~ sentence is about to expire, or
1828 for a minor patient involuntarily placed, ~~while a minor~~ but who
1829 is about to reach the age of 18, the administrator shall
1830 petition the administrative law judge for an order authorizing
1831 continued involuntary inpatient placement.

1832 (f) If the patient has been previously found incompetent to
1833 consent to treatment, the administrative law judge shall
1834 consider testimony and evidence regarding the patient's
1835 competence. If the administrative law judge finds evidence that
1836 the patient is now competent to consent to treatment, the
1837 administrative law judge may issue a recommended order to the



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1838 court that found the patient incompetent to consent to treatment
1839 that the patient's competence be restored and that any guardian
1840 advocate previously appointed be discharged.

1841 (g) If the patient has been ordered to undergo involuntary
1842 inpatient placement and has previously been found incompetent to
1843 consent to treatment, the court shall consider testimony and
1844 evidence regarding the patient's incompetence. If the patient's
1845 competency to consent to treatment is restored, the discharge of
1846 the guardian advocate shall be governed by the provisions of s.
1847 394.4598.

1848
1849 The procedure required in this subsection must be followed
1850 before the expiration of each additional period the patient is
1851 involuntarily receiving services.

1852 (8) RETURN TO FACILITY OF PATIENTS.—If a patient
1853 involuntarily held ~~When a patient~~ at a treatment facility under
1854 this part leaves the facility without the administrator's
1855 authorization, the administrator may authorize a search for the
1856 patient and his or her ~~the return of the patient~~ to the
1857 facility. The administrator may request the assistance of a law
1858 enforcement agency in this regard ~~the search for and return of~~
1859 ~~the patient.~~

1860 Section 14. Section 394.46715, Florida Statutes, is amended
1861 to read:

1862 394.46715 Rulemaking authority.—The department may adopt
1863 rules to administer this part ~~Department of Children and~~
1864 ~~Families shall have rulemaking authority to implement the~~
1865 ~~provisions of ss. 394.455, 394.4598, 394.4615, 394.463,~~
1866 ~~394.4655, and 394.467 as amended or created by this act. These~~



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1867 ~~rules shall be for the purpose of protecting the health, safety,~~
1868 ~~and well-being of persons examined, treated, or placed under~~
1869 ~~this act.~~

1870 Section 15. Section 394.656, Florida Statutes, is amended
1871 to read:

1872 394.656 Criminal Justice, Mental Health, and Substance
1873 Abuse Reinvestment Grant Program.—

1874 (1) There is created within the Department of Children and
1875 Families the Criminal Justice, Mental Health, and Substance
1876 Abuse Reinvestment Grant Program. The purpose of the program is
1877 to provide funding to counties ~~with~~ which they may use to ~~can~~
1878 plan, implement, or expand initiatives that increase public
1879 safety, avert increased spending on criminal justice, and
1880 improve the accessibility and effectiveness of treatment
1881 services for adults and juveniles who have a mental illness,
1882 substance abuse disorder, or co-occurring mental health and
1883 substance abuse disorders and who are in, or at risk of
1884 entering, the criminal or juvenile justice systems.

1885 (2) The department shall establish a Criminal Justice,
1886 Mental Health, and Substance Abuse Statewide Grant Review
1887 Committee. The committee shall include:

1888 (a) One representative of the Department of Children and
1889 Families;

1890 (b) One representative of the Department of Corrections;

1891 (c) One representative of the Department of Juvenile
1892 Justice;

1893 (d) One representative of the Department of Elderly
1894 Affairs; ~~and~~

1895 (e) One representative of the Office of the State Courts



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1896 Administrator;
1897 (f) One representative of the Department of Veterans'
1898 Affairs;
1899 (g) One representative of the Florida Sheriffs Association;
1900 (h) One representative of the Florida Police Chiefs
1901 Association;
1902 (i) One representative of the Florida Association of
1903 Counties;
1904 (j) One representative of the Florida Alcohol and Drug
1905 Abuse Association;
1906 (k) One representative of the Florida Association of
1907 Managing Entities;
1908 (l) One representative of the Florida Council for Community
1909 Mental Health;
1910 (m) One representative of the Florida Prosecuting Attorneys
1911 Association;
1912 (n) One representative of the Florida Public Defender
1913 Association; and
1914 (o) One administrator of an assisted living facility that
1915 holds a limited mental health license.
1916 (3) The committee shall serve as the advisory body to
1917 review policy and funding issues that help reduce the impact of
1918 persons with mental illness and substance abuse disorders on
1919 communities, criminal justice agencies, and the court system.
1920 The committee shall advise the department in selecting
1921 priorities for grants and investing awarded grant moneys.
1922 (4) The committee must have experience in substance use and
1923 mental health disorders, community corrections, and law
1924 enforcement. To the extent possible, the ~~members of the~~



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1925 committee shall have expertise in grant review writing, ~~grant~~
1926 ~~reviewing~~, and grant application scoring.

1927 (5) (a) ~~(3) (a)~~ A county, or a not-for-profit community
1928 provider or managing entity designated by the county planning
1929 council or committee, as described in s. 394.657, may apply for
1930 a 1-year planning grant or a 3-year implementation or expansion
1931 grant. The purpose of the grants is to demonstrate that
1932 investment in treatment efforts related to mental illness,
1933 substance abuse disorders, or co-occurring mental health and
1934 substance abuse disorders results in a reduced demand on the
1935 resources of the judicial, corrections, juvenile detention, and
1936 health and social services systems.

1937 (b) To be eligible to receive a 1-year planning grant or a
1938 3-year implementation or expansion grant:7

1939 1. A county applicant must have a ~~county~~ planning council
1940 or committee that is in compliance with the membership
1941 requirements set forth in this section.

1942 2. A not-for-profit community provider or managing entity
1943 must be designated by the county planning council or committee
1944 and have written authorization to submit an application. A not-
1945 for-profit community provider or managing entity must have
1946 written authorization for each submitted application.

1947 (c) The department may award a 3-year implementation or
1948 expansion grant to an applicant who has not received a 1-year
1949 planning grant.

1950 (d) The department may require an applicant to conduct
1951 sequential intercept mapping for a project. For purposes of this
1952 paragraph, the term "sequential intercept mapping" means a
1953 process for reviewing a local community's mental health,



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1954 substance abuse, criminal justice, and related systems and
1955 identifying points of interceptions where interventions may be
1956 made to prevent an individual with a substance abuse disorder or
1957 mental illness from deeper involvement in the criminal justice
1958 system.

1959 (6) ~~(4)~~ The grant review and selection committee shall
1960 select the grant recipients and notify the department of
1961 Children and Families in writing of the recipients' names of the
1962 applicants who have been selected by the committee to receive a
1963 grant. Contingent upon the availability of funds and upon
1964 notification by the grant review and selection committee of
1965 those applicants approved to receive planning, implementation,
1966 or expansion grants, the department of Children and Families may
1967 transfer funds appropriated for the grant program to a selected
1968 grant recipient to any county awarded a grant.

1969 Section 16. Section 394.761, Florida Statutes, is created
1970 to read:

1971 394.761 Revenue maximization.—The department, in
1972 coordination with the Agency for Health Care and the managing
1973 entities, shall compile detailed documentation of the cost and
1974 reimbursements for Medicaid covered services provided to
1975 Medicaid eligible individuals by providers of behavioral health
1976 services that are also funded for programs authorized by this
1977 chapter and chapter 397. The department's documentation, along
1978 with a report of general revenue funds supporting behavioral
1979 health services that are not counted as maintenance of effort or
1980 match for any other federal program, will be submitted to the
1981 Agency for Health Care Administration by December 31, 2016.
1982 Copies of the report must also be provided to the Governor, the



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1983 President of the Senate, and the Speaker of the House of
1984 Representatives. If this report presents clear evidence that
1985 Medicaid reimbursements are less than the costs of providing the
1986 services, the Agency for Health Care Administration and the
1987 Department of Children and Families will prepare and submit any
1988 budget amendments necessary to use unmatched general revenue
1989 funds in the 2016-2017 fiscal year to draw additional federal
1990 funding to increase Medicaid funding to behavioral health
1991 service providers receiving the unmatched general revenue.
1992 Payments shall be made to providers in such manner as is allowed
1993 by federal law and regulations.

1994 Section 17. Subsection (11) is added to section 394.875,
1995 Florida Statutes, to read:

1996 394.875 Crisis stabilization units, residential treatment
1997 facilities, and residential treatment centers for children and
1998 adolescents; authorized services; license required.—

1999 (11) By January 1, 2017, the department and the agency
2000 shall modify licensure rules and procedures to create an option
2001 for a single, consolidated license for a provider who offers
2002 multiple types of mental health and substance abuse services
2003 regulated under this chapter and chapter 397. Providers eligible
2004 for a consolidated license shall operate these services through
2005 a single corporate entity and a unified management structure.
2006 Any provider serving adults and children must meet department
2007 standards for separate facilities and other requirements
2008 necessary to ensure children's safety and promote therapeutic
2009 efficacy.

2010 Section 18. Section 394.9082, Florida Statutes, is amended
2011 to read:



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2012 (Substantial rewording of section. See
2013 s. 394.9082, F.S., for present text.)
2014 394.9082 Behavioral health managing entities' purpose;
2015 definitions; duties; contracting; accountability.-
2016 (1) PURPOSE.-The purpose of the behavioral health managing
2017 entities is to plan, coordinate and contract for the delivery of
2018 community mental health and substance abuse services, to improve
2019 access to care, to promote service continuity, to purchase
2020 services, and to support efficient and effective delivery of
2021 services.
2022 (2) DEFINITIONS.-As used in this section, the term:
2023 (a) "Behavioral health services" means mental health
2024 services and substance abuse prevention and treatment services
2025 as described in this chapter and chapter 397.
2026 (b) "Case management" means those direct services provided
2027 to a client in order to assess needs, plan or arrange services,
2028 coordinate service providers, monitor service delivery, and
2029 evaluate outcomes.
2030 (c) "Coordinated system of care" means the full array of
2031 behavioral health and related services in a region or a
2032 community offered by all service providers, whether
2033 participating under contract with the managing entity or through
2034 another method of community partnership or mutual agreement.
2035 (d) "Geographic area" means one or more contiguous
2036 counties, circuits, or regions as described in s. 409.966.
2037 (e) "High-need or high-utilization individual" means a
2038 recipient who meets one or more of the following criteria and
2039 may be eligible for intensive case management services:
2040 1. Has resided in a state mental health facility for at



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2041 least 6 months in the last 36 months;

2042 2. Has had two or more admissions to a state mental health
2043 facility in the last 36 months; or

2044 3. Has had three or more admissions to a crisis
2045 stabilization unit, an addictions receiving facility, a short-
2046 term residential detoxification facility, or an inpatient
2047 psychiatric unit within the last 12 months.

2048 (f) "Managed behavioral health organization" means a
2049 Medicaid managed care organization currently under contract with
2050 the statewide Medicaid managed medical assistance program in
2051 this state pursuant to part IV of chapter 409, including a
2052 managed care organization operating as a behavioral health
2053 specialty plan.

2054 (g) "Managing entity" means a corporation designated or
2055 filed as a nonprofit organization under s. 501(c)(3) of the
2056 Internal Revenue Code which is selected by, and is under
2057 contract with, the department to manage the daily operational
2058 delivery of behavioral health services through a coordinated
2059 system of care.

2060 (h) "Provider network" means the group of direct service
2061 providers, facilities, and organizations under contract with a
2062 managing entity to provide a comprehensive array of emergency,
2063 acute care, residential, outpatient, recovery support, and
2064 consumer support services, including prevention services.

2065 (i) "Receiving facility" means any public or private
2066 facility designated by the department to receive and hold or to
2067 refer, as appropriate, involuntary patients under emergency
2068 conditions for mental health or substance abuse evaluation and
2069 to provide treatment or transportation to the appropriate



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2070 service provider. County jails may not be used or designated as
2071 a receiving facility, a triage center, or an access center.

2072 (3) DEPARTMENT DUTIES.—The department shall:

2073 (a) Designate, with input from the managing entity,
2074 facilities that meet the definitions in s. 394.455(1), (2),
2075 (13), and (41) and the receiving system developed by one or more
2076 counties pursuant to s. 394.4573(2)(b).

2077 (b) Contract with organizations to serve as the managing
2078 entity in accordance with the requirements of this section.

2079 (c) Specify the geographic area served.

2080 (d) Specify data reporting and use of shared data systems.

2081 (e) Develop strategies to divert persons with mental
2082 illness or substance abuse disorders from the criminal and
2083 juvenile justice systems.

2084 (f) Support the development and implementation of a
2085 coordinated system of care by requiring each provider that
2086 receives state funds for behavioral health services through a
2087 direct contract with the department to work with the managing
2088 entity in the provider's service area to coordinate the
2089 provision of behavioral health services, as part of the contract
2090 with the department.

2091 (g) Require that any public receiving facility initiating a
2092 patient transfer to a licensed hospital for acute care mental
2093 health services not accessible through the public receiving
2094 facility notify the hospital of such transfer and provide all
2095 records relating to the emergency psychiatric or medical
2096 condition.

2097 (h) Set performance measures and performance standards for
2098 managing entities based on nationally recognized standards, such



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2099 as those developed by the National Quality Forum, the National
2100 Committee for Quality Assurance, or similar credible sources.

2101 Performance standards must include all of the following:

2102 1. Annual improvement in the extent to which the need for
2103 behavioral health services is met by the coordinated system of
2104 care in the geographic area served.

2105 2. Annual improvement in the percentage of patients who
2106 receive services through the coordinated system of care and who
2107 achieve improved functional status as indicated by health
2108 condition, employment status, and housing stability.

2109 3. Annual reduction in the rates of readmissions to acute
2110 care facilities, jails, prisons, and forensic facilities for
2111 persons receiving care coordination.

2112 4. Annual improvement in consumer and family satisfaction.

2113 (i) Provide technical assistance to the managing entities.

2114 (j) Promote the integration of behavioral health care and
2115 primary care.

2116 (k) Facilitate the coordination between the managing entity
2117 and other payors of behavioral health care.

2118 (l) Develop and provide a unique identifier for clients
2119 receiving services under the managing entity to coordinate care.

2120 (m) Coordinate procedures for the referral and admission of
2121 patients to, and the discharge of patients from, state treatment
2122 facilities and their return to the community.

2123 (n) Ensure that managing entities comply with state and
2124 federal laws, rules, and regulations.

2125 (o) Develop rules for the operations of, and the
2126 requirements that must be met by, the managing entity, if
2127 necessary.



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2128 (4) CONTRACT FOR SERVICES.-
2129 (a) In contracting for services with managing entities
2130 under this section, the department must first attempt to
2131 contract with not-for-profit, community-based organizations that
2132 have competence in managing networks of providers serving
2133 persons with mental health and substance abuse disorders.
2134 (b) The department shall issue an invitation to negotiate
2135 under s. 287.057 to select an organization to serve as a
2136 managing entity. If the department receives fewer than two
2137 responsive bids to the solicitation, the department shall
2138 reissue the invitation to negotiate, in which case managed
2139 behavioral health organizations shall be eligible to bid and be
2140 awarded a contract.
2141 (c) If the managing entity is a not-for-profit, community-
2142 based organization, it must have a governing board that is
2143 representative. At a minimum, the governing board must include
2144 consumers and their family members; representatives of local
2145 government, area law enforcement agencies, health care
2146 facilities, and community-based care lead agencies; business
2147 leaders; and providers of substance abuse and mental health
2148 services as defined in this chapter and chapter 397.
2149 (d) If the managing entity is a managed behavioral health
2150 organization, it must establish an advisory board that meets the
2151 same requirements specified in paragraph (c) for a governing
2152 board.
2153 (e) If the department issues an invitation to negotiate
2154 pursuant to paragraph (b), the department shall consider the
2155 advice and recommendations of the provider network and community
2156 stakeholders in determining the criteria and relative weight of



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2157 the criteria that will be used in the solicitation of the new
2158 contractor. The department shall consider all of the following
2159 factors:

2160 1. Experience serving persons with mental health and
2161 substance abuse disorders.

2162 2. Establishment of community partnerships with behavioral
2163 health providers.

2164 3. Demonstrated organizational capabilities for network
2165 management functions.

2166 4. Capability to coordinate behavioral health with primary
2167 care services.

2168 (f) The department's contracts with managing entities must
2169 support efficient and effective administration of the behavioral
2170 health system and ensure accountability for performance.

2171 (g) A contractor serving as a managing entity shall operate
2172 under the same data reporting, administrative, and
2173 administrative rate requirements, regardless of whether it is a
2174 for-profit or a not-for-profit entity.

2175 (h) The contract must designate the geographic area that
2176 will be served by the managing entity, which area must be of
2177 sufficient size in population, funding, and services to allow
2178 for flexibility and efficiency.

2179 (i) The contract must require that, when there is a change
2180 in the managing entity in a geographic area, a transition plan
2181 be developed and implemented by the department which ensures
2182 continuity of care for patients receiving behavioral health
2183 services.

2184 (j) As of October 31, 2019, if all other contract
2185 requirements and performance standards are met and the



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2186 department determines that the managing entity has made progress
2187 toward the implementation of a coordinated system of care in its
2188 geographic region, the department may continue its contract with
2189 the managing entity for up to, but not exceeding, 5 years,
2190 including any and all renewals and extensions. Thereafter, the
2191 department must issue a competitive solicitation pursuant to
2192 paragraph (b).

2193 (5) MANAGING ENTITIES DUTIES.—A managing entity shall:

2194 (a) Maintain a board of directors that is representative of
2195 the community and that, at a minimum, includes consumers and
2196 family members, community stakeholders and organizations, and
2197 providers of mental health and substance abuse services,
2198 including public and private receiving facilities.

2199 (b) Conduct a community behavioral health care needs
2200 assessment in the geographic area served by the managing entity.
2201 The needs assessment must be updated annually and provided to
2202 the department. The assessment must include, at a minimum, the
2203 information the department needs for its annual report to the
2204 Governor and Legislature pursuant to s. 394.4573.

2205 (c) Develop local resources by pursuing third-party
2206 payments for services, applying for grants, assisting providers
2207 in securing local matching funds and in-kind services, and any
2208 other methods needed to ensure services are available and
2209 accessible.

2210 (d) Provide assistance to counties to develop a designated
2211 receiving system pursuant to s. 394.4573(2)(b) and a
2212 transportation plan pursuant to s. 394.462.

2213 (e) Promote the development and effective implementation of
2214 a coordinated system of care pursuant to s. 394.4573.



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2215 (f) Develop a comprehensive network of qualified providers
2216 to deliver behavioral health services. The managing entity is
2217 not required to competitively procure network providers, but
2218 must have a process in place to publicize opportunities to join
2219 the network and to evaluate providers in the network to
2220 determine if they can remain in the network. These processes
2221 must be published on the website of the managing entity. The
2222 managing entity must ensure continuity of care for clients if a
2223 provider ceases to provide a service or leaves the network.

2224 (g) Enter into cooperative agreements with local homeless
2225 councils and organizations to allow the sharing of available
2226 resource information, shared client information, client referral
2227 services, and any other data or information that may be useful
2228 in addressing the homelessness of persons suffering from a
2229 behavioral health crisis. All information sharing must comply
2230 with federal and state privacy and confidentiality laws,
2231 statutes and regulations.

2232 (h) Monitor network providers' performance and their
2233 compliance with contract requirements and federal and state
2234 laws, rules, and regulations.

2235 (i) Provide or contract for case management services.

2236 (j) Manage and allocate funds for services to meet the
2237 requirements of law or rule.

2238 (k) Promote integration of behavioral health with primary
2239 care.

2240 (l) Implement shared data systems necessary for the
2241 delivery of coordinated care and integrated services, the
2242 assessment of managing entity performance and provider
2243 performance, and the reporting of outcomes and costs of



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2244 services.

2245 (m) Operate in a transparent manner, providing public
2246 access to information, notice of meetings, and opportunities for
2247 public participation in managing entity decision-making.

2248 (n) Establish and maintain effective relationships with
2249 community stakeholders, including local governments and other
2250 organizations that serve individuals with behavioral health
2251 needs.

2252 (o) Collaborate with local criminal and juvenile justice
2253 systems to divert persons with mental illness or substance abuse
2254 disorders, or both, from the criminal and juvenile justice
2255 systems.

2256 (p) Collaborate with the local court system to develop
2257 procedures to maximize the use of involuntary outpatient
2258 services; reduce involuntary inpatient treatment; and increase
2259 diversion from the criminal and juvenile justice systems.

2260 (6) FUNDING FOR MANAGING ENTITIES.-

2261 (a) A contract established between the department and a
2262 managing entity under this section must be funded by general
2263 revenue, other applicable state funds, or applicable federal
2264 funding sources. A managing entity may carry forward documented
2265 unexpended state funds from one fiscal year to the next, but the
2266 cumulative amount carried forward may not exceed 8 percent of
2267 the total value of the contract. Any unexpended state funds in
2268 excess of that percentage must be returned to the department.
2269 The funds carried forward may not be used in a way that would
2270 increase future recurring obligations or for any program or
2271 service that was not authorized as of July 1, 2016, under the
2272 existing contract with the department. Expenditures of funds



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2273 carried forward must be separately reported to the department.
2274 Any unexpended funds that remain at the end of the contract
2275 period must be returned to the department. Funds carried forward
2276 may be retained through contract renewals and new contract
2277 procurements as long as the same managing entity is retained by
2278 the department.

2279 (b) The method of payment for a fixed-price contract with a
2280 managing entity must provide for a 2-month advance payment at
2281 the beginning of each fiscal year and equal monthly payments
2282 thereafter.

2283 (7) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The
2284 department shall develop, implement, and maintain standards
2285 under which a managing entity shall collect utilization data
2286 from all public receiving facilities situated within its
2287 geographic service area. As used in this subsection, the term
2288 “public receiving facility” means an entity that meets the
2289 licensure requirements of, and is designated by, the department
2290 to operate as a public receiving facility under s. 394.875 and
2291 that is operating as a licensed crisis stabilization unit.

2292 (a) The department shall develop standards and protocols
2293 for managing entities and public receiving facilities to be used
2294 for data collection, storage, transmittal, and analysis. The
2295 standards and protocols must allow for compatibility of data and
2296 data transmittal between public receiving facilities, managing
2297 entities, and the department for the implementation and
2298 requirements of this subsection.

2299 (b) A managing entity shall require a public receiving
2300 facility within its provider network to submit data, in real
2301 time or at least daily, to the managing entity for:



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2302 1. All admissions and discharges of clients receiving
2303 public receiving facility services who qualify as indigent, as
2304 defined in s. 394.4787; and

2305 2. The current active census of total licensed beds, the
2306 number of beds purchased by the department, the number of
2307 clients qualifying as indigent who occupy those beds, and the
2308 total number of unoccupied licensed beds regardless of funding.

2309 (c) A managing entity shall require a public receiving
2310 facility within its provider network to submit data, on a
2311 monthly basis, to the managing entity which aggregates the daily
2312 data submitted under paragraph (b). The managing entity shall
2313 reconcile the data in the monthly submission to the data
2314 received by the managing entity under paragraph (b) to check for
2315 consistency. If the monthly aggregate data submitted by a public
2316 receiving facility under this paragraph are inconsistent with
2317 the daily data submitted under paragraph (b), the managing
2318 entity shall consult with the public receiving facility to make
2319 corrections necessary to ensure accurate data.

2320 (d) A managing entity shall require a public receiving
2321 facility within its provider network to submit data, on an
2322 annual basis, to the managing entity which aggregates the data
2323 submitted and reconciled under paragraph (c). The managing
2324 entity shall reconcile the data in the annual submission to the
2325 data received and reconciled by the managing entity under
2326 paragraph (c) to check for consistency. If the annual aggregate
2327 data submitted by a public receiving facility under this
2328 paragraph are inconsistent with the data received and reconciled
2329 under paragraph (c), the managing entity shall consult with the
2330 public receiving facility to make corrections necessary to



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2331 ensure accurate data.

2332 (e) After ensuring the accuracy of data pursuant to
2333 paragraphs (c) and (d), the managing entity shall submit the
2334 data to the department on a monthly and an annual basis. The
2335 department shall create a statewide database for the data
2336 described under paragraph (b) and submitted under this paragraph
2337 for the purpose of analyzing the payments for and the use of
2338 crisis stabilization services funded by the Baker Act on a
2339 statewide basis and on an individual public receiving facility
2340 basis.

2341 Section 19. Present subsections (20) through (45) of
2342 section 397.311, Florida Statutes, are redesignated as
2343 subsections (22) through (47), respectively, new subsections
2344 (20) and (21) are added to that section, and present subsections
2345 (30) and (38) of that section are amended, to read:

2346 397.311 Definitions.—As used in this chapter, except part
2347 VIII, the term:

2348 (20) "Informed consent" means consent voluntarily given in
2349 writing by a competent person after sufficient explanation and
2350 disclosure of the subject matter involved to enable the person
2351 to make a knowing and willful decision without any element of
2352 force, fraud, deceit, duress, or other form of constraint or
2353 coercion.

2354 (21) "Involuntary services" means an array of behavioral
2355 health services that may be ordered by the court for persons
2356 with substance abuse or co-occurring mental health disorders.

2357 ~~(31)~~(30) "Qualified professional" means a physician or a
2358 physician assistant licensed under chapter 458 or chapter 459; a
2359 professional licensed under chapter 490 or chapter 491; an



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2360 advanced registered nurse practitioner ~~having a specialty in~~
2361 ~~psychiatry~~ licensed under part I of chapter 464; or a person who
2362 is certified through a department-recognized certification
2363 process for substance abuse treatment services and who holds, at
2364 a minimum, a bachelor's degree. A person who is certified in
2365 substance abuse treatment services by a state-recognized
2366 certification process in another state at the time of employment
2367 with a licensed substance abuse provider in this state may
2368 perform the functions of a qualified professional as defined in
2369 this chapter but must meet certification requirements contained
2370 in this subsection no later than 1 year after his or her date of
2371 employment.

2372 ~~(39)-(38)~~ "Service component" or "component" means a
2373 discrete operational entity within a service provider which is
2374 subject to licensing as defined by rule. Service components
2375 include prevention, intervention, and clinical treatment
2376 described in subsection (24) ~~(22)~~.

2377 Section 20. Section 397.675, Florida Statutes, is amended
2378 to read:

2379 397.675 Criteria for involuntary admissions, including
2380 protective custody, emergency admission, and other involuntary
2381 assessment, involuntary treatment, and alternative involuntary
2382 assessment for minors, for purposes of assessment and
2383 stabilization, and for involuntary treatment.—A person meets the
2384 criteria for involuntary admission if there is good faith reason
2385 to believe that the person has a substance abuse or co-occurring
2386 mental health disorder ~~is substance abuse impaired~~ and, because
2387 of such disorder ~~impairment~~:

2388 (1) Has lost the power of self-control with respect to



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2389 substance abuse use; and ~~either~~
2390 (2) (a) ~~Has inflicted, or threatened or attempted to~~
2391 ~~inflict, or unless admitted is likely to inflict, physical harm~~
2392 ~~on himself or herself or another; or~~
2393 ~~(b)~~ Is in need of substance abuse services and, by reason
2394 of substance abuse impairment, his or her judgment has been so
2395 impaired that he or she ~~the person~~ is incapable of appreciating
2396 his or her need for such services and of making a rational
2397 decision in that regard, although ~~thereto; however,~~ mere refusal
2398 to receive such services does not constitute evidence of lack of
2399 judgment with respect to his or her need for such services.
2400 (b) Without care or treatment, is likely to suffer from
2401 neglect or to refuse to care for himself or herself, that such
2402 neglect or refusal poses a real and present threat of
2403 substantial harm to his or her well-being and that it is not
2404 apparent that such harm may be avoided through the help of
2405 willing family members or friends or the provision of other
2406 services, or there is substantial likelihood that the person has
2407 inflicted, or threatened to or attempted to inflict, or, unless
2408 admitted, is likely to inflict, physical harm on himself,
2409 herself, or another.
2410 Section 21. Section 397.679, Florida Statutes, is amended
2411 to read:
2412 397.679 Emergency admission; circumstances justifying.—A
2413 person who meets the criteria for involuntary admission in s.
2414 397.675 may be admitted to a hospital or to a licensed
2415 detoxification facility or addictions receiving facility for
2416 emergency assessment and stabilization, or to a less intensive
2417 component of a licensed service provider for assessment only,



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2418 upon receipt by the facility of a ~~the physician's~~ certificate by
2419 a physician, an advanced registered nurse practitioner, a
2420 clinical psychologist, a licensed clinical social worker, a
2421 licensed marriage and family therapist, a licensed mental health
2422 counselor, a physician assistant working under the scope of
2423 practice of the supervising physician, or a master's-level-
2424 certified addictions professional, if the certificate is
2425 specific to substance abuse disorders, and the completion of an
2426 application for emergency admission.

2427 Section 22. Section 397.6791, Florida Statutes, is amended
2428 to read:

2429 397.6791 Emergency admission; persons who may initiate.—The
2430 following professionals ~~persons~~ may request a certificate for an
2431 emergency assessment or admission:

2432 (1) In the case of an adult, physicians, advanced
2433 registered nurse practitioners, clinical psychologists, licensed
2434 clinical social workers, licensed marriage and family
2435 therapists, licensed mental health counselors, physician
2436 assistants working under the scope of practice of the
2437 supervising physician, and a master's-level-certified addictions
2438 professional, if the certificate is specific to substance abuse
2439 disorders ~~the certifying physician,~~ the person's spouse or legal
2440 guardian, any relative of the person, or any other responsible
2441 adult who has personal knowledge of the person's substance abuse
2442 impairment.

2443 (2) In the case of a minor, the minor's parent, legal
2444 guardian, or legal custodian.

2445 Section 23. Section 397.6793, Florida Statutes, is amended
2446 to read:



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2447 397.6793 Professional's ~~Physician's~~ certificate for
2448 emergency admission.—

2449 (1) The professional's ~~physician's~~ certificate must include
2450 the name of the person to be admitted, the relationship between
2451 the person and the professional executing the certificate
2452 ~~physician~~, the relationship between the applicant and the
2453 professional ~~physician~~, any relationship between the
2454 professional ~~physician~~ and the licensed service provider, and a
2455 statement that the person has been examined and assessed within
2456 the preceding 5 days of the application date, and ~~must include~~
2457 factual allegations with respect to the need for emergency
2458 admission, including:

2459 (a) The reason for the ~~physician's~~ belief that the person
2460 is substance abuse impaired; and

2461 (b) The reason for the ~~physician's~~ belief that because of
2462 such impairment the person has lost the power of self-control
2463 with respect to substance abuse; and ~~either~~

2464 (c)1. The reason for the belief ~~physician believes~~ that,
2465 without care or treatment, the person is likely to suffer from
2466 neglect or refuse to care for himself or herself; that such
2467 neglect or refusal poses a real and present threat of
2468 substantial harm to his or her well-being; and that it is not
2469 apparent that such harm may be avoided through the help of
2470 willing family members or friends or the provision of other
2471 services or there is substantial likelihood that the person has
2472 inflicted or is likely to inflict physical harm on himself or
2473 herself or others unless admitted; or

2474 2. The reason for the belief ~~physician believes~~ that the
2475 person's refusal to voluntarily receive care is based on



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2476 judgment so impaired by reason of substance abuse that the
2477 person is incapable of appreciating his or her need for care and
2478 of making a rational decision regarding his or her need for
2479 care.

2480 (2) The professional's ~~physician's~~ certificate must
2481 recommend the least restrictive type of service that is
2482 appropriate for the person. The certificate must be signed by
2483 the professional ~~physician~~. If other less restrictive means are
2484 not available, such as voluntary appearance for outpatient
2485 evaluation, a law enforcement officer shall take the person
2486 named in the certificate into custody and deliver him or her to
2487 the appropriate facility for involuntary examination.

2488 (3) A signed copy of the professional's ~~physician's~~
2489 certificate shall accompany the person, and shall be made a part
2490 of the person's clinical record, together with a signed copy of
2491 the application. The application and the professional's
2492 ~~physician's~~ certificate authorize the involuntary admission of
2493 the person pursuant to, and subject to the provisions of, ss.
2494 397.679-397.6797.

2495 (4) The professional's certificate is valid for 7 days
2496 after issuance.

2497 (5) The professional's ~~physician's~~ certificate must
2498 indicate whether the person requires transportation assistance
2499 for delivery for emergency admission and specify, pursuant to s.
2500 397.6795, the type of transportation assistance necessary.

2501 Section 24. Section 397.6795, Florida Statutes, is amended
2502 to read:

2503 397.6795 Transportation-assisted delivery of persons for
2504 emergency assessment.—An applicant for a person's emergency



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2505 admission, ~~or~~ the person's spouse or guardian, or a law
2506 enforcement officer, ~~or a health officer~~ may deliver a person
2507 named in the professional's physician's certificate for
2508 emergency admission to a hospital or a licensed detoxification
2509 facility or addictions receiving facility for emergency
2510 assessment and stabilization.

2511 Section 25. Subsection (1) of section 397.681, Florida
2512 Statutes, is amended to read:

2513 397.681 Involuntary petitions; general provisions; court
2514 jurisdiction and right to counsel.—

2515 (1) JURISDICTION.—The courts have jurisdiction of
2516 involuntary assessment and stabilization petitions and
2517 involuntary treatment petitions for substance abuse impaired
2518 persons, and such petitions must be filed with the clerk of the
2519 court in the county where the person is located. The clerk of
2520 the court may not charge a fee for the filing of a petition
2521 under this section. The chief judge may appoint a general or
2522 special magistrate to preside over all or part of the
2523 proceedings. The alleged impaired person is named as the
2524 respondent.

2525 Section 26. Subsection (1) of section 397.6811, Florida
2526 Statutes, is amended to read:

2527 397.6811 Involuntary assessment and stabilization.—A person
2528 determined by the court to appear to meet the criteria for
2529 involuntary admission under s. 397.675 may be admitted for a
2530 period of 5 days to a hospital or to a licensed detoxification
2531 facility or addictions receiving facility, for involuntary
2532 assessment and stabilization or to a less restrictive component
2533 of a licensed service provider for assessment only upon entry of



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2534 a court order or upon receipt by the licensed service provider
2535 of a petition. Involuntary assessment and stabilization may be
2536 initiated by the submission of a petition to the court.

2537 (1) If the person upon whose behalf the petition is being
2538 filed is an adult, a petition for involuntary assessment and
2539 stabilization may be filed by the respondent's spouse, or legal
2540 guardian, any relative, a private practitioner, the director of
2541 a licensed service provider or the director's designee, or any
2542 individual ~~three adults~~ who has direct ~~have~~ personal knowledge
2543 of the respondent's substance abuse impairment.

2544 Section 27. Section 397.6814, Florida Statutes, is amended
2545 to read:

2546 397.6814 Involuntary assessment and stabilization; contents
2547 of petition.—A petition for involuntary assessment and
2548 stabilization must contain the name of the respondent, + the name
2549 of the applicant or applicants, + the relationship between the
2550 respondent and the applicant, and ~~+~~ the name of the respondent's
2551 attorney, if known, ~~and a statement of the respondent's ability~~
2552 ~~to afford an attorney~~; and must state facts to support the need
2553 for involuntary assessment and stabilization, including:

2554 (1) The reason for the petitioner's belief that the
2555 respondent is substance abuse impaired; ~~and~~

2556 (2) The reason for the petitioner's belief that because of
2557 such impairment the respondent has lost the power of self-
2558 control with respect to substance abuse; and ~~either~~

2559 (3) (a) The reason the petitioner believes that the
2560 respondent has inflicted or is likely to inflict physical harm
2561 on himself or herself or others unless admitted; or

2562 (b) The reason the petitioner believes that the



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2563 respondent's refusal to voluntarily receive care is based on
2564 judgment so impaired by reason of substance abuse that the
2565 respondent is incapable of appreciating his or her need for care
2566 and of making a rational decision regarding that need for care.
2567 If the respondent has refused to submit to an assessment, such
2568 refusal must be alleged in the petition.

2569
2570 A fee may not be charged for the filing of a petition pursuant
2571 to this section.

2572 Section 28. Section 397.6819, Florida Statutes, is amended
2573 to read:

2574 397.6819 Involuntary assessment and stabilization;
2575 responsibility of licensed service provider.—

2576 (1) A licensed service provider may admit an individual for
2577 involuntary assessment and stabilization for a period not to
2578 exceed 5 days unless a petition has been filed pursuant to s.
2579 397.6821 or s. 397.6822. The individual must be assessed within
2580 72 hours ~~without unnecessary delay~~ by a qualified professional.
2581 If an assessment is performed by a qualified professional who is
2582 not a physician, the assessment must be reviewed by a physician
2583 before the end of the assessment period.

2584 (2) The managing entity must be notified of the
2585 recommendation for involuntary services so that it may assist in
2586 locating and providing the requested services, if such services
2587 are available. The managing entity shall document its efforts to
2588 obtain the recommended services.

2589 Section 29. Section 397.695, Florida Statutes, is amended
2590 to read:

2591 397.695 Involuntary services ~~treatment~~; persons who may



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2592 petition.-

2593 (1) (a) If the respondent is an adult, a petition for
2594 involuntary services ~~treatment~~ may be filed by the respondent's
2595 spouse or legal guardian, any relative, a service provider, or
2596 any individual ~~three adults~~ who has direct ~~have~~ personal
2597 knowledge of the respondent's substance abuse impairment and his
2598 or her prior course of assessment and treatment.

2599 (2) If the respondent is a minor, a petition for
2600 involuntary treatment may be filed by a parent, legal guardian,
2601 or service provider.

2602 Section 30. Section 397.6951, Florida Statutes, is amended
2603 to read:

2604 397.6951 Contents of petition for involuntary services
2605 ~~treatment~~.—A petition for involuntary services ~~treatment~~ must
2606 contain the name of the respondent ~~to be admitted~~; the name of
2607 the petitioner or petitioners; the relationship between the
2608 respondent and the petitioner; the name of the respondent's
2609 attorney, if known, ~~and a statement of the petitioner's~~
2610 ~~knowledge of the respondent's ability to afford an attorney~~; the
2611 findings and recommendations of the assessment performed by the
2612 qualified professional; and the factual allegations presented by
2613 the petitioner establishing the need for involuntary outpatient
2614 services. The factual allegations must demonstrate treatment,
2615 including:

2616 (1) The reason for the petitioner's belief that the
2617 respondent is substance abuse impaired; ~~and~~

2618 (2) The reason for the petitioner's belief that because of
2619 such impairment the respondent has lost the power of self-
2620 control with respect to substance abuse; and either



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2621 (3) (a) The reason the petitioner believes that the
2622 respondent has inflicted or is likely to inflict physical harm
2623 on himself or herself or others unless the court orders the
2624 involuntary services admitted; or

2625 (b) The reason the petitioner believes that the
2626 respondent's refusal to voluntarily receive care is based on
2627 judgment so impaired by reason of substance abuse that the
2628 respondent is incapable of appreciating his or her need for care
2629 and of making a rational decision regarding that need for care.

2630 Section 31. Section 397.6955, Florida Statutes, is amended
2631 to read:

2632 397.6955 Duties of court upon filing of petition for
2633 involuntary services treatment.-

2634 (1) Upon the filing of a petition for ~~the~~ involuntary
2635 services for treatment of a substance abuse impaired person with
2636 the clerk of the court, the court shall immediately determine
2637 whether the respondent is represented by an attorney or whether
2638 the appointment of counsel for the respondent is appropriate. If
2639 the court appoints counsel for the person, the clerk of the
2640 court shall immediately notify the regional conflict counsel,
2641 created pursuant to s. 27.511, of the appointment. The regional
2642 conflict counsel shall represent the person until the petition
2643 is dismissed, the court order expires, or the person is
2644 discharged from involuntary services. An attorney that
2645 represents the person named in the petition shall have access to
2646 the person, witnesses, and records relevant to the presentation
2647 of the person's case and shall represent the interests of the
2648 person, regardless of the source of payment to the attorney.

2649 (2) The court shall schedule a hearing to be held on the



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2650 petition within 5 ~~10~~ days unless a continuance is granted. The
2651 court may appoint a magistrate to preside at the hearing.

2652 (3) A copy of the petition and notice of the hearing must
2653 be provided to the respondent; the respondent's parent,
2654 guardian, or legal custodian, in the case of a minor; the
2655 respondent's attorney, if known; the petitioner; the
2656 respondent's spouse or guardian, if applicable; and such other
2657 persons as the court may direct. If the respondent is a minor, a
2658 copy of the petition and notice of the hearing must be and have
2659 such petition and order personally delivered to the respondent
2660 if he or she is a minor. The court shall also issue a summons to
2661 the person whose admission is sought.

2662 Section 32. Section 397.6957, Florida Statutes, is amended
2663 to read:

2664 397.6957 Hearing on petition for involuntary services
2665 ~~treatment.~~—

2666 (1) At a hearing on a petition for involuntary services
2667 ~~treatment~~, the court shall hear and review all relevant
2668 evidence, including the review of results of the assessment
2669 completed by the qualified professional in connection with the
2670 respondent's protective custody, emergency admission,
2671 involuntary assessment, or alternative involuntary admission.
2672 The respondent must be present unless the court finds that his
2673 or her presence is likely to be injurious to himself or herself
2674 or others, in which event the court must appoint a guardian
2675 advocate to act in behalf of the respondent throughout the
2676 proceedings.

2677 (2) The petitioner has the burden of proving by clear and
2678 convincing evidence that:



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2679 (a) The respondent is substance abuse impaired and has a
2680 history of lack of compliance with treatment for substance
2681 abuse; ~~and~~

2682 (b) Because of such impairment the respondent is unlikely
2683 to voluntarily participate in the recommended services or is
2684 unable to determine for himself or herself whether services are
2685 necessary ~~the respondent has lost the power of self-control with~~
2686 ~~respect to substance abuse; and either~~

2687 1. Without services, the respondent is likely to suffer
2688 from neglect or to refuse to care for himself or herself; that
2689 such neglect or refusal poses a real and present threat of
2690 substantial harm to his or her well-being; and that there is a
2691 substantial likelihood that without services the respondent will
2692 cause serious bodily harm to himself or herself or others in the
2693 near future, as evidenced by recent behavior ~~The respondent has~~
2694 ~~inflicted or is likely to inflict physical harm on himself or~~
2695 ~~herself or others unless admitted; or~~

2696 2. The respondent's refusal to voluntarily receive care is
2697 based on judgment so impaired by reason of substance abuse that
2698 the respondent is incapable of appreciating his or her need for
2699 care and of making a rational decision regarding that need for
2700 care.

2701 (3) One of the qualified professionals who executed the
2702 involuntary services certificate must be a witness. The court
2703 shall allow testimony from individuals, including family
2704 members, deemed by the court to be relevant under state law,
2705 regarding the respondent's prior history and how that prior
2706 history relates to the person's current condition. The testimony
2707 in the hearing must be under oath, and the proceedings must be



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2708 recorded. The patient may refuse to testify at the hearing.

2709 (4)~~(3)~~ At the conclusion of the hearing the court shall
2710 ~~either~~ dismiss the petition or order the respondent to receive
2711 ~~undergo~~ involuntary services from his or her ~~substance abuse~~
2712 ~~treatment, with the respondent's~~ chosen licensed service
2713 provider if to deliver the involuntary substance abuse treatment
2714 ~~where~~ possible and appropriate.

2715 Section 33. Section 397.697, Florida Statutes, is amended
2716 to read:

2717 397.697 Court determination; effect of court order for
2718 involuntary services ~~substance abuse treatment~~.

2719 (1) When the court finds that the conditions for
2720 involuntary services ~~substance abuse treatment~~ have been proved
2721 by clear and convincing evidence, it may order the respondent to
2722 receive ~~undergo~~ involuntary services from ~~treatment by a~~
2723 licensed service provider for a period not to exceed 90 ~~60~~ days.
2724 The court may order a respondent to undergo treatment through a
2725 privately funded licensed service provider if the respondent has
2726 the ability to pay for the treatment, or if any person on the
2727 respondent's behalf voluntarily demonstrates a willingness and
2728 an ability to pay for the treatment. If the court finds it
2729 necessary, it may direct the sheriff to take the respondent into
2730 custody and deliver him or her to the licensed service provider
2731 specified in the court order, or to the nearest appropriate
2732 licensed service provider, for involuntary services ~~treatment~~.
2733 When the conditions justifying involuntary services ~~treatment~~ no
2734 longer exist, the individual must be released as provided in s.
2735 397.6971. When the conditions justifying involuntary services
2736 ~~treatment~~ are expected to exist after 90 ~~60~~ days of services



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2737 ~~treatment~~, a renewal of the involuntary services ~~treatment~~ order
2738 may be requested pursuant to s. 397.6975 before ~~prior to~~ the end
2739 of the 90 ~~60~~-day period.

2740 (2) In all cases resulting in an order for involuntary
2741 services ~~substance abuse treatment~~, the court shall retain
2742 jurisdiction over the case and the parties for the entry of such
2743 further orders as the circumstances may require. The court's
2744 requirements for notification of proposed release must be
2745 included in the original ~~treatment~~ order.

2746 (3) An involuntary services ~~treatment~~ order authorizes the
2747 licensed service provider to require the individual to receive
2748 services that undergo such treatment as will benefit him or her,
2749 including services ~~treatment~~ at any licensable service component
2750 of a licensed service provider.

2751 (4) If the court orders involuntary services, a copy of the
2752 order must be sent to the managing entity within 1 working day
2753 after it is received from the court. Documents may be submitted
2754 electronically through existing data systems, if applicable.

2755 Section 34. Section 397.6971, Florida Statutes, is amended
2756 to read:

2757 397.6971 Early release from involuntary services ~~substance~~
2758 ~~abuse treatment~~.—

2759 (1) At any time before ~~prior to~~ the end of the 90 ~~60~~-day
2760 involuntary services ~~treatment~~ period, or ~~prior to~~ the end of
2761 any extension granted pursuant to s. 397.6975, an individual
2762 receiving ~~admitted for~~ involuntary services ~~treatment~~ may be
2763 determined eligible for discharge to the most appropriate
2764 referral or disposition for the individual when any of the
2765 following apply:



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2766 (a) The individual no longer meets the criteria for
2767 involuntary admission and has given his or her informed consent
2768 to be transferred to voluntary treatment status.~~†~~

2769 (b) If the individual was admitted on the grounds of
2770 likelihood of infliction of physical harm upon himself or
2771 herself or others, such likelihood no longer exists.~~†~~~~or~~

2772 (c) If the individual was admitted on the grounds of need
2773 for assessment and stabilization or treatment, accompanied by
2774 inability to make a determination respecting such need,~~either:~~

2775 1. Such inability no longer exists; or

2776 2. It is evident that further treatment will not bring
2777 about further significant improvements in the individual's
2778 condition.~~†~~

2779 (d) The individual is no longer in need of services.~~†~~~~or~~

2780 (e) The director of the service provider determines that
2781 the individual is beyond the safe management capabilities of the
2782 provider.

2783 (2) Whenever a qualified professional determines that an
2784 individual admitted for involuntary services ~~qualifies treatment~~
2785 ~~is ready~~ for early release under ~~for any of the reasons listed~~
2786 ~~in~~ subsection (1), the service provider shall immediately
2787 discharge the individual, and must notify all persons specified
2788 by the court in the original treatment order.

2789 Section 35. Section 397.6975, Florida Statutes, is amended
2790 to read:

2791 397.6975 Extension of involuntary services ~~substance abuse~~
2792 ~~treatment~~ period.—

2793 (1) Whenever a service provider believes that an individual
2794 who is nearing the scheduled date of his or her release from



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2795 involuntary services ~~treatment~~ continues to meet the criteria
2796 for involuntary services ~~treatment~~ in s. 397.693, a petition for
2797 renewal of the involuntary services ~~treatment~~ order may be filed
2798 with the court at least 10 days before the expiration of the
2799 court-ordered services ~~treatment~~ period. The court shall
2800 immediately schedule a hearing to be held not more than 15 days
2801 after filing of the petition. The court shall provide the copy
2802 of the petition for renewal and the notice of the hearing to all
2803 parties to the proceeding. The hearing is conducted pursuant to
2804 s. 397.6957.

2805 (2) If the court finds that the petition for renewal of the
2806 involuntary services ~~treatment~~ order should be granted, it may
2807 order the respondent to receive ~~undergo~~ involuntary services
2808 ~~treatment~~ for a period not to exceed an additional 90 days. When
2809 the conditions justifying involuntary services ~~treatment~~ no
2810 longer exist, the individual must be released as provided in s.
2811 397.6971. When the conditions justifying involuntary services
2812 ~~treatment~~ continue to exist after an additional 90 days of
2813 service ~~additional treatment~~, a new petition requesting renewal
2814 of the involuntary services ~~treatment~~ order may be filed
2815 pursuant to this section.

2816 (3) Within 1 court working day after the filing of a
2817 petition for continued involuntary services, the court shall
2818 appoint the regional conflict counsel to represent the
2819 respondent, unless the respondent is otherwise represented by
2820 counsel. The clerk of the court shall immediately notify the
2821 regional conflict counsel of such appointment. The regional
2822 conflict counsel shall represent the respondent until the
2823 petition is dismissed or the court order expires or the



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2824 respondent is discharged from involuntary services. Any attorney
2825 representing the respondent shall have access to the respondent,
2826 witnesses, and records relevant to the presentation of the
2827 respondent's case and shall represent the interests of the
2828 respondent, regardless of the source of payment to the attorney.

2829 (4) Hearings on petitions for continued involuntary
2830 services shall be before the circuit court. The court may
2831 appoint a magistrate to preside at the hearing. The procedures
2832 for obtaining an order pursuant to this section shall be in
2833 accordance with s. 397.697.

2834 (5) Notice of hearing shall be provided to the respondent
2835 or his or her counsel. The respondent and the respondent's
2836 counsel may agree to a period of continued involuntary services
2837 without a court hearing.

2838 (6) The same procedure shall be repeated before the
2839 expiration of each additional period of involuntary services.

2840 (7) If the respondent has previously been found incompetent
2841 to consent to treatment, the court shall consider testimony and
2842 evidence regarding the respondent's competence.

2843 Section 36. Section 397.6977, Florida Statutes, is amended
2844 to read:

2845 397.6977 Disposition of individual upon completion of
2846 involuntary services ~~substance abuse treatment~~.-At the
2847 conclusion of the 90 ~~60~~-day period of court-ordered involuntary
2848 services ~~treatment~~, the respondent ~~individual~~ is automatically
2849 discharged unless a motion for renewal of the involuntary
2850 services ~~treatment~~ order has been filed with the court pursuant
2851 to s. 397.6975.

2852 Section 37. Section 397.6978, Florida Statutes, is created



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2853 to read:

2854 397.6978 Guardian advocate; patient incompetent to consent;
2855 substance abuse disorder.—

2856 (1) The administrator of a receiving facility or addictions
2857 receiving facility may petition the court for the appointment of
2858 a guardian advocate based upon the opinion of a qualified
2859 professional that the patient is incompetent to consent to
2860 treatment. If the court finds that a patient is incompetent to
2861 consent to treatment and has not been adjudicated incapacitated
2862 and that a guardian with the authority to consent to mental
2863 health treatment has not been appointed, it may appoint a
2864 guardian advocate. The patient has the right to have an attorney
2865 represent him or her at the hearing. If the person is indigent,
2866 the court shall appoint the office of the regional conflict
2867 counsel to represent him or her at the hearing. The patient has
2868 the right to testify, cross-examine witnesses, and present
2869 witnesses. The proceeding shall be recorded electronically or
2870 stenographically, and testimony must be provided under oath. One
2871 of the qualified professionals authorized to give an opinion in
2872 support of a petition for involuntary placement, as described in
2873 s. 397.675 or s. 397.6981, must testify. A guardian advocate
2874 must meet the qualifications of a guardian contained in part IV
2875 of chapter 744. The person who is appointed as a guardian
2876 advocate must agree to the appointment.

2877 (2) The following persons are prohibited from appointment
2878 as a patient's guardian advocate:

2879 (a) A professional providing clinical services to the
2880 individual under this part.

2881 (b) The qualified professional who initiated the



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2882 involuntary examination of the individual, if the examination
2883 was initiated by a qualified professional's certificate.

2884 (c) An employee, an administrator, or a board member of the
2885 facility providing the examination of the individual.

2886 (d) An employee, an administrator, or a board member of the
2887 treatment facility providing treatment of the individual.

2888 (e) A person providing any substantial professional
2889 services, excluding public guardians or professional guardians,
2890 to the individual, including clinical services.

2891 (f) A creditor of the individual.

2892 (g) A person subject to an injunction for protection
2893 against domestic violence under s. 741.30, whether the order of
2894 injunction is temporary or final, and for which the individual
2895 was the petitioner.

2896 (h) A person subject to an injunction for protection
2897 against repeat violence, stalking, sexual violence, or dating
2898 violence under s. 784.046, whether the order of injunction is
2899 temporary or final, and for which the individual was the
2900 petitioner.

2901 (3) A facility requesting appointment of a guardian
2902 advocate must, before the appointment, provide the prospective
2903 guardian advocate with information about the duties and
2904 responsibilities of guardian advocates, including information
2905 about the ethics of medical decision-making. Before asking a
2906 guardian advocate to give consent to treatment for a patient,
2907 the facility must provide to the guardian advocate sufficient
2908 information so that the guardian advocate can decide whether to
2909 give express and informed consent to the treatment. Such
2910 information must include information that demonstrates that the



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2911 treatment is essential to the care of the patient and does not
2912 present an unreasonable risk of serious, hazardous, or
2913 irreversible side effects. If possible, before giving consent to
2914 treatment, the guardian advocate must personally meet and talk
2915 with the patient and the patient's physician. If that is not
2916 possible, the discussion may be conducted by telephone. The
2917 decision of the guardian advocate may be reviewed by the court,
2918 upon petition of the patient's attorney, the patient's family,
2919 or the facility administrator.

2920 (4) In lieu of the training required for guardians
2921 appointed pursuant to chapter 744, a guardian advocate shall
2922 attend at least a 4-hour training course approved by the court
2923 before exercising his or her authority. At a minimum, the
2924 training course must include information about patient rights,
2925 the diagnosis of substance abuse disorders, the ethics of
2926 medical decision-making, and the duties of guardian advocates.

2927 (5) The required training course and the information to be
2928 supplied to prospective guardian advocates before their
2929 appointment must be developed by the department, approved by the
2930 chief judge of the circuit court, and taught by a court-approved
2931 organization, which may include, but need not be limited to, a
2932 community college, a guardianship organization, a local bar
2933 association, or The Florida Bar. The training course may be web-
2934 based, provided in video format, or other electronic means but
2935 must be capable of ensuring the identity and participation of
2936 the prospective guardian advocate. The court may waive some or
2937 all of the training requirements for guardian advocates or
2938 impose additional requirements. The court shall make its
2939 decision on a case-by-case basis and, in making its decision,



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2940 shall consider the experience and education of the guardian
2941 advocate, the duties assigned to the guardian advocate, and the
2942 needs of the patient.

2943 (6) In selecting a guardian advocate, the court shall give
2944 preference to the patient's health care surrogate, if one has
2945 already been designated by the patient. If the patient has not
2946 previously designated a health care surrogate, the selection
2947 shall be made, except for good cause documented in the court
2948 record, from among the following persons, listed in order of
2949 priority:

2950 (a) The patient's spouse.

2951 (b) An adult child of the patient.

2952 (c) A parent of the patient.

2953 (d) The adult next of kin of the patient.

2954 (e) An adult friend of the patient.

2955 (f) An adult trained and willing to serve as the guardian
2956 advocate for the patient.

2957 (7) If a guardian with the authority to consent to medical
2958 treatment has not already been appointed, or if the patient has
2959 not already designated a health care surrogate, the court may
2960 authorize the guardian advocate to consent to medical treatment
2961 as well as substance abuse disorder treatment. Unless otherwise
2962 limited by the court, a guardian advocate with authority to
2963 consent to medical treatment has the same authority to make
2964 health care decisions and is subject to the same restrictions as
2965 a proxy appointed under part IV of chapter 765. Unless the
2966 guardian advocate has sought and received express court approval
2967 in a proceeding separate from the proceeding to determine the
2968 competence of the patient to consent to medical treatment, the



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2969 guardian advocate may not consent to:

2970 (a) Abortion.

2971 (b) Sterilization.

2972 (c) Electroshock therapy.

2973 (d) Psychosurgery.

2974 (e) Experimental treatments that have not been approved by
2975 a federally approved institutional review board in accordance
2976 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

2977

2978 The court must base its authorization on evidence that the
2979 treatment or procedure is essential to the care of the patient
2980 and that the treatment does not present an unreasonable risk of
2981 serious, hazardous, or irreversible side effects. In complying
2982 with this subsection, the court shall follow the procedures set
2983 forth in subsection (1).

2984 (8) The guardian advocate shall be discharged when the
2985 patient is discharged from an order for involuntary services or
2986 when the patient is transferred from involuntary to voluntary
2987 status. The court or a hearing officer shall consider the
2988 competence of the patient as provided in subsection (1) and may
2989 consider an involuntarily placed patient's competence to consent
2990 to services at any hearing. Upon sufficient evidence, the court
2991 may restore, or the magistrate may recommend that the court
2992 restore, the patient's competence. A copy of the order restoring
2993 competence or the certificate of discharge containing the
2994 restoration of competence shall be provided to the patient and
2995 the guardian advocate.

2996 Section 38. Present paragraphs (d) through (m) of
2997 subsection (2) of section 409.967, are redesignated as



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2998 paragraphs (e) through (n), respectively, and a new paragraph
2999 (d) is added to that subsection, to read:

3000 409.967 Managed care plan accountability.—

3001 (2) The agency shall establish such contract requirements
3002 as are necessary for the operation of the statewide managed care
3003 program. In addition to any other provisions the agency may deem
3004 necessary, the contract must require:

3005 (d) Quality care.—Managed care plans shall provide, or
3006 contract for the provision of, care coordination to facilitate
3007 the appropriate delivery of behavioral health care services in
3008 the least restrictive setting with treatment and recovery
3009 capabilities that address the needs of the patient. Services
3010 shall be provided in a manner that integrates behavioral health
3011 services and primary care. Plans shall be required to achieve
3012 specific behavioral health outcome standards, established by the
3013 agency in consultation with the department.

3014 Section 39. Subsection (5) is added to section 409.973,
3015 Florida Statutes, to read:

3016 409.973 Benefits.—

3017 (5) INTEGRATED BEHAVIORAL HEALTH INITIATIVE.—Each plan
3018 operating in the managed medical assistance program shall work
3019 with the managing entity in its service area to establish
3020 specific organizational supports and protocols that enhance the
3021 integration and coordination of primary care and behavioral
3022 health services for Medicaid recipients. Progress in this
3023 initiative shall be measured using the integration framework and
3024 core measures developed by the Agency for Healthcare Research
3025 and Quality.

3026 Section 40. Section 491.0045, Florida Statutes, is amended



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3027 to read:

3028 491.0045 Intern registration; requirements.—

3029 (1) ~~Effective January 1, 1998,~~ An individual who has not
3030 satisfied ~~intends to practice in Florida to satisfy the~~
3031 postgraduate or post-master's level experience requirements, as
3032 specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register
3033 as an intern in the profession for which he or she is seeking
3034 licensure prior to commencing the post-master's experience
3035 requirement or an individual who intends to satisfy part of the
3036 required graduate-level practicum, internship, or field
3037 experience, outside the academic arena for any profession, must
3038 register as an intern in the profession for which he or she is
3039 seeking licensure prior to commencing the practicum, internship,
3040 or field experience.

3041 (2) The department shall register as a clinical social
3042 worker intern, marriage and family therapist intern, or mental
3043 health counselor intern each applicant who the board certifies
3044 has:

3045 (a) Completed the application form and remitted a
3046 nonrefundable application fee not to exceed \$200, as set by
3047 board rule;

3048 (b)1. Completed the education requirements as specified in
3049 s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which
3050 he or she is applying for licensure, if needed; and

3051 2. Submitted an acceptable supervision plan, as determined
3052 by the board, for meeting the practicum, internship, or field
3053 work required for licensure that was not satisfied in his or her
3054 graduate program.

3055 (c) Identified a qualified supervisor.



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3056 (3) An individual registered under this section must remain
3057 under supervision while practicing under registered intern
3058 status until he or she is in receipt of a license or a letter
3059 from the department stating that he or she is licensed to
3060 practice the profession for which he or she applied.

3061 ~~(4) An individual who has applied for intern registration~~
3062 ~~on or before December 31, 2001, and has satisfied the education~~
3063 ~~requirements of s. 491.005 that are in effect through December~~
3064 ~~31, 2000, will have met the educational requirements for~~
3065 ~~licensure for the profession for which he or she has applied.~~

3066 (4)(5) An individual who fails ~~Individuals who have~~
3067 ~~commenced the experience requirement as specified in s.~~
3068 ~~491.005(1)(c), (3)(c), or (4)(c) but failed to register as~~
3069 ~~required by subsection (1) shall register with the department~~
3070 ~~before January 1, 2000. Individuals who fail to comply with this~~
3071 section may subsection shall not be granted a license under this
3072 chapter, and any time spent by the individual completing the
3073 experience requirement as specified in s. 491.005(1)(c), (3)(c),
3074 or (4)(c) before ~~prior to~~ registering as an intern does shall
3075 not count toward completion of the such requirement.

3076 (5) An intern registration is valid for 5 years.

3077 (6) A registration issued on or before March 31, 2017,
3078 expires March 31, 2022, and may not be renewed or reissued. Any
3079 registration issued after March 31, 2017, expires 60 months
3080 after the date it is issued. A subsequent intern registration
3081 may not be issued unless the candidate has passed the theory and
3082 practice examination described in s. 491.005(1)(d), (3)(d), and
3083 (4)(d).

3084 (7) An individual who has held a provisional license issued



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3085 by the board may not apply for an intern registration in the
3086 same profession.

3087 Section 41. Section 394.4674, Florida Statutes, is
3088 repealed.

3089 Section 42. Section 394.4985, Florida Statutes, is
3090 repealed.

3091 Section 43. Section 394.745, Florida Statutes, is repealed.

3092 Section 44. Section 397.331, Florida Statutes, is repealed.

3093 Section 45. Section 397.801, Florida Statutes, is repealed.

3094 Section 46. Section 397.811, Florida Statutes, is repealed.

3095 Section 47. Section 397.821, Florida Statutes, is repealed.

3096 Section 48. Section 397.901, Florida Statutes, is repealed.

3097 Section 49. Section 397.93, Florida Statutes, is repealed.

3098 Section 50. Section 397.94, Florida Statutes, is repealed.

3099 Section 51. Section 397.951, Florida Statutes, is repealed.

3100 Section 52. Section 397.97, Florida Statutes, is repealed.

3101 Section 53. Section 397.98, Florida Statutes, is repealed.

3102 Section 54. Paragraph (a) of subsection (3) of section
3103 39.407, Florida Statutes, is amended to read:

3104 39.407 Medical, psychiatric, and psychological examination
3105 and treatment of child; physical, mental, or substance abuse
3106 examination of person with or requesting child custody.—

3107 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
3108 or paragraph (e), before the department provides psychotropic
3109 medications to a child in its custody, the prescribing physician
3110 shall attempt to obtain express and informed consent, as defined
3111 in s. 394.455(16) ~~s. 394.455(9)~~ and as described in s.
3112 394.459(3) (a), from the child's parent or legal guardian. The
3113 department must take steps necessary to facilitate the inclusion



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3114 of the parent in the child's consultation with the physician.
3115 However, if the parental rights of the parent have been
3116 terminated, the parent's location or identity is unknown or
3117 cannot reasonably be ascertained, or the parent declines to give
3118 express and informed consent, the department may, after
3119 consultation with the prescribing physician, seek court
3120 authorization to provide the psychotropic medications to the
3121 child. Unless parental rights have been terminated and if it is
3122 possible to do so, the department shall continue to involve the
3123 parent in the decisionmaking process regarding the provision of
3124 psychotropic medications. If, at any time, a parent whose
3125 parental rights have not been terminated provides express and
3126 informed consent to the provision of a psychotropic medication,
3127 the requirements of this section that the department seek court
3128 authorization do not apply to that medication until such time as
3129 the parent no longer consents.

3130 2. Any time the department seeks a medical evaluation to
3131 determine the need to initiate or continue a psychotropic
3132 medication for a child, the department must provide to the
3133 evaluating physician all pertinent medical information known to
3134 the department concerning that child.

3135 Section 55. Paragraph (e) of subsection (5) of section
3136 212.055, Florida Statutes, is amended to read:

3137 212.055 Discretionary sales surtaxes; legislative intent;
3138 authorization and use of proceeds.—It is the legislative intent
3139 that any authorization for imposition of a discretionary sales
3140 surtax shall be published in the Florida Statutes as a
3141 subsection of this section, irrespective of the duration of the
3142 levy. Each enactment shall specify the types of counties



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3143 authorized to levy; the rate or rates which may be imposed; the
3144 maximum length of time the surtax may be imposed, if any; the
3145 procedure which must be followed to secure voter approval, if
3146 required; the purpose for which the proceeds may be expended;
3147 and such other requirements as the Legislature may provide.
3148 Taxable transactions and administrative procedures shall be as
3149 provided in s. 212.054.

3150 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
3151 s. 125.011(1) may levy the surtax authorized in this subsection
3152 pursuant to an ordinance either approved by extraordinary vote
3153 of the county commission or conditioned to take effect only upon
3154 approval by a majority vote of the electors of the county voting
3155 in a referendum. In a county as defined in s. 125.011(1), for
3156 the purposes of this subsection, “county public general
3157 hospital” means a general hospital as defined in s. 395.002
3158 which is owned, operated, maintained, or governed by the county
3159 or its agency, authority, or public health trust.

3160 (e) A governing board, agency, or authority shall be
3161 chartered by the county commission upon this act becoming law.
3162 The governing board, agency, or authority shall adopt and
3163 implement a health care plan for indigent health care services.
3164 The governing board, agency, or authority shall consist of no
3165 more than seven and no fewer than five members appointed by the
3166 county commission. The members of the governing board, agency,
3167 or authority shall be at least 18 years of age and residents of
3168 the county. No member may be employed by or affiliated with a
3169 health care provider or the public health trust, agency, or
3170 authority responsible for the county public general hospital.
3171 The following community organizations shall each appoint a



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3172 representative to a nominating committee: the South Florida
3173 Hospital and Healthcare Association, the Miami-Dade County
3174 Public Health Trust, the Dade County Medical Association, the
3175 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
3176 County. This committee shall nominate between 10 and 14 county
3177 citizens for the governing board, agency, or authority. The
3178 slate shall be presented to the county commission and the county
3179 commission shall confirm the top five to seven nominees,
3180 depending on the size of the governing board. Until such time as
3181 the governing board, agency, or authority is created, the funds
3182 provided for in subparagraph (d)2. shall be placed in a
3183 restricted account set aside from other county funds and not
3184 disbursed by the county for any other purpose.

3185 1. The plan shall divide the county into a minimum of four
3186 and maximum of six service areas, with no more than one
3187 participant hospital per service area. The county public general
3188 hospital shall be designated as the provider for one of the
3189 service areas. Services shall be provided through participants'
3190 primary acute care facilities.

3191 2. The plan and subsequent amendments to it shall fund a
3192 defined range of health care services for both indigent persons
3193 and the medically poor, including primary care, preventive care,
3194 hospital emergency room care, and hospital care necessary to
3195 stabilize the patient. For the purposes of this section,
3196 "stabilization" means stabilization as defined in s. 397.311(43)
3197 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
3198 may include services rendered by physicians, clinics, community
3199 hospitals, and alternative delivery sites, as well as at least
3200 one regional referral hospital per service area. The plan shall



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3201 provide that agreements negotiated between the governing board,
3202 agency, or authority and providers shall recognize hospitals
3203 that render a disproportionate share of indigent care, provide
3204 other incentives to promote the delivery of charity care to draw
3205 down federal funds where appropriate, and require cost
3206 containment, including, but not limited to, case management.
3207 From the funds specified in subparagraphs (d)1. and 2. for
3208 indigent health care services, service providers shall receive
3209 reimbursement at a Medicaid rate to be determined by the
3210 governing board, agency, or authority created pursuant to this
3211 paragraph for the initial emergency room visit, and a per-member
3212 per-month fee or capitation for those members enrolled in their
3213 service area, as compensation for the services rendered
3214 following the initial emergency visit. Except for provisions of
3215 emergency services, upon determination of eligibility,
3216 enrollment shall be deemed to have occurred at the time services
3217 were rendered. The provisions for specific reimbursement of
3218 emergency services shall be repealed on July 1, 2001, unless
3219 otherwise reenacted by the Legislature. The capitation amount or
3220 rate shall be determined before ~~prior to~~ program implementation
3221 by an independent actuarial consultant. In no event shall such
3222 reimbursement rates exceed the Medicaid rate. The plan must also
3223 provide that any hospitals owned and operated by government
3224 entities on or after the effective date of this act must, as a
3225 condition of receiving funds under this subsection, afford
3226 public access equal to that provided under s. 286.011 as to any
3227 meeting of the governing board, agency, or authority the subject
3228 of which is budgeting resources for the retention of charity
3229 care, as that term is defined in the rules of the Agency for



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3230 Health Care Administration. The plan shall also include
3231 innovative health care programs that provide cost-effective
3232 alternatives to traditional methods of service and delivery
3233 funding.

3234 3. The plan's benefits shall be made available to all
3235 county residents currently eligible to receive health care
3236 services as indigents or medically poor as defined in paragraph
3237 (4) (d).

3238 4. Eligible residents who participate in the health care
3239 plan shall receive coverage for a period of 12 months or the
3240 period extending from the time of enrollment to the end of the
3241 current fiscal year, per enrollment period, whichever is less.

3242 5. At the end of each fiscal year, the governing board,
3243 agency, or authority shall prepare an audit that reviews the
3244 budget of the plan, delivery of services, and quality of
3245 services, and makes recommendations to increase the plan's
3246 efficiency. The audit shall take into account participant
3247 hospital satisfaction with the plan and assess the amount of
3248 poststabilization patient transfers requested, and accepted or
3249 denied, by the county public general hospital.

3250 Section 56. Paragraph (c) of subsection (2) of section
3251 394.4599, Florida Statutes, is amended to read:

3252 394.4599 Notice.—

3253 (2) INVOLUNTARY ADMISSION.—

3254 (c)1. A receiving facility shall give notice of the
3255 whereabouts of a minor who is being involuntarily held for
3256 examination pursuant to s. 394.463 to the minor's parent,
3257 guardian, caregiver, or guardian advocate, in person or by
3258 telephone or other form of electronic communication, immediately



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3259 after the minor's arrival at the facility. The facility may
3260 delay notification for no more than 24 hours after the minor's
3261 arrival if the facility has submitted a report to the central
3262 abuse hotline, pursuant to s. 39.201, based upon knowledge or
3263 suspicion of abuse, abandonment, or neglect and if the facility
3264 deems a delay in notification to be in the minor's best
3265 interest.

3266 2. The receiving facility shall attempt to notify the
3267 minor's parent, guardian, caregiver, or guardian advocate until
3268 the receiving facility receives confirmation from the parent,
3269 guardian, caregiver, or guardian advocate, verbally, by
3270 telephone or other form of electronic communication, or by
3271 recorded message, that notification has been received. Attempts
3272 to notify the parent, guardian, caregiver, or guardian advocate
3273 must be repeated at least once every hour during the first 12
3274 hours after the minor's arrival and once every 24 hours
3275 thereafter and must continue until such confirmation is
3276 received, unless the minor is released at the end of the 72-hour
3277 examination period, or until a petition for involuntary services
3278 ~~placement~~ is filed with the court pursuant to s. 394.463(2)(g)
3279 ~~s. 394.463(2)(i)~~. The receiving facility may seek assistance
3280 from a law enforcement agency to notify the minor's parent,
3281 guardian, caregiver, or guardian advocate if the facility has
3282 not received within the first 24 hours after the minor's arrival
3283 a confirmation by the parent, guardian, caregiver, or guardian
3284 advocate that notification has been received. The receiving
3285 facility must document notification attempts in the minor's
3286 clinical record.

3287 Section 57. Subsection (3) of section 394.495, Florida



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3288 Statutes, is amended to read:

3289 394.495 Child and adolescent mental health system of care;
3290 programs and services.—

3291 (3) Assessments must be performed by:

3292 (a) A professional as defined in s. 394.455(6), (8), (34),
3293 (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24);~~

3294 (b) A professional licensed under chapter 491; or

3295 (c) A person who is under the direct supervision of a
3296 professional as defined in s. 394.455(6), (8), (34), (37), or
3297 (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional
3298 licensed under chapter 491.

3299 Section 58. Subsection (5) of section 394.496, Florida
3300 Statutes, is amended to read:

3301 394.496 Service planning.—

3302 (5) A professional as defined in s. 394.455(6), (8), (34),
3303 (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a
3304 professional licensed under chapter 491 must be included among
3305 those persons developing the services plan.

3306 Section 59. Subsection (6) of section 394.9085, Florida
3307 Statutes, is amended to read:

3308 394.9085 Behavioral provider liability.—

3309 (6) For purposes of this section, the terms "detoxification
3310 services," "addictions receiving facility," and "receiving
3311 facility" have the same meanings as those provided in ss.
3312 397.311(24)(a)4., 397.311(24)(a)1., and 394.455(41) ss.
3313 ~~397.311(22)(a)4., 397.311(22)(a)1., and 394.455(26),~~
3314 respectively.

3315 Section 60. Subsection (15) of section 397.321, Florida
3316 Statutes, is amended to read:



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3317 397.321 Duties of the department.—The department shall:
3318 ~~(15) Appoint a substance abuse impairment coordinator to~~
3319 ~~represent the department in efforts initiated by the statewide~~
3320 ~~substance abuse impairment prevention and treatment coordinator~~
3321 ~~established in s. 397.801 and to assist the statewide~~
3322 ~~coordinator in fulfilling the responsibilities of that position.~~

3323 Section 61. Subsection (8) of section 397.405, Florida
3324 Statutes, is amended to read:

3325 397.405 Exemptions from licensure.—The following are exempt
3326 from the licensing provisions of this chapter:

3327 (8) A legally cognizable church or nonprofit religious
3328 organization or denomination providing substance abuse services,
3329 including prevention services, which are solely religious,
3330 spiritual, or ecclesiastical in nature. A church or nonprofit
3331 religious organization or denomination providing any of the
3332 licensed service components itemized under s. 397.311(24) ~~s.~~
3333 ~~397.311(22)~~ is not exempt from substance abuse licensure but
3334 retains its exemption with respect to all services which are
3335 solely religious, spiritual, or ecclesiastical in nature.

3336
3337 The exemptions from licensure in this section do not apply to
3338 any service provider that receives an appropriation, grant, or
3339 contract from the state to operate as a service provider as
3340 defined in this chapter or to any substance abuse program
3341 regulated pursuant to s. 397.406. Furthermore, this chapter may
3342 not be construed to limit the practice of a physician or
3343 physician assistant licensed under chapter 458 or chapter 459, a
3344 psychologist licensed under chapter 490, a psychotherapist
3345 licensed under chapter 491, or an advanced registered nurse



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3346 practitioner licensed under part I of chapter 464, who provides
3347 substance abuse treatment, so long as the physician, physician
3348 assistant, psychologist, psychotherapist, or advanced registered
3349 nurse practitioner does not represent to the public that he or
3350 she is a licensed service provider and does not provide services
3351 to individuals pursuant to part V of this chapter. Failure to
3352 comply with any requirement necessary to maintain an exempt
3353 status under this section is a misdemeanor of the first degree,
3354 punishable as provided in s. 775.082 or s. 775.083.

3355 Section 62. Subsections (1) and (5) of section 397.407,
3356 Florida Statutes, are amended to read:

3357 397.407 Licensure process; fees.-

3358 (1) The department shall establish the licensure process to
3359 include fees and categories of licenses and must prescribe a fee
3360 range that is based, at least in part, on the number and
3361 complexity of programs listed in s. 397.311(24) ~~s. 397.311(22)~~
3362 which are operated by a licensee. The fees from the licensure of
3363 service components are sufficient to cover at least 50 percent
3364 of the costs of regulating the service components. The
3365 department shall specify a fee range for public and privately
3366 funded licensed service providers. Fees for privately funded
3367 licensed service providers must exceed the fees for publicly
3368 funded licensed service providers.

3369 (5) The department may issue probationary, regular, and
3370 interim licenses. The department shall issue one license for
3371 each service component that is operated by a service provider
3372 and defined pursuant to s. 397.311(24) ~~s. 397.311(22)~~. The
3373 license is valid only for the specific service components listed
3374 for each specific location identified on the license. The



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3375 licensed service provider shall apply for a new license at least
3376 60 days before the addition of any service components or 30 days
3377 before the relocation of any of its service sites. Provision of
3378 service components or delivery of services at a location not
3379 identified on the license may be considered an unlicensed
3380 operation that authorizes the department to seek an injunction
3381 against operation as provided in s. 397.401, in addition to
3382 other sanctions authorized by s. 397.415. Probationary and
3383 regular licenses may be issued only after all required
3384 information has been submitted. A license may not be
3385 transferred. As used in this subsection, the term "transfer"
3386 includes, but is not limited to, the transfer of a majority of
3387 the ownership interest in the licensed entity or transfer of
3388 responsibilities under the license to another entity by
3389 contractual arrangement.

3390 Section 63. Section 397.416, Florida Statutes, is amended
3391 to read:

3392 397.416 Substance abuse treatment services; qualified
3393 professional.—Notwithstanding any other provision of law, a
3394 person who was certified through a certification process
3395 recognized by the former Department of Health and Rehabilitative
3396 Services before January 1, 1995, may perform the duties of a
3397 qualified professional with respect to substance abuse treatment
3398 services as defined in this chapter, and need not meet the
3399 certification requirements contained in s. 397.311(32) ~~s.~~
3400 ~~397.311(30)~~.

3401 Section 64. Subsection (2) of section 397.4871, Florida
3402 Statutes, is amended to read:

3403 397.4871 Recovery residence administrator certification.—



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3404 (2) The department shall approve at least one credentialing
3405 entity by December 1, 2015, for the purpose of developing and
3406 administering a voluntary credentialing program for
3407 administrators. The department shall approve any credentialing
3408 entity that the department endorses pursuant to s. 397.321(15)
3409 ~~s. 397.321(16)~~ if the credentialing entity also meets the
3410 requirements of this section. The approved credentialing entity
3411 shall:

3412 (a) Establish recovery residence administrator core
3413 competencies, certification requirements, testing instruments,
3414 and recertification requirements.

3415 (b) Establish a process to administer the certification
3416 application, award, and maintenance processes.

3417 (c) Develop and administer:

3418 1. A code of ethics and disciplinary process.

3419 2. Biennial continuing education requirements and annual
3420 certification renewal requirements.

3421 3. An education provider program to approve training
3422 entities that are qualified to provide precertification training
3423 to applicants and continuing education opportunities to
3424 certified persons.

3425 Section 65. Paragraph (e) of subsection (3) of section
3426 409.966, Florida Statutes, is amended to read:

3427 409.966 Eligible plans; selection.—

3428 (3) QUALITY SELECTION CRITERIA.—

3429 (e) To ensure managed care plan participation in Regions 1
3430 and 2, the agency shall award an additional contract to each
3431 plan with a contract award in Region 1 or Region 2. Such
3432 contract shall be in any other region in which the plan



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3433 submitted a responsive bid and negotiates a rate acceptable to
3434 the agency. If a plan that is awarded an additional contract
3435 pursuant to this paragraph is subject to penalties pursuant to
3436 s. 409.967(2)(i) ~~s. 409.967(2)(h)~~ for activities in Region 1 or
3437 Region 2, the additional contract is automatically terminated
3438 180 days after the imposition of the penalties. The plan must
3439 reimburse the agency for the cost of enrollment changes and
3440 other transition activities.

3441 Section 66. Paragraph (b) of subsection (1) of section
3442 409.972, Florida Statutes, is amended to read:

3443 409.972 Mandatory and voluntary enrollment.—

3444 (1) The following Medicaid-eligible persons are exempt from
3445 mandatory managed care enrollment required by s. 409.965, and
3446 may voluntarily choose to participate in the managed medical
3447 assistance program:

3448 (b) Medicaid recipients residing in residential commitment
3449 facilities operated through the Department of Juvenile Justice
3450 or a mental health treatment facility ~~facilities~~ as defined in
3451 s. 394.455(50) ~~by s. 394.455(32)~~.

3452 Section 67. Paragraphs (d) and (g) of subsection (1) of
3453 section 440.102, Florida Statutes, are amended to read:

3454 440.102 Drug-free workplace program requirements.—The
3455 following provisions apply to a drug-free workplace program
3456 implemented pursuant to law or to rules adopted by the Agency
3457 for Health Care Administration:

3458 (1) DEFINITIONS.—Except where the context otherwise
3459 requires, as used in this act:

3460 (d) "Drug rehabilitation program" means a service provider,
3461 established pursuant to s. 397.311(41) ~~s. 397.311(39)~~, that



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3462 provides confidential, timely, and expert identification,
3463 assessment, and resolution of employee drug abuse.

3464 (g) "Employee assistance program" means an established
3465 program capable of providing expert assessment of employee
3466 personal concerns; confidential and timely identification
3467 services with regard to employee drug abuse; referrals of
3468 employees for appropriate diagnosis, treatment, and assistance;
3469 and followup services for employees who participate in the
3470 program or require monitoring after returning to work. If, in
3471 addition to the above activities, an employee assistance program
3472 provides diagnostic and treatment services, these services shall
3473 in all cases be provided by service providers pursuant to s.
3474 397.311(41) ~~s. 397.311(39)~~.

3475 Section 68. Subsection (7) of section 744.704, Florida
3476 Statutes, is amended to read:

3477 744.704 Powers and duties.—

3478 (7) A public guardian may ~~shall~~ not commit a ward to a
3479 ~~mental health~~ treatment facility, as defined in s. 394.455(50)
3480 ~~s. 394.455(32)~~, without an involuntary placement proceeding as
3481 provided by law.

3482 Section 69. Paragraph (a) of subsection (2) of section
3483 790.065, Florida Statutes, is amended to read:

3484 790.065 Sale and delivery of firearms.—

3485 (2) Upon receipt of a request for a criminal history record
3486 check, the Department of Law Enforcement shall, during the
3487 licensee's call or by return call, forthwith:

3488 (a) Review any records available to determine if the
3489 potential buyer or transferee:

3490 1. Has been convicted of a felony and is prohibited from



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3491 receipt or possession of a firearm pursuant to s. 790.23;
3492 2. Has been convicted of a misdemeanor crime of domestic
3493 violence, and therefore is prohibited from purchasing a firearm;
3494 3. Has had adjudication of guilt withheld or imposition of
3495 sentence suspended on any felony or misdemeanor crime of
3496 domestic violence unless 3 years have elapsed since probation or
3497 any other conditions set by the court have been fulfilled or
3498 expunction has occurred; or
3499 4. Has been adjudicated mentally defective or has been
3500 committed to a mental institution by a court or as provided in
3501 sub-sub-subparagraph b.(II), and as a result is prohibited by
3502 state or federal law from purchasing a firearm.
3503 a. As used in this subparagraph, "adjudicated mentally
3504 defective" means a determination by a court that a person, as a
3505 result of marked subnormal intelligence, or mental illness,
3506 incompetency, condition, or disease, is a danger to himself or
3507 herself or to others or lacks the mental capacity to contract or
3508 manage his or her own affairs. The phrase includes a judicial
3509 finding of incapacity under s. 744.331(6)(a), an acquittal by
3510 reason of insanity of a person charged with a criminal offense,
3511 and a judicial finding that a criminal defendant is not
3512 competent to stand trial.
3513 b. As used in this subparagraph, "committed to a mental
3514 institution" means:
3515 (I) Involuntary commitment, commitment for mental
3516 defectiveness or mental illness, and commitment for substance
3517 abuse. The phrase includes involuntary inpatient placement as
3518 defined in s. 394.467, involuntary outpatient services ~~placement~~
3519 as defined in s. 394.4655, involuntary assessment and



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3520 stabilization under s. 397.6818, and involuntary substance abuse
3521 treatment under s. 397.6957, but does not include a person in a
3522 mental institution for observation or discharged from a mental
3523 institution based upon the initial review by the physician or a
3524 voluntary admission to a mental institution; or

3525 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
3526 admission to a mental institution for outpatient or inpatient
3527 treatment of a person who had an involuntary examination under
3528 s. 394.463, where each of the following conditions have been
3529 met:

3530 (A) An examining physician found that the person is an
3531 imminent danger to himself or herself or others.

3532 (B) The examining physician certified that if the person
3533 did not agree to voluntary treatment, a petition for involuntary
3534 outpatient or inpatient services ~~treatment~~ would have been filed
3535 under s. 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining
3536 physician certified that a petition was filed and the person
3537 subsequently agreed to voluntary treatment before ~~prior to~~ a
3538 court hearing on the petition.

3539 (C) Before agreeing to voluntary treatment, the person
3540 received written notice of that finding and certification, and
3541 written notice that as a result of such finding, he or she may
3542 be prohibited from purchasing a firearm, and may not be eligible
3543 to apply for or retain a concealed weapon or firearms license
3544 under s. 790.06 and the person acknowledged such notice in
3545 writing, in substantially the following form:

3546
3547 "I understand that the doctor who examined me believes
3548 I am a danger to myself or to others. I understand



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3549 that if I do not agree to voluntary treatment, a
3550 petition will be filed in court to require me to
3551 receive involuntary treatment. I understand that if
3552 that petition is filed, I have the right to contest
3553 it. In the event a petition has been filed, I
3554 understand that I can subsequently agree to voluntary
3555 treatment prior to a court hearing. I understand that
3556 by agreeing to voluntary treatment in either of these
3557 situations, I may be prohibited from buying firearms
3558 and from applying for or retaining a concealed weapons
3559 or firearms license until I apply for and receive
3560 relief from that restriction under Florida law.”

3561
3562 (D) A judge or a magistrate has, pursuant to sub-sub-
3563 subparagraph c.(II), reviewed the record of the finding,
3564 certification, notice, and written acknowledgment classifying
3565 the person as an imminent danger to himself or herself or
3566 others, and ordered that such record be submitted to the
3567 department.

3568 c. In order to check for these conditions, the department
3569 shall compile and maintain an automated database of persons who
3570 are prohibited from purchasing a firearm based on court records
3571 of adjudications of mental defectiveness or commitments to
3572 mental institutions.

3573 (I) Except as provided in sub-sub-subparagraph (II), clerks
3574 of court shall submit these records to the department within 1
3575 month after the rendition of the adjudication or commitment.
3576 Reports shall be submitted in an automated format. The reports
3577 must, at a minimum, include the name, along with any known alias



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3578 or former name, the sex, and the date of birth of the subject.

3579 (II) For persons committed to a mental institution pursuant
3580 to sub-sub-subparagraph b.(II), within 24 hours after the
3581 person's agreement to voluntary admission, a record of the
3582 finding, certification, notice, and written acknowledgment must
3583 be filed by the administrator of the receiving or treatment
3584 facility, as defined in s. 394.455, with the clerk of the court
3585 for the county in which the involuntary examination under s.
3586 394.463 occurred. No fee shall be charged for the filing under
3587 this sub-sub-subparagraph. The clerk must present the records to
3588 a judge or magistrate within 24 hours after receipt of the
3589 records. A judge or magistrate is required and has the lawful
3590 authority to review the records ex parte and, if the judge or
3591 magistrate determines that the record supports the classifying
3592 of the person as an imminent danger to himself or herself or
3593 others, to order that the record be submitted to the department.
3594 If a judge or magistrate orders the submittal of the record to
3595 the department, the record must be submitted to the department
3596 within 24 hours.

3597 d. A person who has been adjudicated mentally defective or
3598 committed to a mental institution, as those terms are defined in
3599 this paragraph, may petition the circuit court that made the
3600 adjudication or commitment, or the court that ordered that the
3601 record be submitted to the department pursuant to sub-sub-
3602 subparagraph c.(II), for relief from the firearm disabilities
3603 imposed by such adjudication or commitment. A copy of the
3604 petition shall be served on the state attorney for the county in
3605 which the person was adjudicated or committed. The state
3606 attorney may object to and present evidence relevant to the



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3607 relief sought by the petition. The hearing on the petition may
3608 be open or closed as the petitioner may choose. The petitioner
3609 may present evidence and subpoena witnesses to appear at the
3610 hearing on the petition. The petitioner may confront and cross-
3611 examine witnesses called by the state attorney. A record of the
3612 hearing shall be made by a certified court reporter or by court-
3613 approved electronic means. The court shall make written findings
3614 of fact and conclusions of law on the issues before it and issue
3615 a final order. The court shall grant the relief requested in the
3616 petition if the court finds, based on the evidence presented
3617 with respect to the petitioner's reputation, the petitioner's
3618 mental health record and, if applicable, criminal history
3619 record, the circumstances surrounding the firearm disability,
3620 and any other evidence in the record, that the petitioner will
3621 not be likely to act in a manner that is dangerous to public
3622 safety and that granting the relief would not be contrary to the
3623 public interest. If the final order denies relief, the
3624 petitioner may not petition again for relief from firearm
3625 disabilities until 1 year after the date of the final order. The
3626 petitioner may seek judicial review of a final order denying
3627 relief in the district court of appeal having jurisdiction over
3628 the court that issued the order. The review shall be conducted
3629 de novo. Relief from a firearm disability granted under this
3630 sub-subparagraph has no effect on the loss of civil rights,
3631 including firearm rights, for any reason other than the
3632 particular adjudication of mental defectiveness or commitment to
3633 a mental institution from which relief is granted.

3634 e. Upon receipt of proper notice of relief from firearm
3635 disabilities granted under sub-subparagraph d., the department



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3636 shall delete any mental health record of the person granted
3637 relief from the automated database of persons who are prohibited
3638 from purchasing a firearm based on court records of
3639 adjudications of mental defectiveness or commitments to mental
3640 institutions.

3641 f. The department is authorized to disclose data collected
3642 pursuant to this subparagraph to agencies of the Federal
3643 Government and other states for use exclusively in determining
3644 the lawfulness of a firearm sale or transfer. The department is
3645 also authorized to disclose this data to the Department of
3646 Agriculture and Consumer Services for purposes of determining
3647 eligibility for issuance of a concealed weapons or concealed
3648 firearms license and for determining whether a basis exists for
3649 revoking or suspending a previously issued license pursuant to
3650 s. 790.06(10). When a potential buyer or transferee appeals a
3651 nonapproval based on these records, the clerks of court and
3652 mental institutions shall, upon request by the department,
3653 provide information to help determine whether the potential
3654 buyer or transferee is the same person as the subject of the
3655 record. Photographs and any other data that could confirm or
3656 negate identity must be made available to the department for
3657 such purposes, notwithstanding any other provision of state law
3658 to the contrary. Any such information that is made confidential
3659 or exempt from disclosure by law shall retain such confidential
3660 or exempt status when transferred to the department.

3661 Section 70. This act shall take effect July 1, 2016.

3662
3663 ===== T I T L E A M E N D M E N T =====

3664 And the title is amended as follows:



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3665 Delete everything before the enacting clause
3666 and insert:

3667 A bill to be entitled
3668 An act relating to mental health and substance abuse;
3669 amending s. 29.004, F.S.; including services provided
3670 to treatment-based mental health programs within case
3671 management funded from state revenues as an element of
3672 the state courts system; amending s. 39.001, F.S.;
3673 providing legislative intent regarding mental illness
3674 for purposes of the child welfare system; amending s.
3675 39.407, F.S.; requiring assessment findings to be
3676 provided to the plan that is financially responsible
3677 for a child's care in residential treatment under
3678 certain circumstances; amending s. 39.507, F.S.;
3679 providing for consideration of mental health issues
3680 and involvement in treatment-based mental health
3681 programs in adjudicatory hearings and orders;
3682 providing requirements for certain court orders;
3683 amending s. 39.521, F.S.; providing for consideration
3684 of mental health issues and involvement in treatment-
3685 based mental health programs in disposition hearings;
3686 providing requirements for certain court orders;
3687 amending s. 394.455, F.S.; defining terms; revising
3688 definitions; amending s. 394.4573, F.S.; requiring the
3689 Department of Children and Families to submit a
3690 certain assessment to the Governor and the Legislature
3691 by a specified date; redefining terms; providing
3692 essential elements of a coordinated system of care;
3693 providing requirements for the department's annual



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3694 assessment; authorizing the department to award
3695 certain grants; deleting duties and measures of the
3696 department regarding continuity of care management
3697 systems; amending s. 394.4597, F.S.; revising the
3698 prioritization of health care surrogates to be
3699 selected for involuntary patients; specifying certain
3700 persons who are prohibited from being selected as an
3701 individual's representative; amending s. 394.4598,
3702 F.S.; specifying certain persons who are prohibited
3703 from being appointed as a person's guardian advocate;
3704 amending s. 394.462, F.S.; requiring that counties
3705 develop and implement transportation plans; providing
3706 requirements for the plans; revising requirements for
3707 transportation to receiving facilities and treatment
3708 facilities; deleting exceptions to such requirements;
3709 amending s. 394.463, F.S.; authorizing county or
3710 circuit courts to enter ex parte orders for
3711 involuntary examinations; requiring a facility to
3712 provide copies of ex parte orders, reports, and
3713 certifications to managing entities and the
3714 department, rather than the Agency for Health Care
3715 Administration; requiring the managing entity and
3716 department to receive certain orders, certificates,
3717 and reports; requiring the managing entity and the
3718 department to receive and maintain copies of certain
3719 documents; prohibiting a person from being held for
3720 involuntary examination for more than a specified
3721 period of time; providing exceptions; requiring
3722 certain individuals to be released to law enforcement



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3723 custody; providing exceptions; amending s. 394.4655,
3724 F.S.; providing for involuntary outpatient services;
3725 requiring a service provider to document certain
3726 inquiries; requiring the managing entity to document
3727 certain efforts; providing requirements for the
3728 appointment of state counsel; making technical
3729 changes; amending s. 394.467, F.S.; revising criteria
3730 for involuntary inpatient placement; requiring a
3731 facility filing a petition for involuntary inpatient
3732 placement to send a copy to the department and
3733 managing entity; providing requirements for the
3734 appointment of state counsel; revising criteria for a
3735 hearing on involuntary inpatient placement; revising
3736 criteria for a procedure for continued involuntary
3737 inpatient services; specifying requirements for a
3738 certain waiver of the patient's attendance at a
3739 hearing; requiring the court to consider certain
3740 testimony and evidence regarding a patient's
3741 incompetence; amending s. 394.46715, F.S.; revising
3742 rulemaking authority of the department; amending s.
3743 394.656, F.S.; revising the membership of the Criminal
3744 Justice, Mental Health, and Substance Abuse Statewide
3745 Grant Review Committee; providing duties for the
3746 committee; authorizing a not-for-profit community
3747 provider or managing entity to apply for certain
3748 grants; revising eligibility for such grants; defining
3749 a term; creating s. 394.761, F.S.; authorizing the
3750 agency and the department to develop a plan for
3751 revenue maximization; requiring the plan to be



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3752 submitted to the Legislature by a certain date;
3753 amending s. 394.875, F.S.; requiring the department to
3754 modify licensure rules and procedures to create an
3755 option for a single, consolidated license for certain
3756 providers by a specified date; amending s. 394.9082,
3757 F.S.; providing a purpose for behavioral health
3758 managing entities; revising definitions; providing
3759 duties of the department; requiring the department to
3760 revise its contracts with managing entities; providing
3761 duties for managing entities; deleting provisions
3762 relating to legislative findings and intent, service
3763 delivery strategies, essential elements, reporting
3764 requirements, and rulemaking authority; amending s.
3765 397.311, F.S.; defining the terms "informed consent"
3766 and "involuntary services"; revising the definition of
3767 the term "qualified professional"; conforming a cross-
3768 reference; amending s. 397.675, F.S.; revising the
3769 criteria for involuntary admissions due to substance
3770 abuse or co-occurring mental health disorders;
3771 amending s. 397.679, F.S.; specifying the licensed
3772 professionals who may complete a certificate for the
3773 involuntary admission of an individual; amending s.
3774 397.6791, F.S.; providing a list of professionals
3775 authorized to initiate a certificate for an emergency
3776 assessment or admission of a person with a substance
3777 abuse disorder; amending s. 397.6793, F.S.; revising
3778 the criteria for initiation of a certificate for an
3779 emergency admission for a person who is substance
3780 abuse impaired; amending s. 397.6795, F.S.; revising



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3781 the list of persons who may deliver a person for an
3782 emergency assessment; amending s. 397.681, F.S.;

3783 prohibiting the court from charging a fee for
3784 involuntary petitions; amending s. 397.6811, F.S.;

3785 revising the list of persons who may file a petition
3786 for an involuntary assessment and stabilization;

3787 amending s. 397.6814, F.S.; prohibiting a fee from
3788 being charged for the filing of a petition for
3789 involuntary assessment and stabilization; amending s.
3790 397.6819, F.S.; revising the responsibilities of
3791 service providers who admit an individual for an
3792 involuntary assessment and stabilization; requiring a
3793 managing entity to be notified of certain
3794 recommendations; amending s. 397.695, F.S.;

3795 authorizing certain persons to file a petition for
3796 involuntary outpatient services of an individual;

3797 providing procedures and requirements for such
3798 petitions; amending s. 397.6951, F.S.; requiring that
3799 certain additional information be included in a
3800 petition for involuntary outpatient services; amending
3801 s. 397.6955, F.S.; requiring a court to fulfill
3802 certain additional duties upon the filing of a
3803 petition for involuntary outpatient services; amending
3804 s. 397.6957, F.S.; providing additional requirements
3805 for a hearing on a petition for involuntary outpatient
3806 services; amending s. 397.697, F.S.; authorizing a
3807 court to make a determination of involuntary
3808 outpatient services; authorizing a court to order a
3809 respondent to undergo treatment through a privately



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3810 funded licensed service provider under certain
3811 circumstances; prohibiting a court from ordering
3812 involuntary outpatient services under certain
3813 circumstances; requiring the service provider to
3814 document certain inquiries; requiring the managing
3815 entity to document certain efforts; requiring a copy
3816 of the court's order to be sent to the department and
3817 managing entity; providing procedures for
3818 modifications to such orders; amending s. 397.6971,
3819 F.S.; establishing the requirements for an early
3820 release from involuntary outpatient services; amending
3821 s. 397.6975, F.S.; requiring the court to appoint
3822 certain counsel; providing requirements for hearings
3823 on petitions for continued involuntary outpatient
3824 services; requiring notice of such hearings; amending
3825 s. 397.6977, F.S.; conforming provisions to changes
3826 made by the act; creating s. 397.6978, F.S.; providing
3827 for the appointment of guardian advocates if an
3828 individual is found incompetent to consent to
3829 treatment; providing a list of persons prohibited from
3830 being appointed as an individual's guardian advocate;
3831 providing requirements for a facility requesting the
3832 appointment of a guardian advocate; requiring a
3833 training course for guardian advocates; providing
3834 requirements for the training course; providing
3835 requirements for the prioritization of individuals to
3836 be selected as guardian advocates; authorizing certain
3837 guardian advocates to consent to medical treatment;
3838 providing exceptions; providing procedures for the



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3839 discharge of a guardian advocate; amending s. 409.967,
3840 F.S.; requiring managed care plans to provide for
3841 quality care; amending s. 409.973, F.S.; providing an
3842 integrated behavioral health initiative; amending s.
3843 491.0045, F.S.; revising registration requirements for
3844 interns; repealing s. 394.4674, F.S., relating to the
3845 comprehensive plan and report on the
3846 deinstitutionalization of patients in a treatment
3847 facility; repealing s. 394.4985, F.S., relating to the
3848 implementation of a districtwide information and
3849 referral network; repealing s. 394.745, F.S., relating
3850 to the annual report on the compliance of providers
3851 under contract with the department; repealing s.
3852 397.331, F.S., relating to definitions and legislative
3853 intent; repealing part IX of chapter 397, consisting
3854 of ss. 397.801, 397.811, and 397.821, F.S., relating
3855 to substance abuse impairment services coordination;
3856 repealing s. 397.901, F.S., relating to prototype
3857 juvenile addictions receiving facilities; repealing s.
3858 397.93, F.S., relating to target populations for
3859 children's substance abuse services; repealing s.
3860 397.94, F.S., relating to the information and referral
3861 network for children's substance abuse services;
3862 repealing s. 397.951, F.S., relating to substance
3863 abuse treatment and sanctions; repealing s. 397.97,
3864 F.S., relating to demonstration models for children's
3865 substance abuse services; repealing s. 397.98, F.S.,
3866 relating to utilization management for children's
3867 substance abuse services; amending ss. 39.407,



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3868 212.055, 394.4599, 394.495, 394.496, 394.9085,
3869 397.321, 397.405, 397.407, 397.416, 397.4871, 409.966,
3870 409.972, 440.102, 744.704, and 790.065, F.S. ;
3871 conforming cross-references; providing an effective
3872 date.



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576-02646-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 29.004, F.S.; including services provided to treatment-based mental health programs within case management funded from state revenues as an element of the state courts system; amending s. 39.001, F.S.; providing legislative intent regarding mental illness for purposes of the child welfare system; amending s. 39.507, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in adjudicatory hearings and orders; amending s. 39.521, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in disposition hearings; amending s. 394.455, F.S.; defining terms; revising definitions; amending s. 394.4573, F.S.; requiring the Department of Children and Families to submit a certain assessment to the Governor and the Legislature by a specified date; redefining terms; providing essential elements of a coordinated system of care; providing requirements for the department's annual assessment; authorizing the department to award certain grants; deleting duties and measures of the department regarding continuity of care management systems; amending s. 394.4597, F.S.; revising the prioritization of health care surrogates to be selected for involuntary patients; specifying



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certain persons who are prohibited from being selected as an individual's representative; amending s. 394.4598, F.S.; specifying certain persons who are prohibited from being appointed as a person's guardian advocate; amending s. 394.462, F.S.; requiring that counties develop and implement transportation plans; providing requirements for the plans; revising requirements for transportation to a receiving facility and treatment facility; deleting exceptions to such requirements; amending s. 394.463, F.S.; authorizing county or circuit courts to enter ex parte orders for involuntary examinations; requiring a facility to provide copies of ex parte orders, reports, and certifications to managing entities and the department, rather than the Agency for Health Care Administration; requiring the managing entity and department to receive certain orders, certificates, and reports; requiring the department to provide such documents to the Agency for Health Care Administration; requiring certain individuals to be released to law enforcement custody; providing exceptions; amending s. 394.4655, F.S.; providing for involuntary outpatient services; requiring a service provider to document certain inquiries; requiring the managing entity to document certain efforts; making technical changes; amending s. 394.467, F.S.; revising criteria for involuntary inpatient placement; requiring a facility filing a petition for involuntary inpatient placement to send a copy to the department



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57 and managing entity; revising criteria for a hearing
58 on involuntary inpatient placement; revising criteria
59 for a procedure for continued involuntary inpatient
60 services; specifying requirements for a certain waiver
61 of the patient's attendance at a hearing; requiring
62 the court to consider certain testimony and evidence
63 regarding a patient's incompetence; amending s.
64 394.46715, F.S.; revising rulemaking authority of the
65 department; creating s. 394.761, F.S.; authorizing the
66 agency and the department to develop a plan for
67 revenue maximization; requiring the plan to be
68 submitted to the Legislature by a certain date;
69 amending s. 394.875, F.S.; requiring the department to
70 modify licensure rules and procedures to create an
71 option for a single, consolidated license for certain
72 providers by a specified date; amending s. 394.9082,
73 F.S.; providing a purpose for behavioral health
74 managing entities; revising definitions; providing
75 duties of the department; requiring the department to
76 revise its contracts with managing entities; providing
77 duties for managing entities; deleting provisions
78 relating to legislative findings and intent, service
79 delivery strategies, essential elements, reporting
80 requirements, and rulemaking authority; amending s.
81 397.311, F.S.; defining the term "involuntary
82 services"; revising the definition of the term
83 "qualified professional"; conforming a cross-
84 reference; amending s. 397.675, F.S.; revising the
85 criteria for involuntary admissions due to substance



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86 abuse or co-occurring mental health disorders;
87 amending s. 397.679, F.S.; specifying the licensed
88 professionals who may complete a certificate for the
89 involuntary admission of an individual; amending s.
90 397.6791, F.S.; providing a list of professionals
91 authorized to initiate a certificate for an emergency
92 assessment or admission of a person with a substance
93 abuse disorder; amending s. 397.6793, F.S.; revising
94 the criteria for initiation of a certificate for an
95 emergency admission for a person who is substance
96 abuse impaired; amending s. 397.6795, F.S.; revising
97 the list of persons who may deliver a person for an
98 emergency assessment; amending s. 397.681, F.S.;
99 prohibiting the court from charging a fee for
100 involuntary petitions; amending s. 397.6811, F.S.;
101 revising the list of persons who may file a petition
102 for an involuntary assessment and stabilization;
103 amending s. 397.6814, F.S.; prohibiting a fee from
104 being charged for the filing of a petition for
105 involuntary assessment and stabilization; amending s.
106 397.6819, F.S.; revising the responsibilities of
107 service providers who admit an individual for an
108 involuntary assessment and stabilization; amending s.
109 397.695, F.S.; authorizing certain persons to file a
110 petition for involuntary outpatient services of an
111 individual; providing procedures and requirements for
112 such petitions; amending s. 397.6951, F.S.; requiring
113 that certain additional information be included in a
114 petition for involuntary outpatient services; amending



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115 s. 397.6955, F.S.; requiring a court to fulfill
116 certain additional duties upon the filing of petition
117 for involuntary outpatient services; amending s.
118 397.6957, F.S.; providing additional requirements for
119 a hearing on a petition for involuntary outpatient
120 services; amending s. 397.697, F.S.; authorizing a
121 court to make a determination of involuntary
122 outpatient services; prohibiting a court from ordering
123 involuntary outpatient services under certain
124 circumstances; requiring the service provider to
125 document certain inquiries; requiring the managing
126 entity to document certain efforts; requiring a copy
127 of the court's order to be sent to the department and
128 managing entity; providing procedures for
129 modifications to such orders; amending s. 397.6971,
130 F.S.; establishing the requirements for an early
131 release from involuntary outpatient services; amending
132 s. 397.6975, F.S.; requiring the court to appoint
133 certain counsel; providing requirements for hearings
134 on petitions for continued involuntary outpatient
135 services; requiring notice of such hearings; amending
136 s. 397.6977, F.S.; conforming provisions to changes
137 made by the act; creating s. 397.6978, F.S.; providing
138 for the appointment of guardian advocates if an
139 individual is found incompetent to consent to
140 treatment; providing a list of persons prohibited from
141 being appointed as an individual's guardian advocate;
142 providing requirements for a facility requesting the
143 appointment of a guardian advocate; requiring a



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144 training course for guardian advocates; providing
145 requirements for the training course; providing
146 requirements for the prioritization of individuals to
147 be selected as guardian advocates; authorizing certain
148 guardian advocates to consent to medical treatment;
149 providing exceptions; providing procedures for the
150 discharge of a guardian advocate; amending ss. 39.407,
151 212.055, 394.4599, 394.495, 394.496, 394.9085,
152 397.405, 397.407, 397.416, 409.972, 440.102, 744.704,
153 and 790.065, F.S.; conforming cross-references;
154 providing an effective date.
155
156 Be It Enacted by the Legislature of the State of Florida:
157
158 Section 1. Paragraph (e) is added to subsection (10) of
159 section 29.004, Florida Statutes, to read:
160 29.004 State courts system.—For purposes of implementing s.
161 14, Art. V of the State Constitution, the elements of the state
162 courts system to be provided from state revenues appropriated by
163 general law are as follows:
164 (10) Case management. Case management includes:
165 (e) Service referral, coordination, monitoring, and
166 tracking for mental health programs under chapter 394.
167
168 Case management may not include costs associated with the
169 application of therapeutic jurisprudence principles by the
170 courts. Case management also may not include case intake and
171 records management conducted by the clerk of court.
172 Section 2. Subsection (6) of section 39.001, Florida



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173 Statutes, is amended to read:

174 39.001 Purposes and intent; personnel standards and
175 screening.-

176 (6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.-

177 (a) The Legislature recognizes that early referral and
178 comprehensive treatment can help combat mental illness and
179 substance abuse disorders in families and that treatment is
180 cost-effective.

181 (b) The Legislature establishes the following goals for the
182 state related to mental illness and substance abuse treatment
183 services in the dependency process:

184 1. To ensure the safety of children.

185 2. To prevent and remediate the consequences of mental
186 illness and substance abuse disorders on families involved in
187 protective supervision or foster care and reduce the occurrences
188 of mental illness and substance abuse disorders, including
189 alcohol abuse or other related disorders, for families who are
190 at risk of being involved in protective supervision or foster
191 care.

192 3. To expedite permanency for children and reunify healthy,
193 intact families, when appropriate.

194 4. To support families in recovery.

195 (c) The Legislature finds that children in the care of the
196 state's dependency system need appropriate health care services,
197 that the impact of mental illnesses and substance abuse on
198 health indicates the need for health care services to include
199 treatment for mental health and substance abuse disorders for
200 services to children and parents where appropriate, and that it
201 is in the state's best interest that such children be provided



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202 the services they need to enable them to become and remain
203 independent of state care. In order to provide these services,
204 the state's dependency system must have the ability to identify
205 and provide appropriate intervention and treatment for children
206 with personal or family-related mental illness and substance
207 abuse problems.

208 (d) It is the intent of the Legislature to encourage the
209 use of the mental health programs established under chapter 394
210 and the drug court program model established under ~~by~~ s. 397.334
211 and authorize courts to assess children and persons who have
212 custody or are requesting custody of children where good cause
213 is shown to identify and address mental illnesses and substance
214 abuse disorders ~~problems~~ as the court deems appropriate at every
215 stage of the dependency process. Participation in treatment,
216 including a treatment-based mental health court program or a
217 treatment-based drug court program, may be required by the court
218 following adjudication. Participation in assessment and
219 treatment ~~before prior to~~ adjudication ~~is shall be~~ voluntary,
220 except as provided in s. 39.407(16).

221 (e) It is therefore the purpose of the Legislature to
222 provide authority for the state to contract with mental health
223 service providers and community substance abuse treatment
224 providers for the development and operation of specialized
225 support and overlay services for the dependency system, which
226 will be fully implemented and used as resources permit.

227 (f) Participation in a treatment-based mental health court
228 program or a ~~the~~ treatment-based drug court program does not
229 divest any public or private agency of its responsibility for a
230 child or adult, but is intended to enable these agencies to



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231 better meet their needs through shared responsibility and
232 resources.

233 Section 3. Subsection (10) of section 39.507, Florida
234 Statutes, is amended to read:

235 39.507 Adjudicatory hearings; orders of adjudication.—

236 (10) After an adjudication of dependency, or a finding of
237 dependency where adjudication is withheld, the court may order a
238 person who has custody or is requesting custody of the child to
239 submit to a mental health or substance abuse disorder assessment
240 or evaluation. The assessment or evaluation must be administered
241 by a qualified professional, as defined in s. 397.311. The court
242 may also require such person to participate in and comply with
243 treatment and services identified as necessary, including, when
244 appropriate and available, participation in and compliance with
245 a mental health program established under chapter 394 or a
246 treatment-based drug court program established under s. 397.334.
247 In addition to supervision by the department, the court,
248 including a treatment-based mental health court program or a the
249 treatment-based drug court program, may oversee the progress and
250 compliance with treatment by a person who has custody or is
251 requesting custody of the child. The court may impose
252 appropriate available sanctions for noncompliance upon a person
253 who has custody or is requesting custody of the child or make a
254 finding of noncompliance for consideration in determining
255 whether an alternative placement of the child is in the child's
256 best interests. Any order entered under this subsection may be
257 made only upon good cause shown. This subsection does not
258 authorize placement of a child with a person seeking custody,
259 other than the parent or legal custodian, who requires mental



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260 health or substance abuse disorder treatment.

261 Section 4. Paragraph (b) of subsection (1) of section
262 39.521, Florida Statutes, is amended to read:

263 39.521 Disposition hearings; powers of disposition.—

264 (1) A disposition hearing shall be conducted by the court,
265 if the court finds that the facts alleged in the petition for
266 dependency were proven in the adjudicatory hearing, or if the
267 parents or legal custodians have consented to the finding of
268 dependency or admitted the allegations in the petition, have
269 failed to appear for the arraignment hearing after proper
270 notice, or have not been located despite a diligent search
271 having been conducted.

272 (b) When any child is adjudicated by a court to be
273 dependent, the court having jurisdiction of the child has the
274 power by order to:

275 1. Require the parent and, when appropriate, the legal
276 custodian and the child to participate in treatment and services
277 identified as necessary. The court may require the person who
278 has custody or who is requesting custody of the child to submit
279 to a mental illness or substance abuse disorder assessment or
280 evaluation. The assessment or evaluation must be administered by
281 a qualified professional, as defined in s. 397.311. The court
282 may also require such person to participate in and comply with
283 treatment and services identified as necessary, including, when
284 appropriate and available, participation in and compliance with
285 a mental health program established under chapter 394 or a
286 treatment-based drug court program established under s. 397.334.
287 In addition to supervision by the department, the court,
288 including a treatment-based mental health court program or a the



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289 treatment-based drug court program, may oversee the progress and
290 compliance with treatment by a person who has custody or is
291 requesting custody of the child. The court may impose
292 appropriate available sanctions for noncompliance upon a person
293 who has custody or is requesting custody of the child or make a
294 finding of noncompliance for consideration in determining
295 whether an alternative placement of the child is in the child's
296 best interests. Any order entered under this subparagraph may be
297 made only upon good cause shown. This subparagraph does not
298 authorize placement of a child with a person seeking custody of
299 the child, other than the child's parent or legal custodian, who
300 requires mental health or substance abuse treatment.

301 2. Require, if the court deems necessary, the parties to
302 participate in dependency mediation.

303 3. Require placement of the child either under the
304 protective supervision of an authorized agent of the department
305 in the home of one or both of the child's parents or in the home
306 of a relative of the child or another adult approved by the
307 court, or in the custody of the department. Protective
308 supervision continues until the court terminates it or until the
309 child reaches the age of 18, whichever date is first. Protective
310 supervision shall be terminated by the court whenever the court
311 determines that permanency has been achieved for the child,
312 whether with a parent, another relative, or a legal custodian,
313 and that protective supervision is no longer needed. The
314 termination of supervision may be with or without retaining
315 jurisdiction, at the court's discretion, and shall in either
316 case be considered a permanency option for the child. The order
317 terminating supervision by the department must ~~shall~~ set forth



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318 the powers of the custodian of the child and ~~shall~~ include the
319 powers ordinarily granted to a guardian of the person of a minor
320 unless otherwise specified. Upon the court's termination of
321 supervision by the department, ~~no~~ further judicial reviews are
322 not required ~~if, so long as~~ permanency has been established for
323 the child.

324 Section 5. Section 394.455, Florida Statutes, is amended to
325 read:

326 394.455 Definitions.—As used in this part, ~~unless the~~
327 ~~context clearly requires otherwise,~~ the term:

328 (1) "Access center" means a facility staffed by medical,
329 behavioral, and substance abuse professionals which provides
330 emergency screening and evaluation for mental health or
331 substance abuse disorders and may provide transportation to an
332 appropriate facility if an individual is in need of more
333 intensive services.

334 (2) "Addictions receiving facility" means a secure, acute
335 care facility that, at a minimum, provides emergency screening,
336 evaluation, and short-term stabilization services; is operated
337 24 hours per day, 7 days per week; and is designated by the
338 department to serve individuals found to have substance abuse
339 impairment who qualify for services under this part.

340 (3)-(4) "Administrator" means the chief administrative
341 officer of a receiving or treatment facility or his or her
342 designee.

343 (4) "Adult" means an individual who is 18 years of age or
344 older or who has had the disability of nonage removed under
345 chapter 743.

346 (5) "Advanced registered nurse practitioner" means any



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347 person licensed in this state to practice professional nursing
348 who is certified in advanced or specialized nursing practice
349 under s. 464.012.

350 ~~(6)(2)~~ "Clinical psychologist" means a psychologist as
351 defined in s. 490.003(7) with 3 years of postdoctoral experience
352 in the practice of clinical psychology, inclusive of the
353 experience required for licensure, or a psychologist employed by
354 a facility operated by the United States Department of Veterans
355 Affairs that qualifies as a receiving or treatment facility
356 under this part.

357 ~~(7)(3)~~ "Clinical record" means all parts of the record
358 required to be maintained and includes all medical records,
359 progress notes, charts, and admission and discharge data, and
360 all other information recorded by a facility staff which
361 pertains to the patient's hospitalization or treatment.

362 ~~(8)(4)~~ "Clinical social worker" means a person licensed as
363 a clinical social worker under s. 491.005 or s. 491.006 ~~chapter~~
364 ~~491.~~

365 ~~(9)(5)~~ "Community facility" means a ~~any~~ community service
366 provider that contracts ~~contracting~~ with the department to
367 furnish substance abuse or mental health services under part IV
368 of this chapter.

369 ~~(10)(6)~~ "Community mental health center or clinic" means a
370 publicly funded, not-for-profit center that ~~which~~ contracts with
371 the department for the provision of inpatient, outpatient, day
372 treatment, or emergency services.

373 ~~(11)(7)~~ "Court," unless otherwise specified, means the
374 circuit court.

375 ~~(12)(8)~~ "Department" means the Department of Children and



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376 Families.

377 (13) "Designated receiving facility" means a facility
378 approved by the department which may be a crisis stabilization
379 unit, addictions receiving facility and provides, at a minimum,
380 emergency screening, evaluation, and short-term stabilization
381 for mental health or substance abuse disorders, and which may
382 have an agreement with a corresponding facility for
383 transportation and services.

384 (14) "Detoxification facility" means a facility licensed to
385 provide detoxification services under chapter 397.

386 (15) "Electronic means" is a form of telecommunication
387 which requires all parties to maintain visual as well as audio
388 communication.

389 ~~(16)(9)~~ "Express and informed consent" means consent
390 voluntarily given in writing, by a competent person, after
391 sufficient explanation and disclosure of the subject matter
392 involved to enable the person to make a knowing and willful
393 decision without any element of force, fraud, deceit, duress, or
394 other form of constraint or coercion.

395 ~~(17)(10)~~ "Facility" means any hospital, community facility,
396 public or private facility, or receiving or treatment facility
397 providing for the evaluation, diagnosis, care, treatment,
398 training, or hospitalization of persons who appear to have a
399 ~~mental illness~~ or who have been diagnosed as having a mental
400 illness or substance abuse impairment. The term "Facility" does
401 not include a ~~any~~ program or an entity licensed under ~~pursuant~~
402 ~~to~~ chapter 400 or chapter 429.

403 (18) "Governmental facility" means a facility owned,
404 operated, or administered by the Department of Corrections or



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405 the United States Department of Veterans Affairs.

406 (19)(11) "Guardian" means the natural guardian of a minor,
407 or a person appointed by a court to act on behalf of a ward's
408 person if the ward is a minor or has been adjudicated
409 incapacitated.

410 (20)(12) "Guardian advocate" means a person appointed by a
411 court to make decisions regarding mental health or substance
412 abuse treatment on behalf of a patient who has been found
413 incompetent to consent to treatment pursuant to this part. ~~The~~
414 ~~guardian advocate may be granted specific additional powers by~~
415 ~~written order of the court, as provided in this part.~~

416 (21)(13) "Hospital" means a hospital facility as defined in
417 ~~s. 395.002 and~~ licensed under chapter 395 and part II of chapter
418 408.

419 (22)(14) "Incapacitated" means that a person has been
420 adjudicated incapacitated pursuant to part V of chapter 744 and
421 a guardian of the person has been appointed.

422 (23)(15) "Incompetent to consent to treatment" means a
423 state in which ~~that~~ a person's judgment is so affected by a ~~his~~
424 ~~or her~~ mental illness, a substance abuse impairment, that he or
425 ~~she the person~~ lacks the capacity to make a well-reasoned,
426 willful, and knowing decision concerning his or her medical, ~~or~~
427 mental health, or substance abuse treatment.

428 (24) "Involuntary examination" means an examination
429 performed under s. 394.463 or s. 397.675 to determine whether a
430 person qualifies for involuntary outpatient services pursuant to
431 s. 394.4655 or involuntary inpatient placement.

432 (25) "Involuntary services" means court-ordered outpatient
433 services or inpatient placement for mental health treatment



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434 pursuant to s. 394.4655 or s. 394.467.

435 (26)(16) "Law enforcement officer" has the same meaning as
436 provided means a law enforcement officer as defined in s.
437 943.10.

438 (27) "Marriage and family therapist" means a person
439 licensed to practice marriage and family therapy under s.
440 491.005 or s. 491.006.

441 (28) "Mental health counselor" means a person licensed to
442 practice mental health counseling under s. 491.005 or s.
443 491.006.

444 (29)(17) "Mental health overlay program" means a mobile
445 service that which provides an independent examination for
446 voluntary admission admissions and a range of supplemental
447 onsite services to persons with a mental illness in a
448 residential setting such as a nursing home, an assisted living
449 facility, or an adult family-care home, or a nonresidential
450 setting such as an adult day care center. Independent
451 examinations provided pursuant to this part through a mental
452 health overlay program must only be provided under contract with
453 the department ~~for this service~~ or be attached to a public
454 receiving facility that is also a community mental health
455 center.

456 (30)(18) "Mental illness" means an impairment of the mental
457 or emotional processes that exercise conscious control of one's
458 actions or of the ability to perceive or understand reality,
459 which impairment substantially interferes with the person's
460 ability to meet the ordinary demands of living. For the purposes
461 of this part, the term does not include a developmental
462 disability as defined in chapter 393, intoxication, or



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463 conditions manifested only by antisocial behavior or substance
464 abuse impairment.

465 (31) "Minor" means an individual who is 17 years of age or
466 younger and who has not had the disability of nonage removed
467 pursuant to s. 743.01 or s. 743.015.

468 (32)(19) "Mobile crisis response service" means a
469 nonresidential crisis service attached to a public receiving
470 facility and available 24 hours a day, 7 days a week, through
471 which provides immediate intensive assessments and
472 interventions, including screening for admission into a mental
473 health receiving facility, an addictions receiving facility, or
474 a detoxification facility, take place for the purpose of
475 identifying appropriate treatment services.

476 (33)(20) "Patient" means any person who is held or accepted
477 for mental health or substance abuse treatment.

478 (34)(21) "Physician" means a medical practitioner licensed
479 under chapter 458 or chapter 459 who has experience in the
480 diagnosis and treatment of mental and nervous disorders or a
481 physician employed by a facility operated by the United States
482 Department of Veterans Affairs or the United States Department
483 of Defense which qualifies as a receiving or treatment facility
484 under this part.

485 (35) "Physician assistant" means a person licensed under
486 chapter 458 or chapter 459 who has experience in the diagnosis
487 and treatment of mental disorders.

488 (36)(22) "Private facility" means any hospital or facility
489 operated by a for-profit or not-for-profit corporation or
490 association which that provides mental health or substance abuse
491 services and is not a public facility.



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492 (37)(23) "Psychiatric nurse" means an advanced registered
493 nurse practitioner certified under s. 464.012 who has a master's
494 or doctoral degree in psychiatric nursing, holds a national
495 advanced practice certification as a psychiatric mental health
496 advanced practice nurse, and has 2 years of post-master's
497 clinical experience under the supervision of a physician.

498 (38)(24) "Psychiatrist" means a medical practitioner
499 licensed under chapter 458 or chapter 459 who has primarily
500 diagnosed and treated mental and nervous disorders for at least
501 a period of not less than 3 years, inclusive of psychiatric
502 residency.

503 (39)(25) "Public facility" means a any facility that has
504 contracted with the department to provide mental health or
505 substance abuse services to all persons, regardless of their
506 ability to pay, and is receiving state funds for such purpose.

507 (40) "Qualified professional" means a physician or a
508 physician assistant licensed under chapter 458 or chapter 459; a
509 professional licensed under chapter 490.003(7) or chapter 491; a
510 psychiatrist licensed under chapter 458 or chapter 459; or a
511 psychiatric nurse as defined in subsection (37).

512 (41)(26) "Receiving facility" means any public or private
513 facility designated by the department to receive and hold or
514 refer, as appropriate, involuntary patients under emergency
515 conditions or for mental health or substance abuse psychiatric
516 evaluation and to provide short-term treatment or transportation
517 to the appropriate service provider. The term does not include a
518 county jail.

519 (42)(27) "Representative" means a person selected to
520 receive notice of proceedings during the time a patient is held



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521 in or admitted to a receiving or treatment facility.

522 ~~(43)(28) (a) "Restraint" means: a physical device, method,~~
523 ~~or drug used to control behavior.~~

524 (a) A physical restraint, including is any manual method or
525 physical or mechanical device, material, or equipment attached
526 or adjacent to an the individual's body so that he or she cannot
527 easily remove the restraint and which restricts freedom of
528 movement or normal access to one's body. Physical restraint
529 includes the physical holding of a person during a procedure to
530 forcibly administer psychotropic medication. Physical restraint
531 does not include physical devices such as orthopedically
532 prescribed appliances, surgical dressings and bandages,
533 supportive body bands, or other physical holding when necessary
534 for routine physical examinations and tests or for purposes of
535 orthopedic, surgical, or other similar medical treatment, when
536 used to provide support for the achievement of functional body
537 position or proper balance, or when used to protect a person
538 from falling out of bed.

539 ~~(b) A drug or used as a restraint is a medication used to~~
540 ~~control a the person's behavior or to restrict his or her~~
541 ~~freedom of movement which and is not part of the standard~~
542 ~~treatment regimen of a person with a diagnosed mental illness~~
543 ~~who is a client of the department. Physically holding a person~~
544 ~~during a procedure to forcibly administer psychotropic~~
545 ~~medication is a physical restraint.~~

546 ~~(c) Restraint does not include physical devices, such as~~
547 ~~orthopedically prescribed appliances, surgical dressings and~~
548 ~~bandages, supportive body bands, or other physical holding when~~
549 ~~necessary for routine physical examinations and tests; or for~~



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550 ~~purposes of orthopedic, surgical, or other similar medical~~
551 ~~treatment; when used to provide support for the achievement of~~
552 ~~functional body position or proper balance; or when used to~~
553 ~~protect a person from falling out of bed.~~

554 (44) "School psychologist" has the same meaning as in s.
555 490.003.

556 ~~(45)(29) "Seclusion" means the physical segregation of a~~
557 ~~person in any fashion or involuntary isolation of a person in a~~
558 ~~room or area from which the person is prevented from leaving.~~
559 ~~The prevention may be by physical barrier or by a staff member~~
560 ~~who is acting in a manner, or who is physically situated, so as~~
561 ~~to prevent the person from leaving the room or area. For~~
562 ~~purposes of this part chapter, the term does not mean isolation~~
563 ~~due to a person's medical condition or symptoms.~~

564 ~~(46)(30) "Secretary" means the Secretary of Children and~~
565 ~~Families.~~

566 (47) "Service provider" means a receiving facility, any
567 facility licensed under chapter 397, a treatment facility, an
568 entity under contract with the department to provide mental
569 health or substance abuse services, a community mental health
570 center or clinic, a psychologist, a clinical social worker, a
571 marriage and family therapist, a mental health counselor, a
572 physician, a psychiatrist, an advanced registered nurse
573 practitioner, a psychiatric nurse, or a qualified professional
574 as defined in this section.

575 (48) "Substance abuse impairment" means a condition
576 involving the use of alcoholic beverages or any psychoactive or
577 mood-altering substance in such a manner that a person has lost
578 the power of self-control and has inflicted or is likely to



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579 inflict physical harm on himself or herself or others.
580 (49)(31) "Transfer evaluation" means the process by which,
581 as approved by the appropriate district office of the
582 department, whereby a person who is being considered for
583 placement in a state treatment facility is first evaluated for
584 appropriateness of admission to a state treatment the facility
585 by a community-based public receiving facility or by a community
586 mental health center or clinic if the public receiving facility
587 is not a community mental health center or clinic.
588 (50)(32) "Treatment facility" means a any state-owned,
589 state-operated, or state-supported hospital, center, or clinic
590 designated by the department for extended treatment and
591 hospitalization, beyond that provided for by a receiving
592 facility, of persons who have a mental illness, including
593 facilities of the United States Government, and any private
594 facility designated by the department when rendering such
595 services to a person pursuant to the provisions of this part.
596 Patients treated in facilities of the United States Government
597 shall be solely those whose care is the responsibility of the
598 United States Department of Veterans Affairs.
599 (51) "Triage center" means a facility that is approved by
600 the department and has medical, behavioral, and substance abuse
601 professionals present or on call to provide emergency screening
602 and evaluation of individuals transported to the center by a law
603 enforcement officer.
604 (33) "Service provider" means any public or private
605 receiving facility, an entity under contract with the Department
606 of Children and Families to provide mental health services, a
607 clinical psychologist, a clinical social worker, a marriage and



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608 ~~family therapist, a mental health counselor, a physician, a~~
609 ~~psychiatric nurse as defined in subsection (23), or a community~~
610 ~~mental health center or clinic as defined in this part.~~
611 ~~(34) "Involuntary examination" means an examination~~
612 ~~performed under s. 394.463 to determine if an individual~~
613 ~~qualifies for involuntary inpatient treatment under s.~~
614 ~~394.467(1) or involuntary outpatient treatment under s.~~
615 ~~394.4655(1).~~
616 ~~(35) "Involuntary placement" means either involuntary~~
617 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~
618 ~~inpatient treatment pursuant to s. 394.467.~~
619 ~~(36) "Marriage and family therapist" means a person~~
620 ~~licensed as a marriage and family therapist under chapter 491.~~
621 ~~(37) "Mental health counselor" means a person licensed as a~~
622 ~~mental health counselor under chapter 491.~~
623 ~~(38) "Electronic means" means a form of telecommunication~~
624 ~~that requires all parties to maintain visual as well as audio~~
625 ~~communication.~~
626 Section 6. Section 394.4573, Florida Statutes, is amended
627 to read:
628 394.4573 Coordinated system of care; annual assessment;
629 essential elements Continuity of care management system;
630 measures of performance; system improvement grants; reports.-On
631 or before October 1 of each year, the department shall submit to
632 the Governor, the President of the Senate, and the Speaker of
633 the House of Representatives an assessment of the behavioral
634 health services in this state in the context of the No-Wrong-
635 Door model and standards set forth in this section. The
636 department's assessment shall be based on both quantitative and



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637 qualitative data and must identify any significant regional
638 variations. The assessment must include information gathered
639 from managing entities, service providers, law enforcement,
640 judicial officials, local governments, behavioral health
641 consumers and their family members, and the public.

642 (1) ~~As used in For the purposes of~~ this section:

643 (a) "Case management" means those direct services provided
644 to a client in order to assess his or her activities aimed at
645 assessing client needs, plan or arrange planning services,
646 coordinate service providers, monitor linking the service system
647 to a client, coordinating the various system components,
648 monitoring service delivery, and evaluate patient outcomes
649 evaluating the effect of service delivery.

650 (b) "Case manager" means an individual who works with
651 clients, and their families and significant others, to provide
652 case management.

653 (c) "Client manager" means an employee of the managing
654 entity or entity under contract with the managing entity
655 department who is assigned to specific provider agencies and
656 geographic areas to ensure that the full range of needed
657 services is available to clients.

658 (d) "Coordinated system ~~Continuity of care management~~
659 ~~system" means a system that assures, within available resources,~~
660 ~~that clients have access to the full array of behavioral and~~
661 related services in a region or community offered by all service
662 providers, whether participating under contract with the
663 managing entity or another method of community partnership or
664 mutual agreement within the mental health services delivery
665 system.



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666 (e) "No-Wrong-Door model" means a model for the delivery of
667 health care services to persons who have mental health or
668 substance abuse disorders, or both, which optimizes access to
669 care, regardless of the entry point to the behavioral health
670 care system.

671 (2) The essential elements of a coordinated system of care
672 include:

673 (a) Community interventions, such as prevention, primary
674 care for behavioral health needs, therapeutic and supportive
675 services, crisis response services, and diversion programs.

676 (b) A designated receiving system consisting of one or more
677 facilities serving a defined geographic area and responsible for
678 assessment and evaluation, both voluntary and involuntary, and
679 treatment or triage for patients who present with mental
680 illness, substance abuse disorder, or co-occurring disorders.
681 The system must be approved by each county or by several
682 counties, planned through an inclusive process, approved by the
683 managing entity, and documented through written memoranda of
684 agreement or other binding arrangements. The designated
685 receiving system may be organized in any of the following ways
686 so long as it functions as a No-Wrong-Door model that responds
687 to individual needs and integrates services among various
688 providers:

689 1. A central receiving system, which consists of a
690 designated central receiving facility that serves as a single
691 entry point for persons with mental health or substance abuse
692 disorders, or both. The designated receiving facility must be
693 capable of assessment, evaluation, and triage or treatment for
694 various conditions and circumstances.



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695 2. A coordinated receiving system, which consists of
696 multiple entry points that are linked by shared data systems,
697 formal referral agreements, and cooperative arrangements for
698 care coordination and case management. Each entry point must be
699 a designated receiving facility and must provide or arrange for
700 necessary services following an initial assessment and
701 evaluation.

702 3. A tiered receiving system, which consists of multiple
703 entry points, some of which offer only specialized or limited
704 services. Each service provider must be classified according to
705 its capabilities as either a designated receiving facility, or
706 another type of service provider such as a triage center, or an
707 access center. All participating service providers must be
708 linked by methods to share data that are compliant with both
709 state and federal patient privacy laws, formal referral
710 agreements, and cooperative arrangements for care coordination
711 and case management. An accurate inventory of the participating
712 service providers which specifies the capabilities and
713 limitations of each provider must be maintained and made
714 available at all times to all first responders in the service
715 area.

716 (c) Transportation in accordance with a plan developed
717 under s. 394.462.

718 (d) Crisis services, including mobile response teams,
719 crisis stabilization units, addiction receiving facilities, and
720 detoxification facilities.

721 (e) Case management, including intensive case management
722 for individuals determined to be high-need or high-utilization
723 individuals under s. 394.9082(2)(e).



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724 (f) Outpatient services.

725 (g) Residential services.

726 (h) Hospital inpatient care.

727 (i) Aftercare and other post-discharge services.

728 (j) Medication Assisted Treatment and medication
729 management.

730 (k) Recovery support, including housing assistance and
731 support for competitive employment, educational attainment,
732 independent living skills development, family support and
733 education, and wellness management and self-care.

734 (3) The department's annual assessment must compare the
735 status and performance of the extant behavioral health system
736 with the following standards and any other standards or measures
737 that the department determines to be applicable.

738 (a) The capacity of the contracted service providers to
739 meet estimated need when such estimates are based on credible
740 evidence and sound methodologies.

741 (b) The extent to which the behavioral health system uses
742 evidence-informed practices and broadly disseminates the results
743 of quality improvement activities to all service providers.

744 (c) The degree to which services are offered in the least
745 restrictive and most appropriate therapeutic environment.

746 (d) The scope of systemwide accountability activities used
747 to monitor patient outcomes and measure continuous improvement
748 in the behavioral health system.

749 (4) Subject to a specific appropriation by the Legislature,
750 the department may award system improvement grants to managing
751 entities based on the submission of a detailed plan to enhance
752 services, coordination, or performance measurement in accordance



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753 ~~with the model and standards specified in this section. Such a~~
754 ~~grant must be awarded through a performance-based contract that~~
755 ~~links payments to the documented and measurable achievement of~~
756 ~~system improvements. The department is directed to implement a~~
757 ~~continuity of care management system for the provision of mental~~
758 ~~health care, through the provision of client and case~~
759 ~~management, including clients referred from state treatment~~
760 ~~facilities to community mental health facilities. Such system~~
761 ~~shall include a network of client managers and case managers~~
762 ~~throughout the state designed to:~~

763 ~~(a) Reduce the possibility of a client's admission or~~
764 ~~readmission to a state treatment facility.~~

765 ~~(b) Provide for the creation or designation of an agency in~~
766 ~~each county to provide single intake services for each person~~
767 ~~seeking mental health services. Such agency shall provide~~
768 ~~information and referral services necessary to ensure that~~
769 ~~clients receive the most appropriate and least restrictive form~~
770 ~~of care, based on the individual needs of the person seeking~~
771 ~~treatment. Such agency shall have a single telephone number,~~
772 ~~operating 24 hours per day, 7 days per week, where practicable,~~
773 ~~at a central location, where each client will have a central~~
774 ~~record.~~

775 ~~(c) Advocate on behalf of the client to ensure that all~~
776 ~~appropriate services are afforded to the client in a timely and~~
777 ~~dignified manner.~~

778 ~~(d) Require that any public receiving facility initiating a~~
779 ~~patient transfer to a licensed hospital for acute care mental~~
780 ~~health services not accessible through the public receiving~~
781 ~~facility shall notify the hospital of such transfer and send all~~



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782 ~~records relating to the emergency psychiatric or medical~~
783 ~~condition.~~

784 ~~(3) The department is directed to develop and include in~~
785 ~~contracts with service providers measures of performance with~~
786 ~~regard to goals and objectives as specified in the state plan.~~
787 ~~Such measures shall use, to the extent practical, existing data~~
788 ~~collection methods and reports and shall not require, as a~~
789 ~~result of this subsection, additional reports on the part of~~
790 ~~service providers. The department shall plan monitoring visits~~
791 ~~of community mental health facilities with other state, federal,~~
792 ~~and local governmental and private agencies charged with~~
793 ~~monitoring such facilities.~~

794 Section 7. Paragraphs (d) and (e) of subsection (2) of
795 section 394.4597, Florida Statutes, are amended to read:

796 394.4597 Persons to be notified; patient's representative.-

797 (2) INVOLUNTARY PATIENTS.-

798 (d) When the receiving or treatment facility selects a
799 representative, first preference shall be given to a health care
800 surrogate, if one has been previously selected by the patient.
801 If the patient has not previously selected a health care
802 surrogate, the selection, except for good cause documented in
803 the patient's clinical record, shall be made from the following
804 list in the order of listing:

- 805 1. The patient's spouse.
- 806 2. An adult child of the patient.
- 807 3. A parent of the patient.
- 808 4. The adult next of kin of the patient.
- 809 5. An adult friend of the patient.
- 810 6. The appropriate Florida local advocacy council as



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811 ~~provided in s. 402.166.~~

812 (e) The following persons are prohibited from selection as
813 a patient's representative:

814 1. A professional providing clinical services to the
815 patient under this part.

816 2. The licensed professional who initiated the involuntary
817 examination of the patient, if the examination was initiated by
818 professional certificate.

819 3. An employee, an administrator, or a board member of the
820 facility providing the examination of the patient.

821 4. An employee, an administrator, or a board member of a
822 treatment facility providing treatment for the patient.

823 5. A person providing any substantial professional services
824 to the patient, including clinical services.

825 6. A creditor of the patient.

826 7. A person subject to an injunction for protection against
827 domestic violence under s. 741.30, whether the order of
828 injunction is temporary or final, and for which the patient was
829 the petitioner.

830 8. A person subject to an injunction for protection against
831 repeat violence, sexual violence, or dating violence under s.
832 784.046, whether the order of injunction is temporary or final,
833 and for which the patient was the petitioner ~~A licensed~~
834 ~~professional providing services to the patient under this part,~~
835 ~~an employee of a facility providing direct services to the~~
836 ~~patient under this part, a department employee, a person~~
837 ~~providing other substantial services to the patient in a~~
838 ~~professional or business capacity, or a creditor of the patient~~
839 ~~shall not be appointed as the patient's representative.~~



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840 Section 8. Present subsections (2) through (7) of section
841 394.4598, Florida Statutes, are redesignated as subsections (3)
842 through (8), respectively, a new subsection (2) is added to that
843 section, and present subsections (3) and (4) of that section are
844 amended, to read:

845 394.4598 Guardian advocate.—

846 (2) The following persons are prohibited from appointment
847 as a patient's guardian advocate:

848 (a) A professional providing clinical services to the
849 patient under this part.

850 (b) The licensed professional who initiated the involuntary
851 examination of the patient, if the examination was initiated by
852 professional certificate.

853 (c) An employee, an administrator, or a board member of the
854 facility providing the examination of the patient.

855 (d) An employee, an administrator, or a board member of a
856 treatment facility providing treatment of the patient.

857 (e) A person providing any substantial professional
858 services to the patient, including clinical services.

859 (f) A creditor of the patient.

860 (g) A person subject to an injunction for protection
861 against domestic violence under s. 741.30, whether the order of
862 injunction is temporary or final, and for which the patient was
863 the petitioner.

864 (h) A person subject to an injunction for protection
865 against repeat violence, sexual violence, or dating violence
866 under s. 784.046, whether the order of injunction is temporary
867 or final, and for which the patient was the petitioner.

868 (4)(3) In lieu of the training required of guardians



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869 ~~appointed pursuant to chapter 744, Prior to~~ a guardian advocate
870 ~~must, at a minimum, participate in a 4-hour training course~~
871 ~~approved by the court before~~ exercising his or her authority,
872 ~~the guardian advocate shall attend a training course approved by~~
873 ~~the court. At a minimum, this training course, of not less than~~
874 ~~4 hours, must include, at minimum, information about the patient~~
875 rights, psychotropic medications, the diagnosis of mental
876 illness, the ethics of medical decisionmaking, and duties of
877 guardian advocates. ~~This training course shall take the place of~~
878 ~~the training required for guardians appointed pursuant to~~
879 ~~chapter 744.~~

880 (5)(4) The required training course and the information to
881 be supplied to prospective guardian advocates before prior to
882 their appointment and the training course for guardian advocates
883 must be developed and completed through a course developed by
884 the department, and approved by the chief judge of the circuit
885 court, and taught by a court-approved organization, which-
886 ~~Court approved organizations~~ may include, but ~~is~~ are not limited
887 to, a community college community or junior colleges, a
888 guardianship organization guardianship organizations, a and the
889 local bar association, or The Florida Bar. The training course
890 may be web-based, provided in video format, or other electronic
891 means but must be capable of ensuring the identity and
892 participation of the prospective guardian advocate. The court
893 ~~may, in its discretion,~~ waive some or all of the training
894 requirements for guardian advocates or impose additional
895 requirements. The court shall make its decision on a case-by-
896 case basis and, in making its decision, shall consider the
897 experience and education of the guardian advocate, the duties



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898 assigned to the guardian advocate, and the needs of the patient.
899 Section 9. Section 394.462, Florida Statutes, is amended to
900 read:

901 394.462 Transportation.-A transportation plan must be
902 developed and implemented by each county in accordance with this
903 section. A county may enter into a memorandum of understanding
904 with the governing boards of nearby counties to establish a
905 shared transportation plan. When multiple counties enter into a
906 memorandum of understanding for this purpose, the managing
907 entity must be notified and provided a copy of the agreement.
908 The transportation plan must describe methods of transport to a
909 facility within the designated receiving system and may identify
910 responsibility for other transportation to a participating
911 facility when necessary and agreed to by the facility. The plan
912 must ensure that individuals who meet the criteria for
913 involuntary assessment and evaluation pursuant to ss. 394.463
914 and 397.675 will be transported. The plan may rely on emergency
915 medical transport services or private transport companies as
916 appropriate.

917 (1) TRANSPORTATION TO A RECEIVING FACILITY.-

918 (a) Each county shall designate a single law enforcement
919 agency within the county, or portions thereof, to take a person
920 into custody upon the entry of an ex parte order or the
921 execution of a certificate for involuntary examination by an
922 authorized professional and to transport that person to an
923 appropriate facility within the designated receiving system the
924 nearest receiving facility for examination.

925 (b)1. The designated law enforcement agency may decline to
926 transport the person to a receiving facility only if:



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927 ~~a.1-~~ The jurisdiction designated by the county has
928 contracted on an annual basis with an emergency medical
929 transport service or private transport company for
930 transportation of persons to receiving facilities pursuant to
931 this section at the sole cost of the county; and
932 ~~b.2-~~ The law enforcement agency and the emergency medical
933 transport service or private transport company agree that the
934 continued presence of law enforcement personnel is not necessary
935 for the safety of the person or others.
936 ~~2.3-~~ The entity providing transportation jurisdiction
937 ~~designated by the county~~ may seek reimbursement for
938 transportation expenses. The party responsible for payment for
939 such transportation is the person receiving the transportation.
940 The county shall seek reimbursement from the following sources
941 in the following order:
942 a. From a private or public third-party payor ~~an insurance~~
943 ~~company, health care corporation, or other source~~, if the person
944 receiving the transportation has applicable coverage ~~is covered~~
945 ~~by an insurance policy or subscribes to a health care~~
946 ~~corporation or other source for payment of such expenses.~~
947 b. From the person receiving the transportation.
948 c. From a financial settlement for medical care, treatment,
949 hospitalization, or transportation payable or accruing to the
950 injured party.
951 ~~(c)(b)-~~ A Any company that transports a patient pursuant to
952 this subsection is considered an independent contractor and is
953 solely liable for the safe and dignified transport
954 ~~transportation~~ of the patient. Such company must be insured and
955 provide no less than \$100,000 in liability insurance with



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956 respect to the transport ~~transportation~~ of patients.
957 ~~(d)-(e)~~ Any company that contracts with a governing board of
958 a county to transport patients shall comply with the applicable
959 rules of the department to ensure the safety and dignity of ~~the~~
960 patients.
961 ~~(e)-(d)~~ When a law enforcement officer takes custody of a
962 person pursuant to this part, the officer may request assistance
963 from emergency medical personnel if such assistance is needed
964 for the safety of the officer or the person in custody.
965 ~~(f)-(e)~~ When a member of a mental health overlay program or
966 a mobile crisis response service is a professional authorized to
967 initiate an involuntary examination pursuant to s. 394.463 or s.
968 397.675 and that professional evaluates a person and determines
969 that transportation to a receiving facility is needed, the
970 service, at its discretion, may transport the person to the
971 facility or may call on the law enforcement agency or other
972 transportation arrangement best suited to the needs of the
973 patient.
974 ~~(g)-(f)~~ When any law enforcement officer has custody of a
975 person based on either noncriminal or minor criminal behavior
976 that meets the statutory guidelines for involuntary examination
977 under this part, the law enforcement officer shall transport the
978 person to an appropriate the nearest receiving facility within
979 the designated receiving system for examination.
980 ~~(h)-(g)~~ When any law enforcement officer has arrested a
981 person for a felony and it appears that the person meets the
982 statutory guidelines for involuntary examination or placement
983 under this part, such person must ~~shall~~ first be processed in
984 the same manner as any other criminal suspect. The law



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985 enforcement agency shall thereafter immediately notify the
986 appropriate nearest public receiving facility within the
987 designated receiving system, which shall be responsible for
988 promptly arranging for the examination and treatment of the
989 person. A receiving facility is not required to admit a person
990 charged with a crime for whom the facility determines and
991 documents that it is unable to provide adequate security, but
992 shall provide ~~mental health~~ examination and treatment to the
993 person where he or she is held.

994 (i)(h) If the appropriate law enforcement officer believes
995 that a person has an emergency medical condition as defined in
996 s. 395.002, the person may be first transported to a hospital
997 for emergency medical treatment, regardless of whether the
998 hospital is a designated receiving facility.

999 (j)(i) The costs of transportation, evaluation,
1000 hospitalization, and treatment incurred under this subsection by
1001 persons who have been arrested for violations of any state law
1002 or county or municipal ordinance may be recovered as provided in
1003 s. 901.35.

1004 (k)(j) The ~~nearest receiving facility within the designated~~
1005 receiving system must accept, pursuant to this part, persons
1006 brought by law enforcement officers, an emergency medical
1007 transport service, or a private transport company for
1008 involuntary examination.

1009 (l)(k) Each law enforcement agency designated pursuant to
1010 paragraph (a) shall establish a policy that develop a memorandum
1011 of understanding with each receiving facility within the law
1012 enforcement agency's jurisdiction which reflects a single set of
1013 protocols approved by the managing entity for the safe and



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1014 secure transportation ~~of the person~~ and transfer of custody of
1015 the person. ~~These protocols must also address crisis~~
1016 ~~intervention measures.~~

1017 (m)(l) When a jurisdiction has entered into a contract with
1018 an emergency medical transport service or a private transport
1019 company for transportation of persons to ~~receiving facilities~~
1020 within the designated receiving system, such service or company
1021 shall be given preference for transportation of persons from
1022 nursing homes, assisted living facilities, adult day care
1023 centers, or adult family-care homes, unless the behavior of the
1024 person being transported is such that transportation by a law
1025 enforcement officer is necessary.

1026 (n)(m) ~~Nothing in~~ This section may not shall be construed
1027 to limit emergency examination and treatment of incapacitated
1028 persons provided in accordance with ~~the provisions of~~ s.
1029 401.445.

1030 (2) TRANSPORTATION TO A TREATMENT FACILITY.-

1031 (a) If neither the patient nor any person legally obligated
1032 or responsible for the patient is able to pay for the expense of
1033 transporting a voluntary or involuntary patient to a treatment
1034 facility, the transportation plan established by the governing
1035 board of the county or counties must specify how in which the
1036 hospitalized patient will be transported to, from, and between
1037 facilities in a is hospitalized shall arrange for such required
1038 transportation and shall ensure the safe and dignified manner
1039 transportation of the patient. The governing board of each
1040 county is authorized to contract with private transport
1041 companies for the transportation of such patients to and from a
1042 treatment facility.



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1043 (b) ~~A~~ Any company that transports a patient pursuant to
1044 this subsection is considered an independent contractor and is
1045 solely liable for the safe and dignified transportation of the
1046 patient. Such company must be insured and provide no less than
1047 \$100,000 in liability insurance with respect to the transport
1048 ~~transportation~~ of patients.

1049 (c) ~~A~~ Any company that contracts with one or more counties
1050 ~~the governing board of a county~~ to transport patients in
1051 accordance with this section shall comply with the applicable
1052 rules of the department to ensure the safety and dignity of ~~the~~
1053 patients.

1054 (d) County or municipal law enforcement and correctional
1055 personnel and equipment may ~~shall~~ not be used to transport
1056 patients adjudicated incapacitated or found by the court to meet
1057 the criteria for involuntary placement pursuant to s. 394.467,
1058 except in small rural counties where there are no cost-efficient
1059 alternatives.

1060 (3) TRANSFER OF CUSTODY.—Custody of a person who is
1061 transported pursuant to this part, along with related
1062 documentation, shall be relinquished to a responsible individual
1063 at the appropriate receiving or treatment facility.

1064 ~~(4) EXCEPTIONS.—An exception to the requirements of this~~
1065 ~~section may be granted by the secretary of the department for~~
1066 ~~the purposes of improving service coordination or better meeting~~
1067 ~~the special needs of individuals. A proposal for an exception~~
1068 ~~must be submitted by the district administrator after being~~
1069 ~~approved by the governing boards of any affected counties, prior~~
1070 ~~to submission to the secretary.~~

1071 ~~(a) A proposal for an exception must identify the specific~~



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1072 ~~provision from which an exception is requested; describe how the~~
1073 ~~proposal will be implemented by participating law enforcement~~
1074 ~~agencies and transportation authorities; and provide a plan for~~
1075 ~~the coordination of services such as case management.~~

1076 ~~(b) The exception may be granted only for:~~

1077 ~~1. An arrangement centralizing and improving the provision~~
1078 ~~of services within a district, which may include an exception to~~
1079 ~~the requirement for transportation to the nearest receiving~~
1080 ~~facility;~~

1081 ~~2. An arrangement by which a facility may provide, in~~
1082 ~~addition to required psychiatric services, an environment and~~
1083 ~~services which are uniquely tailored to the needs of an~~
1084 ~~identified group of persons with special needs, such as persons~~
1085 ~~with hearing impairments or visual impairments, or elderly~~
1086 ~~persons with physical frailties; or~~

1087 ~~3. A specialized transportation system that provides an~~
1088 ~~efficient and humane method of transporting patients to~~
1089 ~~receiving facilities, among receiving facilities, and to~~
1090 ~~treatment facilities.~~

1091 ~~(c) Any exception approved pursuant to this subsection~~
1092 ~~shall be reviewed and approved every 5 years by the secretary.~~

1093 Section 10. Subsection (2) of section 394.463, Florida
1094 Statutes, is amended to read:

1095 394.463 Involuntary examination.—

1096 (2) INVOLUNTARY EXAMINATION.—

1097 (a) An involuntary examination may be initiated by any one
1098 of the following means:

1099 1. A circuit or county court may enter an ex parte order
1100 stating that a person appears to meet the criteria for



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1101 involuntary examination ~~and specifying, giving~~ the findings on
1102 which that conclusion is based. The ex parte order for
1103 involuntary examination must be based on written or oral sworn
1104 testimony that includes specific facts that support the
1105 findings, written or oral. If other, less restrictive, means are
1106 not available, such as voluntary appearance for outpatient
1107 evaluation, a law enforcement officer, or other designated agent
1108 of the court, shall take the person into custody and deliver him
1109 or her to an appropriate nearest receiving facility within
1110 the designated receiving system for involuntary examination. The
1111 order of the court shall be made a part of the patient's
1112 clinical record. ~~A No fee may not shall~~ be charged for the
1113 filing of an order under this subsection. Any ~~receiving~~ facility
1114 accepting the patient based on this order must send a copy of
1115 the order to the managing entity in the region ~~Agency for Health~~
1116 ~~Care Administration~~ on the next working day. The order may be
1117 submitted electronically through existing data systems, if
1118 available. The order shall be valid only until the person is
1119 delivered to the appropriate facility executed or, if not
1120 ~~executed,~~ for the period specified in the order itself,
1121 whichever comes first. If no time limit is specified in the
1122 order, the order shall be valid for 7 days after the date that
1123 the order was signed.

1124 2. A law enforcement officer shall take a person who
1125 appears to meet the criteria for involuntary examination into
1126 custody and deliver the person or have him or her delivered to
1127 the appropriate nearest receiving facility within the designated
1128 receiving system for examination. The officer shall execute a
1129 written report detailing the circumstances under which the



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1130 person was taken into custody, which must and the report shall
1131 be made a part of the patient's clinical record. Any ~~receiving~~
1132 facility accepting the patient based on this report must send a
1133 copy of the report to the department and the managing entity
1134 ~~Agency for Health Care Administration~~ on the next working day.

1135 3. A physician, clinical psychologist, psychiatric nurse
1136 practitioner, mental health counselor, marriage and family
1137 therapist, or clinical social worker may execute a certificate
1138 stating that he or she has examined a person within the
1139 preceding 48 hours and finds that the person appears to meet the
1140 criteria for involuntary examination and stating the
1141 observations upon which that conclusion is based. If other, less
1142 restrictive means, such as voluntary appearance for outpatient
1143 evaluation, are not available, such as voluntary appearance for
1144 outpatient evaluation, a law enforcement officer shall take into
1145 custody the person named in the certificate ~~into custody~~ and
1146 deliver him or her to the appropriate nearest receiving facility
1147 within the designated receiving system for involuntary
1148 examination. The law enforcement officer shall execute a written
1149 report detailing the circumstances under which the person was
1150 taken into custody. The report and certificate shall be made a
1151 part of the patient's clinical record. Any ~~receiving~~ facility
1152 accepting the patient based on this certificate must send a copy
1153 of the certificate to the managing entity ~~Agency for Health Care~~
1154 ~~Administration~~ on the next working day. The document may be
1155 submitted electronically through existing data systems, if
1156 applicable.

1157 (b) A person ~~may shall~~ not be removed from any program or
1158 residential placement licensed under chapter 400 or chapter 429



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1159 and transported to a receiving facility for involuntary
1160 examination unless an ex parte order, a professional
1161 certificate, or a law enforcement officer's report is first
1162 prepared. If the condition of the person is such that
1163 preparation of a law enforcement officer's report is not
1164 practicable before removal, the report shall be completed as
1165 soon as possible after removal, but in any case before the
1166 person is transported to a receiving facility. A ~~receiving~~
1167 facility admitting a person for involuntary examination who is
1168 not accompanied by the required ex parte order, professional
1169 certificate, or law enforcement officer's report shall notify
1170 the managing entity ~~Agency for Health Care Administration~~ of
1171 such admission by certified mail or by e-mail, if available, by
1172 ~~no later than~~ the next working day. The provisions of this
1173 paragraph do not apply when transportation is provided by the
1174 patient's family or guardian.

1175 (c) A law enforcement officer acting in accordance with an
1176 ex parte order issued pursuant to this subsection may serve and
1177 execute such order on any day of the week, at any time of the
1178 day or night.

1179 (d) A law enforcement officer acting in accordance with an
1180 ex parte order issued pursuant to this subsection may use such
1181 reasonable physical force as is necessary to gain entry to the
1182 premises, and any dwellings, buildings, or other structures
1183 located on the premises, and to take custody of the person who
1184 is the subject of the ex parte order.

1185 (e) The managing entity and the department ~~Agency for~~
1186 ~~Health Care Administration~~ shall receive and maintain the copies
1187 of ex parte petitions and orders, involuntary outpatient



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1188 ~~services placement~~ orders issued pursuant to s. 394.4655,
1189 involuntary inpatient placement orders issued pursuant to s.
1190 394.467, professional certificates, and law enforcement
1191 officers' reports. These documents shall be considered part of
1192 the clinical record, governed by the provisions of s. 394.4615.
1193 These documents shall be provided by the department to the
1194 Agency for Health Care Administration and used by the agency to
1195 ~~The agency shall~~ prepare annual reports analyzing the data
1196 obtained from these documents, without information identifying
1197 patients, and shall provide copies of reports to the department,
1198 the President of the Senate, the Speaker of the House of
1199 Representatives, and the minority leaders of the Senate and the
1200 House of Representatives.

1201 (f) A patient shall be examined by a physician ~~or~~ a
1202 clinical psychologist, or by a psychiatric nurse practitioner,
1203 performing within the framework of an established protocol with
1204 a psychiatrist at a ~~receiving~~ facility without unnecessary delay
1205 to determine if the criteria for involuntary services are met.
1206 Emergency treatment may be provided and may, upon the order of a
1207 physician, if the physician determines ~~be given emergency~~
1208 ~~treatment if it is determined~~ that such treatment is necessary
1209 for the safety of the patient or others. The patient may not be
1210 released by the receiving facility or its contractor without the
1211 documented approval of a psychiatrist or a clinical psychologist
1212 or, ~~if the receiving facility is owned or operated by a hospital~~
1213 ~~or health system, the release may also be approved by a~~
1214 psychiatric nurse practitioner performing within the framework
1215 of an established protocol with a psychiatrist, or an attending
1216 emergency department physician with experience in the diagnosis



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1217 and treatment of mental ~~illness and nervous disorders~~ and after
1218 completion of an involuntary examination pursuant to this
1219 subsection. A psychiatric nurse practitioner may not approve the
1220 release of a patient if the involuntary examination was
1221 initiated by a psychiatrist unless the release is approved by
1222 the initiating psychiatrist. ~~However, a patient may not be held~~
1223 ~~in a receiving facility for involuntary examination longer than~~
1224 ~~72 hours.~~

1225 (g) A person may not be held for involuntary examination
1226 for more than 72 hours from the time of his or her arrival at
1227 the facility. Based on the person's needs, one of the following
1228 actions must be taken within the involuntary examination period:

1229 1. The person must be released with the approval of a
1230 physician, psychiatrist, psychiatric nurse practitioner, or
1231 clinical psychologist. However, if the examination is conducted
1232 in a hospital, an attending emergency department physician with
1233 experience in the diagnosis and treatment of mental illness may
1234 approve the release.

1235 2. The person must be asked to give express and informed
1236 consent for voluntary admission if a physician, psychiatrist,
1237 psychiatric nurse practitioner, or clinical psychologist has
1238 determined that the individual is competent to consent to
1239 treatment.

1240 3. A petition for involuntary services must be completed
1241 and filed in the circuit court by the facility administrator. If
1242 electronic filing of the petition is not available in the county
1243 and the 72-hour period ends on a weekend or legal holiday, the
1244 petition must be filed by the next working day. If involuntary
1245 services are deemed necessary, the least restrictive treatment



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1246 consistent with the optimum improvement of the person's
1247 condition must be made available.

1248 (h) An individual discharged from a facility on a voluntary
1249 or an involuntary basis who is currently charged with a crime
1250 shall be released to the custody of a law enforcement officer,
1251 unless the individual has been released from law enforcement
1252 custody by posting of a bond, by a pretrial conditional release,
1253 or by other judicial release.

1254 (i) ~~(g)~~ A person for whom an involuntary examination has
1255 been initiated who is being evaluated or treated at a hospital
1256 for an emergency medical condition specified in s. 395.002 must
1257 be examined by an appropriate ~~a receiving~~ facility within 72
1258 hours. The 72-hour period begins when the patient arrives at the
1259 hospital and ceases when the attending physician documents that
1260 the patient has an emergency medical condition. If the patient
1261 is examined at a hospital providing emergency medical services
1262 by a professional qualified to perform an involuntary
1263 examination and is found as a result of that examination not to
1264 meet the criteria for involuntary outpatient ~~services placement~~
1265 pursuant to s. 394.4655(1) or involuntary inpatient placement
1266 pursuant to s. 394.467(1), the patient may be offered voluntary
1267 placement, if appropriate, or released directly from the
1268 hospital providing emergency medical services. The finding by
1269 the professional that the patient has been examined and does not
1270 meet the criteria for involuntary inpatient placement or
1271 involuntary outpatient ~~services placement~~ must be entered into
1272 the patient's clinical record. ~~Nothing in~~ This paragraph is not
1273 intended to prevent a hospital providing emergency medical
1274 services from appropriately transferring a patient to another



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1275 hospital ~~before~~ prior to stabilization ~~if, provided~~ the
1276 requirements of s. 395.1041(3)(c) have been met.
1277 ~~(j)(h)~~ One of the following must occur within 12 hours
1278 after the patient's attending physician documents that the
1279 patient's medical condition has stabilized or that an emergency
1280 medical condition does not exist:
1281 1. The patient must be examined by an appropriate a
1282 designated receiving facility and released; or
1283 2. The patient must be transferred to a designated
1284 ~~receiving~~ facility in which appropriate medical treatment is
1285 available. However, the ~~receiving~~ facility must be notified of
1286 the transfer within 2 hours after the patient's condition has
1287 been stabilized or after determination that an emergency medical
1288 condition does not exist.
1289 ~~(i) Within the 72-hour examination period or, if the 72~~
1290 ~~hours ends on a weekend or holiday, no later than the next~~
1291 ~~working day thereafter, one of the following actions must be~~
1292 ~~taken, based on the individual needs of the patient:~~
1293 1. ~~The patient shall be released, unless he or she is~~
1294 ~~charged with a crime, in which case the patient shall be~~
1295 ~~returned to the custody of a law enforcement officer;~~
1296 2. ~~The patient shall be released, subject to the provisions~~
1297 ~~of subparagraph 1., for voluntary outpatient treatment;~~
1298 3. ~~The patient, unless he or she is charged with a crime,~~
1299 ~~shall be asked to give express and informed consent to placement~~
1300 ~~as a voluntary patient, and, if such consent is given, the~~
1301 ~~patient shall be admitted as a voluntary patient; or~~
1302 4. ~~A petition for involuntary placement shall be filed in~~
1303 ~~the circuit court when outpatient or inpatient treatment is~~



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1304 ~~deemed necessary. When inpatient treatment is deemed necessary,~~
1305 ~~the least restrictive treatment consistent with the optimum~~
1306 ~~improvement of the patient's condition shall be made available.~~
1307 ~~When a petition is to be filed for involuntary outpatient~~
1308 ~~placement, it shall be filed by one of the petitioners specified~~
1309 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~
1310 ~~placement shall be filed by the facility administrator.~~
1311 Section 11. Section 394.4655, Florida Statutes, is amended
1312 to read:
1313 394.4655 Involuntary outpatient services placement.-
1314 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES
1315 PLACEMENT.-A person may be ordered to involuntary outpatient
1316 services placement upon a finding of the court, by clear and
1317 convincing evidence, that the person meets all of the following
1318 criteria by clear and convincing evidence:
1319 (a) The person is 18 years of age or older.†
1320 (b) The person has a mental illness.†
1321 (c) The person is unlikely to survive safely in the
1322 community without supervision, based on a clinical
1323 determination.†
1324 (d) The person has a history of lack of compliance with
1325 treatment for mental illness.†
1326 (e) The person has:
1327 1. At least twice within the immediately preceding 36
1328 months been involuntarily admitted to a receiving or treatment
1329 facility as defined in s. 394.455, or has received mental health
1330 services in a forensic or correctional facility. The 36-month
1331 period does not include any period during which the person was
1332 admitted or incarcerated; or



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1333 2. Engaged in one or more acts of serious violent behavior
1334 toward self or others, or attempts at serious bodily harm to
1335 himself or herself or others, within the preceding 36 months.
1336 (f) The person is, as a result of his or her mental
1337 illness, unlikely to voluntarily participate in the recommended
1338 treatment plan and ~~either he or she~~ has refused voluntary
1339 services placement for treatment after sufficient and
1340 conscientious explanation and disclosure of why the services are
1341 necessary purpose of placement for treatment or he or she is
1342 unable to determine for himself or herself whether services are
1343 placement is necessary.
1344 (g) In view of the person's treatment history and current
1345 behavior, the person is in need of involuntary outpatient
1346 services placement in order to prevent a relapse or
1347 deterioration that would be likely to result in serious bodily
1348 harm to himself or herself or others, or a substantial harm to
1349 his or her well-being as set forth in s. 394.463(1).
1350 (h) It is likely that the person will benefit from
1351 involuntary outpatient services placement, and
1352 (i) All available, less restrictive alternatives that would
1353 offer an opportunity for improvement of his or her condition
1354 have been judged to be inappropriate or unavailable.
1355 (2) INVOLUNTARY OUTPATIENT SERVICES PLACEMENT.—
1356 (a)1. A patient who is being recommended for involuntary
1357 outpatient services placement by the administrator of the
1358 ~~receiving~~ facility where the patient has been examined may be
1359 retained by the facility after adherence to the notice
1360 procedures provided in s. 394.4599. The recommendation must be
1361 supported by the opinion of two qualified professionals a



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1362 ~~psychiatrist and the second opinion of a clinical psychologist~~
1363 ~~or another psychiatrist~~, both of whom have personally examined
1364 the patient within the preceding 72 hours, that the criteria for
1365 involuntary outpatient services placement are met. However, in a
1366 county having a population of fewer than 50,000, if the
1367 administrator certifies that a qualified professional
1368 ~~psychiatrist or clinical psychologist~~ is not available to
1369 provide the second opinion, the second opinion may be provided
1370 by a licensed physician who has postgraduate training and
1371 experience in diagnosis and treatment of mental ~~and nervous~~
1372 disorders or by a psychiatric nurse practitioner. Any second
1373 opinion authorized in this subparagraph may be conducted through
1374 a face-to-face examination, in person or by electronic means.
1375 Such recommendation must be entered on an involuntary outpatient
1376 services placement certificate that authorizes the ~~receiving~~
1377 facility to retain the patient pending completion of a hearing.
1378 The certificate must ~~shall~~ be made a part of the patient's
1379 clinical record.
1380 2. If the patient has been stabilized and no longer meets
1381 the criteria for involuntary examination pursuant to s.
1382 394.463(1), the patient must be released from the ~~receiving~~
1383 facility while awaiting the hearing for involuntary outpatient
1384 services placement. Before filing a petition for involuntary
1385 outpatient services treatment, the administrator of the a
1386 ~~receiving~~ facility or a designated department representative
1387 must identify the service provider that will have primary
1388 responsibility for service provision under an order for
1389 involuntary outpatient services placement, unless the person is
1390 otherwise participating in outpatient psychiatric treatment and



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1391 is not in need of public financing for that treatment, in which
1392 case the individual, if eligible, may be ordered to involuntary
1393 treatment pursuant to the existing psychiatric treatment
1394 relationship.

1395 3. The service provider shall prepare a written proposed
1396 treatment plan in consultation with the patient or the patient's
1397 guardian advocate, if appointed, for the court's consideration
1398 for inclusion in the involuntary outpatient services placement
1399 order. The service provider shall also provide a copy of the
1400 treatment plan that addresses the nature and extent of the
1401 mental illness and any co-occurring substance use disorders that
1402 necessitate involuntary outpatient services. The treatment plan
1403 must specify the likely level of care, including the use of
1404 medication, and anticipated discharge criteria for terminating
1405 involuntary outpatient services. The service provider shall also
1406 provide a copy of the proposed treatment plan to the patient and
1407 the administrator of the receiving facility. The treatment plan
1408 must specify the nature and extent of the patient's mental
1409 illness, address the reduction of symptoms that necessitate
1410 involuntary outpatient placement, and include measurable goals
1411 and objectives for the services and treatment that are provided
1412 to treat the person's mental illness and assist the person in
1413 living and functioning in the community or to prevent a relapse
1414 or deterioration. Service providers may select and supervise
1415 other individuals to implement specific aspects of the treatment
1416 plan. The services in the ~~treatment~~ plan must be deemed
1417 clinically appropriate by a physician, clinical psychologist,
1418 psychiatric nurse practitioner, mental health counselor,
1419 marriage and family therapist, or clinical social worker who



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1420 consults with, or is employed or contracted by, the service
1421 provider. The service provider must certify to the court in the
1422 proposed treatment plan whether sufficient services for
1423 improvement and stabilization are currently available and
1424 whether the service provider agrees to provide those services.
1425 If the service provider certifies that the services in the
1426 proposed treatment plan are not available, the petitioner may
1427 not file the petition. The service provider must notify the
1428 managing entity as to the availability of the requested
1429 services. The managing entity must document such efforts to
1430 obtain the requested services.

1431 (b) If a patient in involuntary inpatient placement meets
1432 the criteria for involuntary outpatient services placement, the
1433 administrator of the ~~treatment~~ facility may, before the
1434 expiration of the period during which the ~~treatment~~ facility is
1435 authorized to retain the patient, recommend involuntary
1436 outpatient services placement. The recommendation must be
1437 supported by the opinion of two qualified professionals a
1438 psychiatrist and the second opinion of a clinical psychologist
1439 or another psychiatrist, both of whom have personally examined
1440 the patient within the preceding 72 hours, that the criteria for
1441 involuntary outpatient services placement are met. However, in a
1442 county having a population of fewer than 50,000, if the
1443 administrator certifies that a qualified professional
1444 psychiatrist or clinical psychologist is not available to
1445 provide the second opinion, the second opinion may be provided
1446 by a licensed physician who has postgraduate training and
1447 experience in diagnosis and treatment of mental ~~and nervous~~
1448 disorders or by a psychiatric nurse practitioner. Any second



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1449 opinion authorized in this ~~paragraph~~ ~~subparagraph~~ may be
1450 conducted through a face-to-face examination, in person or by
1451 electronic means. Such recommendation must be entered on an
1452 involuntary outpatient services placement certificate, and the
1453 certificate must be made a part of the patient's clinical
1454 record.

1455 (c)1. The administrator of the ~~treatment~~ facility shall
1456 provide a copy of the involuntary outpatient services placement
1457 certificate and a copy of the state mental health discharge form
1458 to the managing entity ~~a department representative~~ in the county
1459 where the patient will be residing. For persons who are leaving
1460 a state mental health treatment facility, the petition for
1461 involuntary outpatient services placement must be filed in the
1462 county where the patient will be residing.

1463 2. The service provider that will have primary
1464 responsibility for service provision shall be identified by the
1465 designated department representative ~~before~~ ~~prior to~~ the order
1466 for involuntary outpatient services placement and must, ~~before~~
1467 ~~prior to~~ filing a petition for involuntary outpatient services
1468 placement, certify to the court whether the services recommended
1469 in the patient's discharge plan are available ~~in the local~~
1470 ~~community~~ and whether the service provider agrees to provide
1471 those services. The service provider must develop with the
1472 patient, or the patient's guardian advocate, if appointed, a
1473 treatment or service plan that addresses the needs identified in
1474 the discharge plan. The plan must be deemed to be clinically
1475 appropriate by a physician, clinical psychologist, psychiatric
1476 nurse practitioner, mental health counselor, marriage and family
1477 therapist, or clinical social worker, as defined in this



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1478 chapter, who consults with, or is employed or contracted by, the
1479 service provider.

1480 3. If the service provider certifies that the services in
1481 the proposed treatment or service plan are not available, the
1482 petitioner may not file the petition. The service provider must
1483 notify the managing entity as to the availability of the
1484 requested services. The managing entity must document such
1485 efforts to obtain the requested services.

1486 (3) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES
1487 PLACEMENT.-

1488 (a) A petition for involuntary outpatient services
1489 placement may be filed by:

- 1490 1. The administrator of a receiving facility; or
- 1491 2. The administrator of a treatment facility.

1492 (b) Each required criterion for involuntary outpatient
1493 services placement must be alleged and substantiated in the
1494 petition for involuntary outpatient services placement. A copy
1495 of the certificate recommending involuntary outpatient services
1496 placement completed by two a qualified professionals
1497 ~~professional specified in subsection (2)~~ must be attached to the
1498 petition. A copy of the proposed treatment plan must be attached
1499 to the petition. Before the petition is filed, the service
1500 provider shall certify that the services in the proposed
1501 treatment plan are available. If the necessary services are not
1502 available ~~in the patient's local community to respond to the~~
1503 ~~person's individual needs~~, the petition may not be filed. The
1504 service provider must notify the managing entity as to the
1505 availability of the requested services. The managing entity must
1506 document such efforts to obtain the requested services.



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1507 (c) The petition for involuntary outpatient services
1508 ~~placement~~ must be filed in the county where the patient is
1509 located, unless the patient is being placed from a state
1510 treatment facility, in which case the petition must be filed in
1511 the county where the patient will reside. When the petition has
1512 been filed, the clerk of the court shall provide copies of the
1513 petition and the proposed treatment plan to the department, the
1514 managing entity, the patient, the patient's guardian or
1515 representative, the state attorney, and the public defender or
1516 the patient's private counsel. A fee may not be charged for
1517 filing a petition under this subsection.

1518 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
1519 after the filing of a petition for involuntary outpatient
1520 services placement, the court shall appoint the public defender
1521 to represent the person who is the subject of the petition,
1522 unless the person is otherwise represented by counsel. The clerk
1523 of the court shall immediately notify the public defender of the
1524 appointment. The public defender shall represent the person
1525 until the petition is dismissed, the court order expires, or the
1526 patient is discharged from involuntary outpatient services
1527 placement. An attorney who represents the patient must be
1528 provided ~~shall have~~ access to the patient, witnesses, and
1529 records relevant to the presentation of the patient's case and
1530 shall represent the interests of the patient, regardless of the
1531 source of payment to the attorney.

1532 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
1533 the concurrence of the patient's counsel, to at least one
1534 continuance of the hearing. The continuance shall be for a
1535 period of up to 4 weeks.



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1536 (6) HEARING ON INVOLUNTARY OUTPATIENT SERVICES PLACEMENT.—
1537 (a)1. The court shall hold the hearing on involuntary
1538 outpatient services placement within 5 working days after the
1539 filing of the petition, unless a continuance is granted. The
1540 hearing must ~~shall~~ be held in the county where the petition is
1541 filed, must ~~shall~~ be as convenient to the patient as is
1542 consistent with orderly procedure, and must ~~shall~~ be conducted
1543 in physical settings not likely to be injurious to the patient's
1544 condition. If the court finds that the patient's attendance at
1545 the hearing is not consistent with the best interests of the
1546 patient and if the patient's counsel does not object, the court
1547 may waive the presence of the patient from all or any portion of
1548 the hearing. The state attorney for the circuit in which the
1549 patient is located shall represent the state, rather than the
1550 petitioner, as the real party in interest in the proceeding.
1551 2. The court may appoint a general or special master to
1552 preside at the hearing. One of the professionals who executed
1553 the involuntary outpatient services placement certificate shall
1554 be a witness. The patient and the patient's guardian or
1555 representative shall be informed by the court of the right to an
1556 independent expert examination. If the patient cannot afford
1557 such an examination, the court shall ensure that one is
1558 provided, as otherwise provided by law ~~provide for one~~. The
1559 independent expert's report is ~~shall be~~ confidential and not
1560 discoverable, unless the expert is to be called as a witness for
1561 the patient at the hearing. The court shall allow testimony from
1562 individuals, including family members, deemed by the court to be
1563 relevant under state law, regarding the person's prior history
1564 and how that prior history relates to the person's current



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1565 condition. The testimony in the hearing must be given under
1566 oath, and the proceedings must be recorded. The patient may
1567 refuse to testify at the hearing.

1568 (b)1. If the court concludes that the patient meets the
1569 criteria for involuntary outpatient services placement pursuant
1570 to subsection (1), the court shall issue an order for
1571 involuntary outpatient services placement. The court order shall
1572 be for a period of up to 90 days ~~6 months~~. The order must
1573 specify the nature and extent of the patient's mental illness.
1574 The order of the court and the treatment plan must ~~shall~~ be made
1575 part of the patient's clinical record. The service provider
1576 shall discharge a patient from involuntary outpatient services
1577 placement when the order expires or any time the patient no
1578 longer meets the criteria for involuntary services placement.
1579 Upon discharge, the service provider shall send a certificate of
1580 discharge to the court.

1581 2. The court may not order the department or the service
1582 provider to provide services if the program or service is not
1583 available in the patient's local community, if there is no space
1584 available in the program or service for the patient, or if
1585 funding is not available for the program or service. The service
1586 provider must notify the managing entity as to the availability
1587 of the requested services. The managing entity must document
1588 such efforts to obtain the requested services. A copy of the
1589 order must be sent to the managing entity Agency for Health Care
1590 Administration by the service provider within 1 working day
1591 after it is received from the court. The order may be submitted
1592 electronically through existing data systems. After the
1593 placement order for involuntary services is issued, the service



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1594 provider and the patient may modify ~~provisions of~~ the treatment
1595 plan. For any material modification of the treatment plan to
1596 which the patient or, if one is appointed, the patient's
1597 guardian advocate agrees, ~~if appointed, does agree~~, the service
1598 provider shall send notice of the modification to the court. Any
1599 material modifications of the treatment plan which are contested
1600 by the patient or the patient's guardian advocate, if applicable
1601 ~~appointed~~, must be approved or disapproved by the court
1602 consistent with subsection (2).

1603 3. If, in the clinical judgment of a physician, the patient
1604 has failed or ~~has~~ refused to comply with the treatment ordered
1605 by the court, and, in the clinical judgment of the physician,
1606 efforts were made to solicit compliance and the patient may meet
1607 the criteria for involuntary examination, a person may be
1608 brought to a receiving facility pursuant to s. 394.463. If,
1609 after examination, the patient does not meet the criteria for
1610 involuntary inpatient placement pursuant to s. 394.467, the
1611 patient must be discharged from the ~~receiving~~ facility. The
1612 involuntary outpatient services placement order shall remain in
1613 effect unless the service provider determines that the patient
1614 no longer meets the criteria for involuntary outpatient services
1615 placement or until the order expires. The service provider must
1616 determine whether modifications should be made to the existing
1617 treatment plan and must attempt to continue to engage the
1618 patient in treatment. For any material modification of the
1619 treatment plan to which the patient or the patient's guardian
1620 advocate, if applicable appointed, agrees does agree, the
1621 service provider shall send notice of the modification to the
1622 court. Any material modifications of the treatment plan which



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1623 are contested by the patient or the patient's guardian advocate,
1624 if ~~applicable appointed~~, must be approved or disapproved by the
1625 court consistent with subsection (2).

1626 (c) If, at any time before the conclusion of the initial
1627 hearing on involuntary outpatient ~~services placement~~, it appears
1628 to the court that the person does not meet the criteria for
1629 involuntary outpatient ~~services placement~~ under this section
1630 but, instead, meets the criteria for involuntary inpatient
1631 placement, the court may order the person admitted for
1632 involuntary inpatient examination under s. 394.463. If the
1633 person instead meets the criteria for involuntary assessment,
1634 protective custody, or involuntary admission pursuant to s.
1635 397.675, the court may order the person to be admitted for
1636 involuntary assessment for a period of 5 days pursuant to s.
1637 397.6811. Thereafter, all proceedings ~~are shall be~~ governed by
1638 chapter 397.

1639 (d) At the hearing on involuntary outpatient ~~services~~
1640 ~~placement~~, the court shall consider testimony and evidence
1641 regarding the patient's competence to consent to treatment. If
1642 the court finds that the patient is incompetent to consent to
1643 treatment, it shall appoint a guardian advocate as provided in
1644 s. 394.4598. The guardian advocate shall be appointed or
1645 discharged in accordance with s. 394.4598.

1646 (e) The administrator of the receiving facility or the
1647 designated department representative shall provide a copy of the
1648 court order and adequate documentation of a patient's mental
1649 illness to the service provider for involuntary outpatient
1650 ~~services placement~~. Such documentation must include any advance
1651 directives made by the patient, a psychiatric evaluation of the



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1652 patient, and any evaluations of the patient performed by a
1653 ~~clinical~~ psychologist or a clinical social worker.

1654 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES
1655 PLACEMENT.-

1656 (a)1. If the person continues to meet the criteria for
1657 involuntary outpatient ~~services placement~~, the service provider
1658 shall, at least 10 days before the expiration of the period
1659 during which the treatment is ordered for the person, file in
1660 the circuit court a petition for continued involuntary
1661 outpatient ~~services placement~~. The court shall immediately
1662 schedule a hearing on the petition to be held within 15 days
1663 after the petition is filed.

1664 2. The existing involuntary outpatient ~~services placement~~
1665 order remains in effect until disposition on the petition for
1666 continued involuntary outpatient ~~services placement~~.

1667 3. A certificate shall be attached to the petition which
1668 includes a statement from the person's physician or clinical
1669 psychologist justifying the request, a brief description of the
1670 patient's treatment during the time he or she was receiving
1671 involuntarily ~~services placed~~, and an individualized plan of
1672 continued treatment.

1673 4. The service provider shall develop the individualized
1674 plan of continued treatment in consultation with the patient or
1675 the patient's guardian advocate, if ~~applicable appointed~~. When
1676 the petition has been filed, the clerk of the court shall
1677 provide copies of the certificate and the individualized plan of
1678 continued treatment to the department, the patient, the
1679 patient's guardian advocate, the state attorney, and the
1680 patient's private counsel or the public defender.



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1681 (b) Within 1 court working day after the filing of a
1682 petition for continued involuntary outpatient services
1683 ~~placement~~, the court shall appoint the public defender to
1684 represent the person who is the subject of the petition, unless
1685 the person is otherwise represented by counsel. The clerk of the
1686 court shall immediately notify the public defender of such
1687 appointment. The public defender shall represent the person
1688 until the petition is dismissed or the court order expires or
1689 the patient is discharged from involuntary outpatient services
1690 ~~placement~~. Any attorney representing the patient shall have
1691 access to the patient, witnesses, and records relevant to the
1692 presentation of the patient's case and shall represent the
1693 interests of the patient, regardless of the source of payment to
1694 the attorney.

1695 (c) Hearings on petitions for continued involuntary
1696 outpatient services must ~~placement shall~~ be before the circuit
1697 court. The court may appoint a general or special master to
1698 preside at the hearing. The procedures for obtaining an order
1699 pursuant to this paragraph must meet the requirements of ~~shall~~
1700 ~~be in accordance with~~ subsection (6), except that the time
1701 period included in paragraph (1)(e) does not apply when is not
1702 ~~applicable in~~ determining the appropriateness of additional
1703 periods of involuntary outpatient services placement.

1704 (d) Notice of the hearing must ~~shall~~ be provided as set
1705 forth in s. 394.4599. The patient and the patient's attorney may
1706 agree to a period of continued outpatient services placement
1707 without a court hearing.

1708 (e) The same procedure must ~~shall~~ be repeated before the
1709 expiration of each additional period the patient is placed in



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1710 treatment.

1711 (f) If the patient has previously been found incompetent to
1712 consent to treatment, the court shall consider testimony and
1713 evidence regarding the patient's competence. Section 394.4598
1714 governs the discharge of the guardian advocate if the patient's
1715 competency to consent to treatment has been restored.

1716 Section 12. Section 394.467, Florida Statutes, is amended
1717 to read:

1718 394.467 Involuntary inpatient placement.—

1719 (1) CRITERIA.—A person may be ordered for ~~placed in~~
1720 involuntary inpatient placement for treatment upon a finding of
1721 the court by clear and convincing evidence that:

1722 (a) He or she has a mental illness ~~is mentally ill~~ and
1723 because of his or her mental illness:

1724 1.a. He or she has refused voluntary inpatient placement
1725 for treatment after sufficient and conscientious explanation and
1726 disclosure of the purpose of inpatient placement for treatment;
1727 or

1728 b. He or she is unable to determine for himself or herself
1729 whether inpatient placement is necessary; and

1730 2.a. He or she is ~~manifestly~~ incapable of surviving alone
1731 or with the help of willing and responsible family or friends,
1732 including available alternative services, and, without
1733 treatment, is likely to suffer from neglect or refuse to care
1734 for himself or herself, and such neglect or refusal poses a real
1735 and present threat of substantial physical or mental harm to his
1736 or her well-being; or

1737 b. There is substantial likelihood that in the near future
1738 he or she will inflict serious bodily harm on self or others



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1739 ~~himself or herself or another person~~, as evidenced by recent
1740 behavior causing, attempting, or threatening such harm; and
1741 (b) All available, less restrictive treatment alternatives
1742 ~~that which~~ would offer an opportunity for improvement of his or
1743 her condition have been judged to be inappropriate.
1744 (2) ADMISSION TO A TREATMENT FACILITY.—A patient may be
1745 retained by a ~~receiving~~ facility or involuntarily placed in a
1746 treatment facility upon the recommendation of the administrator
1747 of the ~~receiving~~ facility where the patient has been examined
1748 and after adherence to the notice and hearing procedures
1749 provided in s. 394.4599. The recommendation must be supported by
1750 the opinion of a psychiatrist and the second opinion of a
1751 psychiatric nurse practitioner, clinical psychologist, or
1752 another psychiatrist, both of whom have personally examined the
1753 patient within the preceding 72 hours, that the criteria for
1754 involuntary inpatient placement are met. However, in a county
1755 that has a population of fewer than 50,000, if the administrator
1756 certifies that a psychiatrist, psychiatric nurse practitioner,
1757 or clinical psychologist is not available to provide the second
1758 opinion, the second opinion may be provided by a ~~licensed~~
1759 physician who has postgraduate training and experience in
1760 diagnosis and treatment of mental illness and nervous disorders
1761 or by a psychiatric nurse practitioner. Any second opinion
1762 authorized in this subsection may be conducted through a face-
1763 to-face examination, in person or by electronic means. Such
1764 recommendation shall be entered on a petition for an involuntary
1765 inpatient placement certificate that authorizes the ~~receiving~~
1766 facility to retain the patient pending transfer to a treatment
1767 facility or completion of a hearing.



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1768 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—
1769 (a) The administrator of the facility shall file a petition
1770 for involuntary inpatient placement in the court in the county
1771 where the patient is located. Upon filing, the clerk of the
1772 court shall provide copies to the department, the patient, the
1773 patient's guardian or representative, and the state attorney and
1774 public defender of the judicial circuit in which the patient is
1775 located. A ~~no~~ fee may not ~~shall~~ be charged for the filing of a
1776 petition under this subsection.
1777 (b) A facility filing a petition under this subsection for
1778 involuntary inpatient placement shall send a copy of the
1779 petition to the managing entity in its area.
1780 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
1781 after the filing of a petition for involuntary inpatient
1782 placement, the court shall appoint the public defender to
1783 represent the person who is the subject of the petition, unless
1784 the person is otherwise represented by counsel. The clerk of the
1785 court shall immediately notify the public defender of such
1786 appointment. Any attorney representing the patient shall have
1787 access to the patient, witnesses, and records relevant to the
1788 presentation of the patient's case and shall represent the
1789 interests of the patient, regardless of the source of payment to
1790 the attorney.
1791 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
1792 the concurrence of the patient's counsel, to at least one
1793 continuance of the hearing. ~~The continuance shall be for a~~
1794 ~~period of~~ up to 4 weeks.
1795 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—
1796 (a)1. The court shall hold the hearing on involuntary



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1797 inpatient placement within 5 court working days, unless a
1798 continuance is granted.

1799 2. Except for good cause documented in the court file, the
1800 hearing must ~~shall~~ be held in the county or the facility, as
1801 appropriate, where the patient is located, must ~~and shall~~ be as
1802 convenient to the patient as ~~is may be~~ consistent with orderly
1803 procedure, and shall be conducted in physical settings not
1804 likely to be injurious to the patient's condition. If the court
1805 finds that the patient's attendance at the hearing is not
1806 consistent with the best interests of the patient, and the
1807 patient's counsel does not object, the court may waive the
1808 presence of the patient from all or any portion of the hearing.
1809 The state attorney for the circuit in which the patient is
1810 located shall represent the state, rather than the petitioning
1811 facility administrator, as the real party in interest in the
1812 proceeding.

1813 3.2- The court may appoint a general or special magistrate
1814 to preside at the hearing. One of the two professionals who
1815 executed the petition for involuntary inpatient placement
1816 certificate shall be a witness. The patient and the patient's
1817 guardian or representative shall be informed by the court of the
1818 right to an independent expert examination. If the patient
1819 cannot afford such an examination, the court shall ensure that
1820 one is provided, as otherwise provided for by law ~~provide for~~
1821 one. The independent expert's report is ~~shall be~~ confidential
1822 and not discoverable, unless the expert is to be called as a
1823 witness for the patient at the hearing. The testimony in the
1824 hearing must be given under oath, and the proceedings must be
1825 recorded. The patient may refuse to testify at the hearing.



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1826 (b) If the court concludes that the patient meets the
1827 criteria for involuntary inpatient placement, it may ~~shall~~ order
1828 that the patient be transferred to a treatment facility or, if
1829 the patient is at a treatment facility, that the patient be
1830 retained there or be treated at any other appropriate ~~receiving~~
1831 ~~or treatment~~ facility, or that the patient receive services from
1832 such a ~~receiving or treatment~~ facility or service provider, on
1833 an involuntary basis, for a period of up to 90 days ~~6 months~~.
1834 However, any order for involuntary mental health services in a
1835 treatment facility may be for up to 6 months. The order shall
1836 specify the nature and extent of the patient's mental illness
1837 The court may not order an individual with traumatic brain
1838 injury or dementia who lacks a co-occurring mental illness to be
1839 involuntarily placed in a treatment facility. The facility shall
1840 discharge a patient any time the patient no longer meets the
1841 criteria for involuntary inpatient placement, unless the patient
1842 has transferred to voluntary status.

1843 (c) If at any time before ~~prior to~~ the conclusion of the
1844 hearing on involuntary inpatient placement it appears to the
1845 court that the person does not meet the criteria for involuntary
1846 inpatient placement under this section, but instead meets the
1847 criteria for involuntary outpatient services placement, the
1848 court may order the person evaluated for involuntary outpatient
1849 services placement pursuant to s. 394.4655. The petition and
1850 hearing procedures set forth in s. 394.4655 shall apply. If the
1851 person instead meets the criteria for involuntary assessment,
1852 protective custody, or involuntary admission pursuant to s.
1853 397.675, then the court may order the person to be admitted for
1854 involuntary assessment for a period of 5 days pursuant to s.



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1855 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by
1856 chapter 397.

1857 (d) At the hearing on involuntary inpatient placement, the
1858 court shall consider testimony and evidence regarding the
1859 patient's competence to consent to treatment. If the court finds
1860 that the patient is incompetent to consent to treatment, it
1861 shall appoint a guardian advocate as provided in s. 394.4598.

1862 (e) The administrator of the petitioning ~~receiving~~ facility
1863 shall provide a copy of the court order and adequate
1864 documentation of a patient's mental illness to the administrator
1865 of a treatment facility if the ~~whenever a~~ patient is ordered for
1866 involuntary inpatient placement, whether by civil or criminal
1867 court. The documentation must ~~shall~~ include any advance
1868 directives made by the patient, a psychiatric evaluation of the
1869 patient, and any evaluations of the patient performed by a
1870 psychiatric nurse practitioner, clinical psychologist, a
1871 marriage and family therapist, a mental health counselor, or a
1872 clinical social worker. The administrator of a treatment
1873 facility may refuse admission to any patient directed to its
1874 facilities on an involuntary basis, whether by civil or criminal
1875 court order, who is not accompanied ~~at the same time~~ by adequate
1876 orders and documentation.

1877 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
1878 PLACEMENT.-

1879 (a) Hearings on petitions for continued involuntary
1880 inpatient placement of an individual placed at any treatment
1881 facility are ~~shall be~~ administrative hearings and must ~~shall~~ be
1882 conducted in accordance with ~~the provisions of~~ s. 120.57(1),
1883 except that any order entered by the administrative law judge is



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1884 ~~shall be~~ final and subject to judicial review in accordance with
1885 s. 120.68. Orders concerning patients committed after
1886 successfully pleading not guilty by reason of insanity are ~~shall~~
1887 ~~be governed by the provisions of~~ s. 916.15.

1888 (b) If the patient continues to meet the criteria for
1889 involuntary inpatient placement and is being treated at a
1890 treatment facility, the administrator shall, before ~~prior to~~ the
1891 expiration of the period ~~during which~~ the treatment facility is
1892 authorized to retain the patient, file a petition requesting
1893 authorization for continued involuntary inpatient placement. The
1894 request must ~~shall~~ be accompanied by a statement from the
1895 patient's physician, psychiatrist, psychiatric nurse
1896 practitioner, or clinical psychologist justifying the request, a
1897 brief description of the patient's treatment during the time he
1898 or she was involuntarily placed, and an individualized plan of
1899 continued treatment. Notice of the hearing must ~~shall~~ be
1900 provided as provided ~~set forth~~ in s. 394.4599. If a patient's
1901 attendance at the hearing is voluntarily waived, the
1902 administrative law judge must determine that the waiver is
1903 knowing and voluntary before waiving the presence of the patient
1904 from all or a portion of the hearing. Alternatively, if at the
1905 hearing the administrative law judge finds that attendance at
1906 the hearing is not consistent with the best interests of the
1907 patient, the administrative law judge may waive the presence of
1908 the patient from all or any portion of the hearing, unless the
1909 patient, through counsel, objects to the waiver of presence. The
1910 testimony in the hearing must be under oath, and the proceedings
1911 must be recorded.

1912 (c) Unless the patient is otherwise represented or is



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1913 ineligible, he or she shall be represented at the hearing on the
1914 petition for continued involuntary inpatient placement by the
1915 public defender of the circuit in which the facility is located.

1916 (d) If at a hearing it is shown that the patient continues
1917 to meet the criteria for involuntary inpatient placement, the
1918 administrative law judge shall sign the order for continued
1919 involuntary inpatient placement for a period of up to 90 days
1920 ~~not to exceed 6 months. However, any order for involuntary~~
1921 mental health services in a treatment facility may be for up to
1922 6 months. The same procedure shall be repeated prior to the
1923 expiration of each additional period the patient is retained.

1924 (e) If continued involuntary inpatient placement is
1925 necessary for a patient admitted while serving a criminal
1926 sentence, but his or her ~~whose~~ sentence is about to expire, or
1927 for a minor patient ~~involuntarily placed, while a minor~~ but who
1928 is about to reach the age of 18, the administrator shall
1929 petition the administrative law judge for an order authorizing
1930 continued involuntary inpatient placement.

1931 (f) If the patient has been previously found incompetent to
1932 consent to treatment, the administrative law judge shall
1933 consider testimony and evidence regarding the patient's
1934 competence. If the administrative law judge finds evidence that
1935 the patient is now competent to consent to treatment, the
1936 administrative law judge may issue a recommended order to the
1937 court that found the patient incompetent to consent to treatment
1938 that the patient's competence be restored and that any guardian
1939 advocate previously appointed be discharged.

1940 (g) If the patient has been ordered to undergo involuntary
1941 inpatient placement and has previously been found incompetent to



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1942 consent to treatment, the court shall consider testimony and
1943 evidence regarding the patient's incompetence. If the patient's
1944 competency to consent to treatment is restored, the discharge of
1945 the guardian advocate shall be governed by the provisions of s.
1946 394.4598.

1947
1948 The procedure required in this subsection must be followed
1949 before the expiration of each additional period the patient is
1950 involuntarily receiving services.

1951 (8) RETURN TO FACILITY OF PATIENTS.—If a patient
1952 involuntarily held ~~When a patient at a treatment facility under~~
1953 this part leaves the facility without the administrator's
1954 authorization, the administrator may authorize a search for the
1955 patient and his or her ~~the return of the patient~~ to the
1956 facility. The administrator may request the assistance of a law
1957 enforcement agency in this regard ~~the search for and return of~~
1958 ~~the patient.~~

1959 Section 13. Section 394.46715, Florida Statutes, is amended
1960 to read:

1961 394.46715 Rulemaking authority.—The department may adopt
1962 rules to administer this part ~~Department of Children and~~
1963 ~~Families shall have rulemaking authority to implement the~~
1964 ~~provisions of ss. 394.455, 394.4598, 394.4615, 394.463,~~
1965 ~~394.4655, and 394.467 as amended or created by this act. These~~
1966 ~~rules shall be for the purpose of protecting the health, safety,~~
1967 ~~and well being of persons examined, treated, or placed under~~
1968 ~~this act.~~

1969 Section 14. Section 394.761, Florida Statutes, is created
1970 to read:



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1971 394.761 Revenue maximization.—The department, in
 1972 coordination with the managing entities, shall compile detailed
 1973 documentation of the cost and reimbursements for Medicaid
 1974 covered services provided to Medicaid eligible individuals by
 1975 providers of behavioral health services that are also funded for
 1976 programs authorized by this chapter and chapter 397. The
 1977 department’s documentation, along with a report of general
 1978 revenue funds supporting behavioral health services that are not
 1979 counted as maintenance of effort or match for any other federal
 1980 program, will be submitted to the Agency for Health Care
 1981 Administration by December 31, 2016. Copies of the report must
 1982 also be provided to the Governor, the President of the Senate,
 1983 and the Speaker of the House of Representatives. If this report
 1984 presents clear evidence that Medicaid reimbursements are less
 1985 than the costs of providing the services, the Agency for Health
 1986 Care Administration and the Department of Children and Families
 1987 will prepare and submit any budget amendments necessary to use
 1988 unmatched general revenue funds in the 2016-2017 fiscal year to
 1989 draw additional federal funding to increase Medicaid funding to
 1990 behavioral health service providers receiving the unmatched
 1991 general revenue. Payments shall be made to providers in such
 1992 manner as is allowed by federal law and regulations.

1993 Section 15. Subsection (11) is added to section 394.875,
 1994 Florida Statutes, to read:

1995 394.875 Crisis stabilization units, residential treatment
 1996 facilities, and residential treatment centers for children and
 1997 adolescents; authorized services; license required.—

1998 (11) By January 1, 2017, the department and the agency
 1999 shall modify licensure rules and procedures to create an option



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2000 for a single, consolidated license for a provider who offers
 2001 multiple types of mental health and substance abuse services
 2002 regulated under this chapter and chapter 397. Providers eligible
 2003 for a consolidated license shall operate these services through
 2004 a single corporate entity and a unified management structure.
 2005 Any provider serving adults and children must meet department
 2006 standards for separate facilities and other requirements
 2007 necessary to ensure children’s safety and promote therapeutic
 2008 efficacy.

2009 Section 16. Section 394.9082, Florida Statutes, is amended
 2010 to read:

2011 (Substantial rewording of section. See
 2012 s. 394.9082, F.S., for present text.)

2013 394.9082 Behavioral health managing entities’ purpose;
 2014 definitions; duties; contracting; accountability.—

2015 (1) PURPOSE.—The purpose of the behavioral health managing
 2016 entities is to plan, coordinate and contract for the delivery of
 2017 community mental health and substance abuse services, to improve
 2018 access to care, to promote service continuity, to purchase
 2019 services, and to support efficient and effective delivery of
 2020 services.

2021 (2) DEFINITIONS.—As used in this section, the term:

2022 (a) “Behavioral health services” means mental health
 2023 services and substance abuse prevention and treatment services
 2024 as described in this chapter and chapter 397.

2025 (b) “Case management” means those direct services provided
 2026 to a client in order to assess needs, plan or arrange services,
 2027 coordinate service providers, monitor service delivery, and
 2028 evaluate outcomes.



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2029 (c) "Coordinated system of care" means the full array of
2030 behavioral health and related services in a region or a
2031 community offered by all service providers, whether
2032 participating under contract with the managing entity or through
2033 another method of community partnership or mutual agreement.

2034 (d) "Geographic area" means one or more contiguous
2035 counties, circuits, or regions as described in s. 409.966 or s.
2036 381.0406.

2037 (e) "High-need or high-utilization individual" means a
2038 recipient who meets one or more of the following criteria and
2039 may be eligible for intensive case management services:

2040 1. Has resided in a state mental health facility for at
2041 least 6 months in the last 36 months;

2042 2. Has had two or more admissions to a state mental health
2043 facility in the last 36 months; or

2044 3. Has had three or more admissions to a crisis
2045 stabilization unit, an addictions receiving facility, a short-
2046 term residential facility, or an inpatient psychiatric unit
2047 within the last 12 months.

2048 (f) "Managing entity" means a corporation designated or
2049 filed as a nonprofit organization under s. 501(c)(3) of the
2050 Internal Revenue Code which is selected by, and is under
2051 contract with, the department to manage the daily operational
2052 delivery of behavioral health services through a coordinated
2053 system of care.

2054 (g) "Provider network" means the group of direct service
2055 providers, facilities, and organizations under contract with a
2056 managing entity to provide a comprehensive array of emergency,
2057 acute care, residential, outpatient, recovery support, and



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2058 consumer support services, including prevention services.

2059 (h) "Receiving facility" means any public or private
2060 facility designated by the department to receive and hold or to
2061 refer, as appropriate, involuntary patients under emergency
2062 conditions for mental health or substance abuse evaluation and
2063 to provide treatment or transportation to the appropriate
2064 service provider. County jails may not be used or designated as
2065 a receiving facility, a triage center, or an access center.

2066 (3) DEPARTMENT DUTIES.—The department shall:

2067 (a) Designate, with input from the managing entity,
2068 facilities that meet the definitions in s. 394.455(1), (2),
2069 (13), and (41) and the receiving system developed by one or more
2070 counties pursuant to s. 394.4573(2)(b).

2071 (b) Contract with organizations to serve as the managing
2072 entity in accordance with the requirements of this section.

2073 (c) Specify the geographic area served.

2074 (d) Specify data reporting and use of shared data systems.

2075 (e) Develop strategies to divert persons with mental
2076 illness or substance abuse disorders from the criminal and
2077 juvenile justice systems.

2078 (f) Support the development and implementation of a
2079 coordinated system of care by requiring each provider that
2080 receives state funds for behavioral health services through a
2081 direct contract with the department to work with the managing
2082 entity in the provider's service area to coordinate the
2083 provision of behavioral health services, as part of the contract
2084 with the department.

2085 (g) Set performance measures and performance standards for
2086 managing entities based on nationally recognized standards, such



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2087 as those developed by the National Quality Forum, the National
2088 Committee for Quality Assurance, or similar credible sources.
2089 Performance standards must include all of the following:
2090 1. Annual improvement in the extent to which the need for
2091 behavioral health services is met by the coordinated system of
2092 care in the geographic area served.
2093 2. Annual improvement in the percentage of patients who
2094 receive services through the coordinated system of care and who
2095 achieve improved functional status as indicated by health
2096 condition, employment status, and housing stability.
2097 3. Annual reduction in the rates of readmissions to acute
2098 care facilities, jails, prisons, and forensic facilities for
2099 persons receiving care coordination.
2100 4. Annual improvement in consumer and family satisfaction.
2101 (h) Provide technical assistance to the managing entities.
2102 (i) Promote the integration of behavioral health care and
2103 primary care.
2104 (j) Facilitate the coordination between the managing entity
2105 and other payors of behavioral health care.
2106 (k) Develop and provide a unique identifier for clients
2107 receiving services under the managing entity to coordinate care.
2108 (l) Coordinate procedures for the referral and admission of
2109 patients to, and the discharge of patients from, state treatment
2110 facilities and their return to the community.
2111 (m) Ensure that managing entities comply with state and
2112 federal laws, rules, and regulations.
2113 (n) Develop rules for the operations of, and the
2114 requirements that must be met by, the managing entity, if
2115 necessary.



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2116 (4) CONTRACT WITH MANAGING ENTITIES.—
2117 (a) The department's contracts with managing entities must
2118 support efficient and effective administration of the behavioral
2119 health system and ensure accountability for performance.
2120 (b) Beginning July 1, 2018, managing entities under
2121 contract with the department are subject to a contract
2122 performance review. The review must include:
2123 1. Analysis of the duties and performance measures
2124 described in this section;
2125 2. The results of contract monitoring compiled during the
2126 term of the contract; and
2127 3. Related compliance and performance issues.
2128 (c) For the managing entities whose performance is
2129 determined satisfactory after completion of the review pursuant
2130 to paragraph (b), and before the end of the term of the
2131 contract, the department may negotiate and enter into a contract
2132 with the managing entity for a period of 4 years pursuant to s.
2133 287.057(3)(e).
2134 (d) The performance review must be completed by the
2135 beginning of the third year of the 4-year contract. In the event
2136 the managing entity does not meet the requirements of the
2137 performance review, a corrective action plan must be created by
2138 the department. The managing entity must complete the corrective
2139 action plan before the beginning of the fourth year of the
2140 contract. If the corrective action plan is not satisfactorily
2141 completed, the department shall provide notice to the managing
2142 entity that the contract will be terminated at the end of the
2143 contract term and the department shall initiate a competitive
2144 procurement process to select a new managing entity pursuant to



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2145 s. 287.057.

2146 (5) MANAGING ENTITIES DUTIES.—A managing entity shall:

2147 (a) Maintain a board of directors that is representative of
2148 the community and that, at a minimum, includes consumers and
2149 family members, community stakeholders and organizations, and
2150 providers of mental health and substance abuse services,
2151 including public and private receiving facilities.

2152 (b) Conduct a community behavioral health care needs
2153 assessment in the geographic area served by the managing entity.
2154 The needs assessment must be updated annually and provided to
2155 the department. The assessment must include, at a minimum, the
2156 information the department needs for its annual report to the
2157 Governor and Legislature pursuant to s. 394.4573.

2158 (c) Develop local resources by pursuing third-party
2159 payments for services, applying for grants, securing local
2160 matching funds and in-kind services, and any other methods
2161 needed to ensure services are available and accessible.

2162 (d) Provide assistance to counties to develop a designated
2163 receiving system pursuant to s. 394.4573(2)(b) and a
2164 transportation plan pursuant to s. 394.462.

2165 (e) Promote the development and effective implementation of
2166 a coordinated system of care pursuant to s. 394.4573.

2167 (f) Develop a comprehensive network of qualified providers
2168 to deliver behavioral health services. The managing entity is
2169 not required to competitively procure network providers, but
2170 must have a process in place to publicize opportunities to join
2171 the network and to evaluate providers in the network to
2172 determine if they can remain in the network. These processes
2173 must be published on the website of the managing entity. The



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2174 managing entity must ensure continuity of care for clients if a
2175 provider ceases to provide a service or leaves the network.

2176 (g) Enter into cooperative agreements with local homeless
2177 councils and organizations to allow the sharing of available
2178 resource information, shared client information, client referral
2179 services, and any other data or information that may be useful
2180 in addressing the homelessness of persons suffering from a
2181 behavioral health crisis.

2182 (h) Monitor network providers' performance and their
2183 compliance with contract requirements and federal and state
2184 laws, rules, and regulations.

2185 (i) Provide or contract for case management services.

2186 (j) Manage and allocate funds for services to meet the
2187 requirements of law or rule.

2188 (k) Promote integration of behavioral health with primary
2189 care.

2190 (l) Implement shared data systems necessary for the
2191 delivery of coordinated care and integrated services, the
2192 assessment of managing entity performance and provider
2193 performance, and the reporting of outcomes and costs of
2194 services.

2195 (m) Operate in a transparent manner, providing public
2196 access to information, notice of meetings, and opportunities for
2197 public participation in managing entity decisionmaking.

2198 (n) Establish and maintain effective relationships with
2199 community stakeholders, including local governments and other
2200 organizations that serve individuals with behavioral health
2201 needs.

2202 (o) Collaborate with local criminal and juvenile justice



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2203 systems to divert persons with mental illness or substance abuse
2204 disorders, or both, from the criminal and juvenile justice
2205 systems.

2206 (p) Collaborate with the local court system to develop
2207 procedures to maximize the use of involuntary outpatient
2208 services; reduce involuntary inpatient treatment; and increase
2209 diversion from the criminal and juvenile justice systems.

2210 (6) FUNDING FOR MANAGING ENTITIES.-

2211 (a) A contract established between the department and a
2212 managing entity under this section must be funded by general
2213 revenue, other applicable state funds, or applicable federal
2214 funding sources. A managing entity may carry forward documented
2215 unexpended state funds from one fiscal year to the next, but the
2216 cumulative amount carried forward may not exceed 8 percent of
2217 the total value of the contract. Any unexpended state funds in
2218 excess of that percentage must be returned to the department.
2219 The funds carried forward may not be used in a way that would
2220 increase future recurring obligations or for any program or
2221 service that was not authorized as of July 1, 2016, under the
2222 existing contract with the department. Expenditures of funds
2223 carried forward must be separately reported to the department.
2224 Any unexpended funds that remain at the end of the contract
2225 period must be returned to the department. Funds carried forward
2226 may be retained through contract renewals and new contract
2227 procurements as long as the same managing entity is retained by
2228 the department.

2229 (b) The method of payment for a fixed-price contract with a
2230 managing entity must provide for a 2-month advance payment at
2231 the beginning of each fiscal year and equal monthly payments



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2232 thereafter.

2233 (7) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.-The
2234 department shall develop, implement, and maintain standards
2235 under which a managing entity shall collect utilization data
2236 from all public receiving facilities situated within its
2237 geographic service area. As used in this subsection, the term
2238 "public receiving facility" means an entity that meets the
2239 licensure requirements of, and is designated by, the department
2240 to operate as a public receiving facility under s. 394.875 and
2241 that is operating as a licensed crisis stabilization unit.

2242 (a) The department shall develop standards and protocols
2243 for managing entities and public receiving facilities to be used
2244 for data collection, storage, transmittal, and analysis. The
2245 standards and protocols must allow for compatibility of data and
2246 data transmittal between public receiving facilities, managing
2247 entities, and the department for the implementation and
2248 requirements of this subsection.

2249 (b) A managing entity shall require a public receiving
2250 facility within its provider network to submit data, in real
2251 time or at least daily, to the managing entity for:

2252 1. All admissions and discharges of clients receiving
2253 public receiving facility services who qualify as indigent, as
2254 defined in s. 394.4787; and

2255 2. The current active census of total licensed beds, the
2256 number of beds purchased by the department, the number of
2257 clients qualifying as indigent who occupy those beds, and the
2258 total number of unoccupied licensed beds regardless of funding.

2259 (c) A managing entity shall require a public receiving
2260 facility within its provider network to submit data, on a



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2261 monthly basis, to the managing entity which aggregates the daily
2262 data submitted under paragraph (b). The managing entity shall
2263 reconcile the data in the monthly submission to the data
2264 received by the managing entity under paragraph (b) to check for
2265 consistency. If the monthly aggregate data submitted by a public
2266 receiving facility under this paragraph are inconsistent with
2267 the daily data submitted under paragraph (b), the managing
2268 entity shall consult with the public receiving facility to make
2269 corrections necessary to ensure accurate data.

2270 (d) A managing entity shall require a public receiving
2271 facility within its provider network to submit data, on an
2272 annual basis, to the managing entity which aggregates the data
2273 submitted and reconciled under paragraph (c). The managing
2274 entity shall reconcile the data in the annual submission to the
2275 data received and reconciled by the managing entity under
2276 paragraph (c) to check for consistency. If the annual aggregate
2277 data submitted by a public receiving facility under this
2278 paragraph are inconsistent with the data received and reconciled
2279 under paragraph (c), the managing entity shall consult with the
2280 public receiving facility to make corrections necessary to
2281 ensure accurate data.

2282 (e) After ensuring the accuracy of data pursuant to
2283 paragraphs (c) and (d), the managing entity shall submit the
2284 data to the department on a monthly and an annual basis. The
2285 department shall create a statewide database for the data
2286 described under paragraph (b) and submitted under this paragraph
2287 for the purpose of analyzing the payments for and the use of
2288 crisis stabilization services funded by the Baker Act on a
2289 statewide basis and on an individual public receiving facility



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2290 basis.
2291 Section 17. Present subsections (20) through (45) of
2292 section 397.311, Florida Statutes, are redesignated as
2293 subsections (21) through (46), respectively, a new subsection
2294 (20) is added to that section, and present subsections (30) and
2295 (38) of that section are amended, to read:
2296 397.311 Definitions.—As used in this chapter, except part
2297 VIII, the term:

2298 (20) "Involuntary services" means court-ordered outpatient
2299 services or treatment for substance abuse disorders or services
2300 provided in an inpatient placement in a receiving facility or
2301 treatment facility.

2302 (31)~~(30)~~ "Qualified professional" means a physician or a
2303 physician assistant licensed under chapter 458 or chapter 459; a
2304 professional licensed under chapter 490 or chapter 491; an
2305 advanced registered nurse practitioner ~~having a specialty in~~
2306 psychiatry licensed under part I of chapter 464; or a person who
2307 is certified through a department-recognized certification
2308 process for substance abuse treatment services and who holds, at
2309 a minimum, a bachelor's degree. A person who is certified in
2310 substance abuse treatment services by a state-recognized
2311 certification process in another state at the time of employment
2312 with a licensed substance abuse provider in this state may
2313 perform the functions of a qualified professional as defined in
2314 this chapter but must meet certification requirements contained
2315 in this subsection no later than 1 year after his or her date of
2316 employment.

2317 (39)~~(38)~~ "Service component" or "component" means a
2318 discrete operational entity within a service provider which is



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2319 subject to licensing as defined by rule. Service components
2320 include prevention, intervention, and clinical treatment
2321 described in subsection (23) ~~(22)~~.

2322 Section 18. Section 397.675, Florida Statutes, is amended
2323 to read:

2324 397.675 Criteria for involuntary admissions, including
2325 protective custody, emergency admission, and other involuntary
2326 assessment, involuntary treatment, and alternative involuntary
2327 assessment for minors, for purposes of assessment and
2328 stabilization, and for involuntary treatment.—A person meets the
2329 criteria for involuntary admission if there is good faith reason
2330 to believe that the person has a substance abuse or co-occurring
2331 mental health disorder ~~is substance abuse impaired~~ and, because
2332 of such disorder impairment:

2333 (1) Has lost the power of self-control with respect to
2334 substance abuse use; and ~~either~~

2335 (2) (a) ~~Has inflicted, or threatened or attempted to~~
2336 ~~inflict, or unless admitted is likely to inflict, physical harm~~
2337 ~~on himself or herself or another; or~~

2338 ~~(b)~~ Is in need of substance abuse services and, by reason
2339 of substance abuse impairment, his or her judgment has been so
2340 impaired that he or she the person is incapable of appreciating
2341 his or her need for such services and of making a rational
2342 decision in that regard, ~~although thereto; however,~~ mere refusal
2343 to receive such services does not constitute evidence of lack of
2344 judgment with respect to his or her need for such services.

2345 (b) Without care or treatment, is likely to suffer from
2346 neglect or to refuse to care for himself or herself, that such
2347 neglect or refusal poses a real and present threat of



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2348 substantial harm to his or her well-being and that it is not
2349 apparent that such harm may be avoided through the help of
2350 willing family members or friends or the provision of other
2351 services, or there is substantial likelihood that the person has
2352 inflicted, or threatened to or attempted to inflict, or, unless
2353 admitted, is likely to inflict, physical harm on himself,
2354 herself, or another.

2355 Section 19. Section 397.679, Florida Statutes, is amended
2356 to read:

2357 397.679 Emergency admission; circumstances justifying.—A
2358 person who meets the criteria for involuntary admission in s.
2359 397.675 may be admitted to a hospital or to a licensed
2360 detoxification facility or addictions receiving facility for
2361 emergency assessment and stabilization, or to a less intensive
2362 component of a licensed service provider for assessment only,
2363 upon receipt by the facility of a the physician's certificate by
2364 a physician, an advanced registered nurse practitioner, a
2365 clinical psychologist, a licensed clinical social worker, a
2366 licensed marriage and family therapist, a licensed mental health
2367 counselor, a physician assistant working under the scope of
2368 practice of the supervising physician, or a master's-level-
2369 certified addictions professional, if the certificate is
2370 specific to substance abuse disorders, and the completion of an
2371 application for emergency admission.

2372 Section 20. Section 397.6791, Florida Statutes, is amended
2373 to read:

2374 397.6791 Emergency admission; persons who may initiate.—The
2375 following professionals persons may request a certificate for a
2376 emergency assessment or admission:



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2377 (1) In the case of an adult, physicians, advanced
2378 registered nurse practitioners, clinical psychologists, licensed
2379 clinical social workers, licensed marriage and family
2380 therapists, licensed mental health counselors, physician
2381 assistants working under the scope of practice of the
2382 supervising physician, and a master's-level-certified addictions
2383 professional, if the certificate is specific to substance abuse
2384 disorders ~~the certifying physician~~, the person's spouse or legal
2385 guardian, any relative of the person, or any other responsible
2386 adult who has personal knowledge of the person's substance abuse
2387 impairment.

2388 (2) In the case of a minor, the minor's parent, legal
2389 guardian, or legal custodian.

2390 Section 21. Section 397.6793, Florida Statutes, is amended
2391 to read:

2392 397.6793 Professional's ~~Physician's~~ certificate for
2393 emergency admission.—

2394 (1) The professional's ~~physician's~~ certificate must include
2395 the name of the person to be admitted, the relationship between
2396 the person and the professional executing the certificate
2397 ~~physician~~, the relationship between the applicant and the
2398 professional ~~physician~~, any relationship between the
2399 professional ~~physician~~ and the licensed service provider, ~~and~~ a
2400 statement that the person has been examined and assessed within
2401 the preceding 5 days of the application date, and ~~must include~~
2402 factual allegations with respect to the need for emergency
2403 admission, including:

2404 (a) The reason for the ~~physician's~~ belief that the person
2405 is substance abuse impaired; and



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2406 (b) The reason for the ~~physician's~~ belief that because of
2407 such impairment the person has lost the power of self-control
2408 with respect to substance abuse; and ~~either~~

2409 (c)1. The reason for the belief ~~physician believes~~ that,
2410 without care or treatment, the person is likely to suffer from
2411 neglect or refuse to care for himself or herself; that such
2412 neglect or refusal poses a real and present threat of
2413 substantial harm to his or her well-being; and that it is not
2414 apparent that such harm may be avoided through the help of
2415 willing family members or friends or the provision of other
2416 services or there is substantial likelihood that the person has
2417 inflicted or is likely to inflict physical harm on himself or
2418 herself or others unless admitted; or

2419 2. The reason for the belief ~~physician believes~~ that the
2420 person's refusal to voluntarily receive care is based on
2421 judgment so impaired by reason of substance abuse that the
2422 person is incapable of appreciating his or her need for care and
2423 of making a rational decision regarding his or her need for
2424 care.

2425 (2) The professional's ~~physician's~~ certificate must
2426 recommend the least restrictive type of service that is
2427 appropriate for the person. The certificate must be signed by
2428 the professional ~~physician~~. If other less restrictive means are
2429 not available, such as voluntary appearance for outpatient
2430 evaluation, a law enforcement officer shall take the person
2431 named in the certificate into custody and deliver him or her to
2432 the appropriate facility for involuntary examination.

2433 (3) A signed copy of the professional's ~~physician's~~
2434 certificate shall accompany the person, and shall be made a part



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2435 of the person's clinical record, together with a signed copy of
2436 the application. The application and the professional's
2437 ~~physician's~~ certificate authorize the involuntary admission of
2438 the person pursuant to, and subject to the provisions of, ss.
2439 397.679-397.6797.

2440 (4) The professional's certificate is valid for 7 days
2441 after issuance.

2442 (5) The professional's ~~physician's~~ certificate must
2443 indicate whether the person requires transportation assistance
2444 for delivery for emergency admission and specify, pursuant to s.
2445 397.6795, the type of transportation assistance necessary.

2446 Section 22. Section 397.6795, Florida Statutes, is amended
2447 to read:

2448 397.6795 Transportation-assisted delivery of persons for
2449 emergency assessment.—An applicant for a person's emergency
2450 admission, ~~or~~ the person's spouse or guardian, or a law
2451 enforcement officer, ~~or a health officer~~ may deliver a person
2452 named in the professional's physician's certificate for
2453 emergency admission to a hospital or a licensed detoxification
2454 facility or addictions receiving facility for emergency
2455 assessment and stabilization.

2456 Section 23. Subsection (1) of section 397.681, Florida
2457 Statutes, is amended to read:

2458 397.681 Involuntary petitions; general provisions; court
2459 jurisdiction and right to counsel.—

2460 (1) JURISDICTION.—The courts have jurisdiction of
2461 involuntary assessment and stabilization petitions and
2462 involuntary treatment petitions for substance abuse impaired
2463 persons, and such petitions must be filed with the clerk of the



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2464 court in the county where the person is located. The clerk of
2465 the court may not charge a fee for the filing of a petition
2466 under this section. The chief judge may appoint a general or
2467 special magistrate to preside over all or part of the
2468 proceedings. The alleged impaired person is named as the
2469 respondent.

2470 Section 24. Subsection (1) of section 397.6811, Florida
2471 Statutes, is amended to read:

2472 397.6811 Involuntary assessment and stabilization.—A person
2473 determined by the court to appear to meet the criteria for
2474 involuntary admission under s. 397.675 may be admitted for a
2475 period of 5 days to a hospital or to a licensed detoxification
2476 facility or addictions receiving facility, for involuntary
2477 assessment and stabilization or to a less restrictive component
2478 of a licensed service provider for assessment only upon entry of
2479 a court order or upon receipt by the licensed service provider
2480 of a petition. Involuntary assessment and stabilization may be
2481 initiated by the submission of a petition to the court.

2482 (1) If the person upon whose behalf the petition is being
2483 filed is an adult, a petition for involuntary assessment and
2484 stabilization may be filed by the respondent's spouse ~~or~~ legal
2485 guardian, any relative, a private practitioner, the director of
2486 a licensed service provider or the director's designee, or any
2487 individual three adults who has direct ~~have~~ personal knowledge
2488 of the respondent's substance abuse impairment.

2489 Section 25. Section 397.6814, Florida Statutes, is amended
2490 to read:

2491 397.6814 Involuntary assessment and stabilization; contents
2492 of petition.—A petition for involuntary assessment and



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2493 stabilization must contain the name of the respondent, ~~the~~ the name
2494 of the applicant or applicants, ~~the~~ the relationship between the
2495 respondent and the applicant, ~~and~~ the name of the respondent's
2496 attorney, if known, ~~and a statement of the respondent's ability~~
2497 ~~to afford an attorney~~; and must state facts to support the need
2498 for involuntary assessment and stabilization, including:

2499 (1) The reason for the petitioner's belief that the
2500 respondent is substance abuse impaired; ~~and~~

2501 (2) The reason for the petitioner's belief that because of
2502 such impairment the respondent has lost the power of self-
2503 control with respect to substance abuse; and ~~either~~

2504 (3) (a) The reason the petitioner believes that the
2505 respondent has inflicted or is likely to inflict physical harm
2506 on himself or herself or others unless admitted; or

2507 (b) The reason the petitioner believes that the
2508 respondent's refusal to voluntarily receive care is based on
2509 judgment so impaired by reason of substance abuse that the
2510 respondent is incapable of appreciating his or her need for care
2511 and of making a rational decision regarding that need for care.
2512 If the respondent has refused to submit to an assessment, such
2513 refusal must be alleged in the petition.

2514
2515 A fee may not be charged for the filing of a petition pursuant
2516 to this section.

2517 Section 26. Section 397.6819, Florida Statutes, is amended
2518 to read:

2519 397.6819 Involuntary assessment and stabilization;
2520 responsibility of licensed service provider.-A licensed service
2521 provider may admit an individual for involuntary assessment and



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2522 stabilization for a period not to exceed 5 days unless a
2523 petition for involuntary outpatient services has been initiated
2524 which authorizes the licensed service provider to retain
2525 physical custody of the person pending further order of the
2526 court pursuant to s. 397.6821. The individual must be assessed
2527 within 24 hours without unnecessary delay by a qualified
2528 professional. The person may not be held pursuant to this
2529 section beyond the 24-hour assessment period unless the
2530 assessment has been reviewed and authorized by a licensed
2531 physician as necessary for continued stabilization. If an
2532 assessment is performed by a qualified professional who is not a
2533 physician, the assessment must be reviewed by a physician before
2534 the end of the assessment period.

2535 Section 27. Section 397.695, Florida Statutes, is amended
2536 to read:

2537 397.695 Involuntary outpatient services treatment; persons
2538 who may petition.-

2539 (1) (a) If the respondent is an adult, a petition for
2540 involuntary outpatient services treatment may be filed by the
2541 respondent's spouse or legal guardian, any relative, a service
2542 provider, or any individual three adults who has direct have
2543 personal knowledge of the respondent's substance abuse
2544 impairment and his or her prior course of assessment and
2545 treatment.

2546 (b) The administrator of a receiving facility, a crisis
2547 stabilization unit, or an addictions receiving facility where
2548 the patient has been examined may retain the patient at the
2549 facility after adherence to the notice procedures provided in s.
2550 397.6955. The recommendation for involuntary outpatient services



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2551 must be supported by the opinion of a qualified professional as
2552 defined in s. 397.311(31) or a master's-level-certified
2553 addictions professional and by the second opinion of a
2554 psychologist, a physician, or an advanced registered nurse
2555 practitioner licensed under chapter 464, both of whom have
2556 personally examined the patient within the preceding 72 hours,
2557 that the criteria for involuntary outpatient services are met.
2558 However, in a county having a population of fewer than 50,000,
2559 if the administrator of the facility certifies that a qualified
2560 professional is not available to provide the second opinion, the
2561 second opinion may be provided by a physician who has
2562 postgraduate training and experience in the diagnosis and
2563 treatment of substance abuse disorders. Any second opinion
2564 authorized in this section may be conducted through face-to-face
2565 examination, in person, or by electronic means. Such
2566 recommendation must be entered on an involuntary outpatient
2567 certificate that authorizes the facility to retain the patient
2568 pending completion of a hearing. The certificate must be made a
2569 part of the patient's clinical record.

2570 (c) If the patient has been stabilized and no longer meets
2571 the criteria for involuntary assessment and stabilization
2572 pursuant to s. 397.6811, the patient must be released from the
2573 facility while awaiting the hearing for involuntary outpatient
2574 services. Before filing a petition for involuntary outpatient
2575 services, the administrator of the facility must identify the
2576 service provider that will have responsibility for service
2577 provision under the order for involuntary outpatient services,
2578 unless the person is otherwise participating in outpatient
2579 substance abuse disorder services and is not in need of public



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2580 financing of the services, in which case the person, if
2581 eligible, may be ordered to involuntary outpatient services
2582 pursuant to the existing provision-of-services relationship he
2583 or she has for substance abuse disorder services.

2584 (d) The service provider shall prepare a written proposed
2585 treatment plan in consultation with the patient or the patient's
2586 guardian advocate, if applicable, for the order for outpatient
2587 services and provide a copy of the proposed treatment plan to
2588 the patient and the administrator of the facility. The service
2589 provider shall also provide a treatment plan that addresses the
2590 nature and extent of the substance abuse disorder and any co-
2591 occurring mental illness and the risks that necessitates
2592 involuntary outpatient services. The treatment plan must
2593 indicate the likely level of care, including medication and the
2594 anticipated discharge criteria for terminating involuntary
2595 outpatient services. Service providers may coordinate, select,
2596 and supervise other individuals to implement specific aspects of
2597 the treatment plan. The services in the treatment plan must be
2598 deemed clinically appropriate by a qualified professional who
2599 consults with, or is employed by, the service provider. The
2600 service provider must certify that the recommended services in
2601 the treatment plan are available for the stabilization and
2602 improvement of the patient. If the service provider certifies
2603 that the recommended services in the proposed treatment plan are
2604 not available, the petition may not be filed. The service
2605 provider must document its inquiry with the department and the
2606 managing entity as to the availability of the requested
2607 services. The managing entity must document such efforts to
2608 obtain the requested services.



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2609 (e) If a patient in involuntary inpatient placement meets
2610 the criteria for involuntary outpatient services, the
2611 administrator of the treatment facility may, before the
2612 expiration of the period during which the treatment facility is
2613 authorized to retain the patient, recommend involuntary
2614 outpatient services. The recommendation must be supported by the
2615 opinion of a qualified professional as defined in s. 397.311(31)
2616 or a master's-level-certified addictions professional and by the
2617 second opinion of a psychologist, a physician, an advanced
2618 registered nurse practitioner licensed under chapter 464, or a
2619 mental health professional licensed under chapter 491, both of
2620 whom have personally examined the patient within the preceding
2621 72 hours, that the criteria for involuntary outpatient services
2622 are met. However, in a county having a population of fewer than
2623 50,000, if the administrator of the facility certifies that a
2624 qualified professional is not available to provide the second
2625 opinion, the second opinion may be provided by a physician who
2626 has postgraduate training and experience in the diagnosis and
2627 treatment of substance abuse disorders. Any second opinion
2628 authorized in this section may be conducted through face-to-face
2629 examination, in person, or by electronic means. Such
2630 recommendation must be entered on an involuntary outpatient
2631 certificate that authorizes the facility to retain the patient
2632 pending completion of a hearing. The certificate must be made a
2633 part of the patient's clinical record.

2634 (f) The service provider who is responsible for providing
2635 services under the order for involuntary outpatient services
2636 must be identified before the entry of the order for outpatient
2637 services. The service provider shall certify to the court that



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2638 the recommended services in the treatment plan are available for
2639 the stabilization and improvement of the patient. If the service
2640 provider certifies that the recommended services in the proposed
2641 treatment plan are not available, the petition may not be filed.
2642 The service provider must document notify the managing entity as
2643 to the availability of the requested services. The managing
2644 entity must document such efforts to obtain the requested
2645 services.

2646 (2) If the respondent is a minor, a petition for
2647 involuntary treatment may be filed by a parent, legal guardian,
2648 or service provider.

2649 Section 28. Section 397.6951, Florida Statutes, is amended
2650 to read:

2651 397.6951 Contents of petition for involuntary outpatient
2652 services treatment.—A petition for involuntary outpatient
2653 services treatment must contain the name of the respondent ~~to be~~
2654 ~~admitted~~; the name of the petitioner or petitioners; the
2655 relationship between the respondent and the petitioner; the name
2656 of the respondent's attorney, if known, ~~and a statement of the~~
2657 ~~petitioner's knowledge of the respondent's ability to afford an~~
2658 ~~attorney~~; the findings and recommendations of the assessment
2659 performed by the qualified professional; and the factual
2660 allegations presented by the petitioner establishing the need
2661 for involuntary outpatient services. The factual allegations
2662 must demonstrate treatment, including:

2663 (1) The reason for the petitioner's belief that the
2664 respondent is substance abuse impaired; ~~and~~

2665 (2) The respondent's history of failure to comply with
2666 requirements for treatment for substance abuse and that the



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2667 ~~respondent has been involuntarily admitted to a receiving or~~
2668 ~~treatment facility at least twice within the immediately~~
2669 ~~preceding 36 months; The reason for the petitioner's belief that~~
2670 ~~because of such impairment the respondent has lost the power of~~
2671 ~~self-control with respect to substance abuse; and either~~

2672 (3) That the respondent is, as a result of his or her
2673 substance abuse disorder, unlikely to voluntarily participate in
2674 the recommended services after sufficient and conscientious
2675 explanation and disclosure of the purpose of the services or he
2676 or she is unable to determine for himself or herself whether
2677 outpatient services are necessary;

2678 (4) That, in view of the person's treatment history and
2679 current behavior, the person is in need of involuntary
2680 outpatient services; that without services, the person is likely
2681 to suffer from neglect or to refuse to care for himself or
2682 herself; that such neglect or refusal poses a real and present
2683 threat of substantial harm to his or her well-being; and that
2684 there is a substantial likelihood that without services the
2685 person will cause serious bodily harm to himself, herself, or
2686 others in the near future, as evidenced by recent behavior; and

2687 (5) That it is likely that the person will benefit from
2688 involuntary outpatient services.

2689 ~~(3)(a) The reason the petitioner believes that the~~
2690 ~~respondent has inflicted or is likely to inflict physical harm~~
2691 ~~on himself or herself or others unless admitted; or~~

2692 ~~(b) The reason the petitioner believes that the~~
2693 ~~respondent's refusal to voluntarily receive care is based on~~
2694 ~~judgment so impaired by reason of substance abuse that the~~
2695 ~~respondent is incapable of appreciating his or her need for care~~



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2696 ~~and of making a rational decision regarding that need for care.~~
2697 Section 29. Section 397.6955, Florida Statutes, is amended
2698 to read:

2699 397.6955 Duties of court upon filing of petition for
2700 involuntary outpatient services ~~treatment.~~-

2701 (1) Upon the filing of a petition for ~~the~~ involuntary
2702 outpatient services for ~~treatment~~ of a substance abuse impaired
2703 person with the clerk of the court, the court shall immediately
2704 determine whether the respondent is represented by an attorney
2705 or whether the appointment of counsel for the respondent is
2706 appropriate. If the court appoints counsel for the person, the
2707 clerk of the court shall immediately notify the regional
2708 conflict counsel, created pursuant to s. 27.511, of the
2709 appointment. The regional conflict counsel shall represent the
2710 person until the petition is dismissed, the court order expires,
2711 or the person is discharged from involuntary outpatient
2712 services. An attorney that represents the person named in the
2713 petition shall have access to the person, witnesses, and records
2714 relevant to the presentation of the person's case and shall
2715 represent the interests of the person, regardless of the source
2716 of payment to the attorney.

2717 (2) The court shall schedule a hearing to be held on the
2718 petition within ~~5~~ 10 days unless a continuance is granted. The
2719 court may appoint a general or special master to preside at the
2720 hearing.

2721 (3) A copy of the petition and notice of the hearing must
2722 be provided to the respondent; the respondent's parent,
2723 guardian, or legal custodian, in the case of a minor; the
2724 respondent's attorney, if known; the petitioner; the



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2725 respondent's spouse or guardian, if applicable; and such other
2726 persons as the court may direct. If the respondent is a minor, a
2727 copy of the petition and notice of the hearing must be and have
2728 such petition and order personally delivered to the respondent
2729 if he or she is a minor. The court shall also issue a summons to
2730 the person whose admission is sought.

2731 Section 30. Section 397.6957, Florida Statutes, is amended
2732 to read:

2733 397.6957 Hearing on petition for involuntary outpatient
2734 services ~~treatment.~~

2735 (1) At a hearing on a petition for involuntary outpatient
2736 services ~~treatment~~, the court shall hear and review all relevant
2737 evidence, including the review of results of the assessment
2738 completed by the qualified professional in connection with the
2739 respondent's protective custody, emergency admission,
2740 involuntary assessment, or alternative involuntary admission.
2741 The respondent must be present unless the court finds that his
2742 or her presence is likely to be injurious to himself or herself
2743 or others, in which event the court must appoint a guardian
2744 advocate to act in behalf of the respondent throughout the
2745 proceedings.

2746 (2) The petitioner has the burden of proving by clear and
2747 convincing evidence that:

2748 (a) The respondent is substance abuse impaired and has a
2749 history of lack of compliance with treatment for substance
2750 abuse; ~~and~~

2751 (b) Because of such impairment the respondent is unlikely
2752 to voluntarily participate in the recommended treatment or is
2753 unable to determine for himself or herself whether outpatient



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2754 ~~services are necessary the respondent has lost the power of~~
2755 ~~self-control with respect to substance abuse; and either~~

2756 1. Without services, the respondent is likely to suffer
2757 from neglect or to refuse to care for himself or herself; that
2758 such neglect or refusal poses a real and present threat of
2759 substantial harm to his or her well-being; and that there is a
2760 substantial likelihood that without services the respondent will
2761 cause serious bodily harm to himself or herself or others in the
2762 near future, as evidenced by recent behavior ~~The respondent has~~
2763 ~~inflicted or is likely to inflict physical harm on himself or~~
2764 ~~herself or others unless admitted; or~~

2765 2. The respondent's refusal to voluntarily receive care is
2766 based on judgment so impaired by reason of substance abuse that
2767 the respondent is incapable of appreciating his or her need for
2768 care and of making a rational decision regarding that need for
2769 care.

2770 (3) One of the qualified professionals who executed the
2771 involuntary outpatient services certificate must be a witness.
2772 The court shall allow testimony from individuals, including
2773 family members, deemed by the court to be relevant under state
2774 law, regarding the respondent's prior history and how that prior
2775 history relates to the person's current condition. The testimony
2776 in the hearing must be under oath, and the proceedings must be
2777 recorded. The patient may refuse to testify at the hearing.

2778 (4) ~~(3)~~ At the conclusion of the hearing the court shall
2779 either dismiss the petition or order the respondent to receive
2780 undergo involuntary outpatient services from his or her
2781 substance abuse treatment, with the respondent's chosen licensed
2782 service provider ~~if to deliver the involuntary substance abuse~~



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2783 ~~treatment~~ where possible and appropriate.

2784 Section 31. Section 397.697, Florida Statutes, is amended
2785 to read:

2786 397.697 Court determination; effect of court order for
2787 involuntary outpatient services ~~substance abuse treatment~~.—

2788 (1) When the court finds that the conditions for
2789 involuntary outpatient services ~~substance abuse treatment~~ have
2790 been proved by clear and convincing evidence, it may order the
2791 respondent to receive ~~undergo~~ involuntary outpatient services
2792 from ~~treatment~~ by a licensed service provider for a period not
2793 to exceed 60 days. If the court finds it necessary, it may
2794 direct the sheriff to take the respondent into custody and
2795 deliver him or her to the licensed service provider specified in
2796 the court order, or to the nearest appropriate licensed service
2797 provider, for involuntary outpatient services ~~treatment~~. When
2798 the conditions justifying involuntary outpatient services
2799 ~~treatment~~ no longer exist, the individual must be released as
2800 provided in s. 397.6971. When the conditions justifying
2801 involuntary outpatient services ~~treatment~~ are expected to exist
2802 after 60 days of services ~~treatment~~, a renewal of the
2803 involuntary outpatient services ~~treatment~~ order may be requested
2804 pursuant to s. 397.6975 before ~~prior to~~ the end of the 60-day
2805 period.

2806 (2) In all cases resulting in an order for involuntary
2807 outpatient services ~~substance abuse treatment~~, the court shall
2808 retain jurisdiction over the case and the parties for the entry
2809 of such further orders as the circumstances may require. The
2810 court's requirements for notification of proposed release must
2811 be included in the original ~~treatment~~ order.



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2812 (3) An involuntary outpatient services ~~treatment~~ order
2813 authorizes the licensed service provider to require the
2814 individual to receive services that ~~undergo such treatment as~~
2815 will benefit him or her, including services ~~treatment~~ at any
2816 licensable service component of a licensed service provider.

2817 (4) The court may not order involuntary outpatient services
2818 if the service provider certifies to the court that the
2819 recommended services are not available. The service provider
2820 must document notify the managing entity as to the availability
2821 of the requested services. The managing entity must document
2822 such efforts to obtain the requested services.

2823 (5) If the court orders involuntary outpatient services, a
2824 copy of the order must be sent to the managing entity within 1
2825 working day after it is received from the court. Documents may
2826 be submitted electronically though existing data systems, if
2827 applicable. After the order for outpatient services is issued,
2828 the service provider and the patient may modify provisions of
2829 the treatment plan. For any material modification of the
2830 treatment plan to which the patient or the patient's guardian
2831 advocate, if appointed, agrees, the service provider shall send
2832 notice of the modification to the court. Any material
2833 modification of the treatment plan which is contested by the
2834 patient or the guardian advocate, if applicable, must be
2835 approved or disapproved by the court.

2836 Section 32. Section 397.6971, Florida Statutes, is amended
2837 to read:

2838 397.6971 Early release from involuntary outpatient services
2839 ~~substance abuse treatment~~.—

2840 (1) At any time before ~~prior to~~ the end of the 60-day



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2841 involuntary outpatient services ~~treatment~~ period, or ~~prior to~~
2842 the end of any extension granted pursuant to s. 397.6975, an
2843 individual receiving admitted for involuntary outpatient
2844 services ~~treatment~~ may be determined eligible for discharge to
2845 the most appropriate referral or disposition for the individual
2846 when any of the following apply:

2847 (a) The individual no longer meets the criteria for
2848 involuntary admission and has given his or her informed consent
2849 to be transferred to voluntary treatment status. ~~+~~

2850 (b) If the individual was admitted on the grounds of
2851 likelihood of infliction of physical harm upon himself or
2852 herself or others, such likelihood no longer exists. ~~+~~ ~~or~~

2853 (c) If the individual was admitted on the grounds of need
2854 for assessment and stabilization or treatment, accompanied by
2855 inability to make a determination respecting such need, ~~either~~:

2856 1. Such inability no longer exists; or

2857 2. It is evident that further treatment will not bring
2858 about further significant improvements in the individual's
2859 condition. ~~+~~

2860 (d) The individual is no longer in need of services. ~~+~~ ~~or~~

2861 (e) The director of the service provider determines that
2862 the individual is beyond the safe management capabilities of the
2863 provider.

2864 (2) Whenever a qualified professional determines that an
2865 individual admitted for involuntary outpatient services
2866 qualifies ~~treatment is ready~~ for early release under ~~for any of~~
2867 ~~the reasons listed in~~ subsection (1), the service provider shall
2868 immediately discharge the individual, ~~+~~ and must notify all
2869 persons specified by the court in the original treatment order.



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2870 Section 33. Section 397.6975, Florida Statutes, is amended
2871 to read:

2872 397.6975 Extension of involuntary outpatient services
2873 substance abuse ~~treatment~~ period.-

2874 (1) Whenever a service provider believes that an individual
2875 who is nearing the scheduled date of his or her release from
2876 involuntary outpatient services ~~treatment~~ continues to meet the
2877 criteria for involuntary outpatient services ~~treatment~~ in s.
2878 397.693, a petition for renewal of the involuntary outpatient
2879 services ~~treatment~~ order may be filed with the court at least 10
2880 days before the expiration of the court-ordered outpatient
2881 services ~~treatment~~ period. The court shall immediately schedule
2882 a hearing to be held not more than 15 days after filing of the
2883 petition. The court shall provide the copy of the petition for
2884 renewal and the notice of the hearing to all parties to the
2885 proceeding. The hearing is conducted pursuant to s. 397.6957.

2886 (2) If the court finds that the petition for renewal of the
2887 involuntary outpatient services ~~treatment~~ order should be
2888 granted, it may order the respondent to receive ~~undergo~~
2889 involuntary outpatient services ~~treatment~~ for a period not to
2890 exceed an additional 90 days. When the conditions justifying
2891 involuntary outpatient services ~~treatment~~ no longer exist, the
2892 individual must be released as provided in s. 397.6971. When the
2893 conditions justifying involuntary outpatient services ~~treatment~~
2894 continue to exist after an additional 90 days of service
2895 ~~additional treatment~~, a new petition requesting renewal of the
2896 involuntary outpatient services ~~treatment~~ order may be filed
2897 pursuant to this section.

2898 (3) Within 1 court working day after the filing of a



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2899 petition for continued involuntary outpatient services, the
2900 court shall appoint the regional conflict counsel to represent
2901 the respondent, unless the respondent is otherwise represented
2902 by counsel. The clerk of the court shall immediately notify the
2903 regional conflict counsel of such appointment. The regional
2904 conflict counsel shall represent the respondent until the
2905 petition is dismissed or the court order expires or the
2906 respondent is discharged from involuntary outpatient services.
2907 Any attorney representing the respondent shall have access to
2908 the respondent, witnesses, and records relevant to the
2909 presentation of the respondent's case and shall represent the
2910 interests of the respondent, regardless of the source of payment
2911 to the attorney.

2912 (4) Hearings on petitions for continued involuntary
2913 outpatient services shall be before the circuit court. The court
2914 may appoint a general or special master to preside at the
2915 hearing. The procedures for obtaining an order pursuant to this
2916 section shall be in accordance with s. 397.697.

2917 (5) Notice of hearing shall be provided to the respondent
2918 or his or her counsel. The respondent and the respondent's
2919 counsel may agree to a period of continued outpatient services
2920 without a court hearing.

2921 (6) The same procedure shall be repeated before the
2922 expiration of each additional period of outpatient services.

2923 (7) If the respondent has previously been found incompetent
2924 to consent to treatment, the court shall consider testimony and
2925 evidence regarding the respondent's competence.

2926 Section 34. Section 397.6977, Florida Statutes, is amended
2927 to read:



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2928 397.6977 Disposition of individual upon completion of
2929 involuntary outpatient services ~~substance abuse treatment.~~-At
2930 the conclusion of the 60-day period of court-ordered involuntary
2931 outpatient services ~~treatment~~, the ~~respondent individual~~ is
2932 automatically discharged unless a motion for renewal of the
2933 involuntary outpatient services ~~treatment~~ order has been filed
2934 with the court pursuant to s. 397.6975.

2935 Section 35. Section 397.6978, Florida Statutes, is created
2936 to read:

2937 397.6978 Guardian advocate; patient incompetent to consent;
2938 ~~substance abuse disorder.-~~

2939 (1) The administrator of a receiving facility or addictions
2940 receiving facility may petition the court for the appointment of
2941 a guardian advocate based upon the opinion of a qualified
2942 professional that the patient is incompetent to consent to
2943 treatment. If the court finds that a patient is incompetent to
2944 consent to treatment and has not been adjudicated incapacitated
2945 and that a guardian with the authority to consent to mental
2946 health treatment has not been appointed, it may appoint a
2947 guardian advocate. The patient has the right to have an attorney
2948 represent him or her at the hearing. If the person is indigent,
2949 the court shall appoint the office of the regional conflict
2950 counsel to represent him or her at the hearing. The patient has
2951 the right to testify, cross-examine witnesses, and present
2952 witnesses. The proceeding shall be recorded electronically or
2953 stenographically, and testimony must be provided under oath. One
2954 of the qualified professionals authorized to give an opinion in
2955 support of a petition for involuntary placement, as described in
2956 s. 397.675 or s. 397.6981, must testify. A guardian advocate



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2957 must meet the qualifications of a guardian contained in part IV
2958 of chapter 744. The person who is appointed as a guardian
2959 advocate must agree to the appointment.

2960 (2) The following persons are prohibited from appointment
2961 as a patient's guardian advocate:

2962 (a) A professional providing clinical services to the
2963 individual under this part.

2964 (b) The qualified professional who initiated the
2965 involuntary examination of the individual, if the examination
2966 was initiated by a qualified professional's certificate.

2967 (c) An employee, an administrator, or a board member of the
2968 facility providing the examination of the individual.

2969 (d) An employee, an administrator, or a board member of the
2970 treatment facility providing treatment of the individual.

2971 (e) A person providing any substantial professional
2972 services to the individual, including clinical services.

2973 (f) A creditor of the individual.

2974 (g) A person subject to an injunction for protection
2975 against domestic violence under s. 741.30, whether the order of
2976 injunction is temporary or final, and for which the individual
2977 was the petitioner.

2978 (h) A person subject to an injunction for protection
2979 against repeat violence, sexual violence, or dating violence
2980 under s. 784.046, whether the order of injunction is temporary
2981 or final, and for which the individual was the petitioner.

2982 (3) A facility requesting appointment of a guardian
2983 advocate must, before the appointment, provide the prospective
2984 guardian advocate with information about the duties and
2985 responsibilities of guardian advocates, including information



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2986 about the ethics of medical decisionmaking. Before asking a
2987 guardian advocate to give consent to treatment for a patient,
2988 the facility must provide to the guardian advocate sufficient
2989 information so that the guardian advocate can decide whether to
2990 give express and informed consent to the treatment. Such
2991 information must include information that demonstrates that the
2992 treatment is essential to the care of the patient and does not
2993 present an unreasonable risk of serious, hazardous, or
2994 irreversible side effects. If possible, before giving consent to
2995 treatment, the guardian advocate must personally meet and talk
2996 with the patient and the patient's physician. If that is not
2997 possible, the discussion may be conducted by telephone. The
2998 decision of the guardian advocate may be reviewed by the court,
2999 upon petition of the patient's attorney, the patient's family,
3000 or the facility administrator.

3001 (4) In lieu of the training required for guardians
3002 appointed pursuant to chapter 744, a guardian advocate shall
3003 attend at least a 4-hour training course approved by the court
3004 before exercising his or her authority. At a minimum, the
3005 training course must include information about patient rights,
3006 the diagnosis of substance abuse disorders, the ethics of
3007 medical decisionmaking, and the duties of guardian advocates.

3008 (5) The required training course and the information to be
3009 supplied to prospective guardian advocates before their
3010 appointment must be developed by the department, approved by the
3011 chief judge of the circuit court, and taught by a court-approved
3012 organization, which may include, but need not be limited to, a
3013 community college, a guardianship organization, a local bar
3014 association, or The Florida Bar. The training course may be web-



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3015 based, provided in video format, or other electronic means but
3016 must be capable of ensuring the identity and participation of
3017 the prospective guardian advocate. The court may waive some or
3018 all of the training requirements for guardian advocates or
3019 impose additional requirements. The court shall make its
3020 decision on a case-by-case basis and, in making its decision,
3021 shall consider the experience and education of the guardian
3022 advocate, the duties assigned to the guardian advocate, and the
3023 needs of the patient.

3024 (6) In selecting a guardian advocate, the court shall give
3025 preference to the patient's health care surrogate, if one has
3026 already been designated by the patient. If the patient has not
3027 previously designated a health care surrogate, the selection
3028 shall be made, except for good cause documented in the court
3029 record, from among the following persons, listed in order of
3030 priority:

- 3031 (a) The patient's spouse.
- 3032 (b) An adult child of the patient.
- 3033 (c) A parent of the patient.
- 3034 (d) The adult next of kin of the patient.
- 3035 (e) An adult friend of the patient.
- 3036 (f) An adult trained and willing to serve as the guardian
3037 advocate for the patient.

3038 (7) If a guardian with the authority to consent to medical
3039 treatment has not already been appointed, or if the patient has
3040 not already designated a health care surrogate, the court may
3041 authorize the guardian advocate to consent to medical treatment
3042 as well as substance abuse disorder treatment. Unless otherwise
3043 limited by the court, a guardian advocate with authority to



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3044 consent to medical treatment has the same authority to make
3045 health care decisions and is subject to the same restrictions as
3046 a proxy appointed under part IV of chapter 765. Unless the
3047 guardian advocate has sought and received express court approval
3048 in a proceeding separate from the proceeding to determine the
3049 competence of the patient to consent to medical treatment, the
3050 guardian advocate may not consent to:

- 3051 (a) Abortion.
- 3052 (b) Sterilization.
- 3053 (c) Electroshock therapy.
- 3054 (d) Psychosurgery.
- 3055 (e) Experimental treatments that have not been approved by
3056 a federally approved institutional review board in accordance
3057 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

3058 The court must base its authorization on evidence that the
3059 treatment or procedure is essential to the care of the patient
3060 and that the treatment does not present an unreasonable risk of
3061 serious, hazardous, or irreversible side effects. In complying
3062 with this subsection, the court shall follow the procedures set
3063 forth in subsection (1).

3064 (8) The guardian advocate shall be discharged when the
3065 patient is discharged from an order for involuntary outpatient
3066 services or involuntary inpatient placement or when the patient
3067 is transferred from involuntary to voluntary status. The court
3068 or a hearing officer shall consider the competence of the
3069 patient as provided in subsection (1) and may consider an
3070 involuntarily placed patient's competence to consent to
3071 treatment at any hearing. Upon sufficient evidence, the court
3072



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3073 may restore, or the hearing officer may recommend that the court
3074 restore, the patient's competence. A copy of the order restoring
3075 competence or the certificate of discharge containing the
3076 restoration of competence shall be provided to the patient and
3077 the guardian advocate.

3078 Section 36. Paragraph (a) of subsection (3) of section
3079 39.407, Florida Statutes, is amended to read:

3080 39.407 Medical, psychiatric, and psychological examination
3081 and treatment of child; physical, mental, or substance abuse
3082 examination of person with or requesting child custody.—

3083 (3)(a)1. Except as otherwise provided in subparagraph (b)1.
3084 or paragraph (e), before the department provides psychotropic
3085 medications to a child in its custody, the prescribing physician
3086 shall attempt to obtain express and informed consent, as defined
3087 in s. 394.455(16) ~~s. 394.455(9)~~ and as described in s.
3088 394.459(3)(a), from the child's parent or legal guardian. The
3089 department must take steps necessary to facilitate the inclusion
3090 of the parent in the child's consultation with the physician.
3091 However, if the parental rights of the parent have been
3092 terminated, the parent's location or identity is unknown or
3093 cannot reasonably be ascertained, or the parent declines to give
3094 express and informed consent, the department may, after
3095 consultation with the prescribing physician, seek court
3096 authorization to provide the psychotropic medications to the
3097 child. Unless parental rights have been terminated and if it is
3098 possible to do so, the department shall continue to involve the
3099 parent in the decisionmaking process regarding the provision of
3100 psychotropic medications. If, at any time, a parent whose
3101 parental rights have not been terminated provides express and



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3102 informed consent to the provision of a psychotropic medication,
3103 the requirements of this section that the department seek court
3104 authorization do not apply to that medication until such time as
3105 the parent no longer consents.

3106 2. Any time the department seeks a medical evaluation to
3107 determine the need to initiate or continue a psychotropic
3108 medication for a child, the department must provide to the
3109 evaluating physician all pertinent medical information known to
3110 the department concerning that child.

3111 Section 37. Paragraph (e) of subsection (5) of section
3112 212.055, Florida Statutes, is amended to read:

3113 212.055 Discretionary sales surtaxes; legislative intent;
3114 authorization and use of proceeds.—It is the legislative intent
3115 that any authorization for imposition of a discretionary sales
3116 surtax shall be published in the Florida Statutes as a
3117 subsection of this section, irrespective of the duration of the
3118 levy. Each enactment shall specify the types of counties
3119 authorized to levy; the rate or rates which may be imposed; the
3120 maximum length of time the surtax may be imposed, if any; the
3121 procedure which must be followed to secure voter approval, if
3122 required; the purpose for which the proceeds may be expended;
3123 and such other requirements as the Legislature may provide.
3124 Taxable transactions and administrative procedures shall be as
3125 provided in s. 212.054.

3126 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
3127 s. 125.011(1) may levy the surtax authorized in this subsection
3128 pursuant to an ordinance either approved by extraordinary vote
3129 of the county commission or conditioned to take effect only upon
3130 approval by a majority vote of the electors of the county voting



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3131 in a referendum. In a county as defined in s. 125.011(1), for
3132 the purposes of this subsection, "county public general
3133 hospital" means a general hospital as defined in s. 395.002
3134 which is owned, operated, maintained, or governed by the county
3135 or its agency, authority, or public health trust.

3136 (e) A governing board, agency, or authority shall be
3137 chartered by the county commission upon this act becoming law.
3138 The governing board, agency, or authority shall adopt and
3139 implement a health care plan for indigent health care services.
3140 The governing board, agency, or authority shall consist of no
3141 more than seven and no fewer than five members appointed by the
3142 county commission. The members of the governing board, agency,
3143 or authority shall be at least 18 years of age and residents of
3144 the county. No member may be employed by or affiliated with a
3145 health care provider or the public health trust, agency, or
3146 authority responsible for the county public general hospital.
3147 The following community organizations shall each appoint a
3148 representative to a nominating committee: the South Florida
3149 Hospital and Healthcare Association, the Miami-Dade County
3150 Public Health Trust, the Dade County Medical Association, the
3151 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
3152 County. This committee shall nominate between 10 and 14 county
3153 citizens for the governing board, agency, or authority. The
3154 slate shall be presented to the county commission and the county
3155 commission shall confirm the top five to seven nominees,
3156 depending on the size of the governing board. Until such time as
3157 the governing board, agency, or authority is created, the funds
3158 provided for in subparagraph (d)2. shall be placed in a
3159 restricted account set aside from other county funds and not



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3160 disbursed by the county for any other purpose.

3161 1. The plan shall divide the county into a minimum of four
3162 and maximum of six service areas, with no more than one
3163 participant hospital per service area. The county public general
3164 hospital shall be designated as the provider for one of the
3165 service areas. Services shall be provided through participants'
3166 primary acute care facilities.

3167 2. The plan and subsequent amendments to it shall fund a
3168 defined range of health care services for both indigent persons
3169 and the medically poor, including primary care, preventive care,
3170 hospital emergency room care, and hospital care necessary to
3171 stabilize the patient. For the purposes of this section,
3172 "stabilization" means stabilization as defined in s. 397.311(42)
3173 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
3174 may include services rendered by physicians, clinics, community
3175 hospitals, and alternative delivery sites, as well as at least
3176 one regional referral hospital per service area. The plan shall
3177 provide that agreements negotiated between the governing board,
3178 agency, or authority and providers shall recognize hospitals
3179 that render a disproportionate share of indigent care, provide
3180 other incentives to promote the delivery of charity care to draw
3181 down federal funds where appropriate, and require cost
3182 containment, including, but not limited to, case management.
3183 From the funds specified in subparagraphs (d)1. and 2. for
3184 indigent health care services, service providers shall receive
3185 reimbursement at a Medicaid rate to be determined by the
3186 governing board, agency, or authority created pursuant to this
3187 paragraph for the initial emergency room visit, and a per-member
3188 per-month fee or capitation for those members enrolled in their



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3189 service area, as compensation for the services rendered
3190 following the initial emergency visit. Except for provisions of
3191 emergency services, upon determination of eligibility,
3192 enrollment shall be deemed to have occurred at the time services
3193 were rendered. The provisions for specific reimbursement of
3194 emergency services shall be repealed on July 1, 2001, unless
3195 otherwise reenacted by the Legislature. The capitation amount or
3196 rate shall be determined before ~~prior to~~ program implementation
3197 by an independent actuarial consultant. In no event shall such
3198 reimbursement rates exceed the Medicaid rate. The plan must also
3199 provide that any hospitals owned and operated by government
3200 entities on or after the effective date of this act must, as a
3201 condition of receiving funds under this subsection, afford
3202 public access equal to that provided under s. 286.011 as to any
3203 meeting of the governing board, agency, or authority the subject
3204 of which is budgeting resources for the retention of charity
3205 care, as that term is defined in the rules of the Agency for
3206 Health Care Administration. The plan shall also include
3207 innovative health care programs that provide cost-effective
3208 alternatives to traditional methods of service and delivery
3209 funding.

3210 3. The plan's benefits shall be made available to all
3211 county residents currently eligible to receive health care
3212 services as indigents or medically poor as defined in paragraph
3213 (4) (d).

3214 4. Eligible residents who participate in the health care
3215 plan shall receive coverage for a period of 12 months or the
3216 period extending from the time of enrollment to the end of the
3217 current fiscal year, per enrollment period, whichever is less.



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3218 5. At the end of each fiscal year, the governing board,
3219 agency, or authority shall prepare an audit that reviews the
3220 budget of the plan, delivery of services, and quality of
3221 services, and makes recommendations to increase the plan's
3222 efficiency. The audit shall take into account participant
3223 hospital satisfaction with the plan and assess the amount of
3224 poststabilization patient transfers requested, and accepted or
3225 denied, by the county public general hospital.

3226 Section 38. Paragraph (c) of subsection (2) of section
3227 394.4599, Florida Statutes, is amended to read:

3228 394.4599 Notice.—

3229 (2) INVOLUNTARY ADMISSION.—

3230 (c)1. A receiving facility shall give notice of the
3231 whereabouts of a minor who is being involuntarily held for
3232 examination pursuant to s. 394.463 to the minor's parent,
3233 guardian, caregiver, or guardian advocate, in person or by
3234 telephone or other form of electronic communication, immediately
3235 after the minor's arrival at the facility. The facility may
3236 delay notification for no more than 24 hours after the minor's
3237 arrival if the facility has submitted a report to the central
3238 abuse hotline, pursuant to s. 39.201, based upon knowledge or
3239 suspicion of abuse, abandonment, or neglect and if the facility
3240 deems a delay in notification to be in the minor's best
3241 interest.

3242 2. The receiving facility shall attempt to notify the
3243 minor's parent, guardian, caregiver, or guardian advocate until
3244 the receiving facility receives confirmation from the parent,
3245 guardian, caregiver, or guardian advocate, verbally, by
3246 telephone or other form of electronic communication, or by



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3247 recorded message, that notification has been received. Attempts
3248 to notify the parent, guardian, caregiver, or guardian advocate
3249 must be repeated at least once every hour during the first 12
3250 hours after the minor's arrival and once every 24 hours
3251 thereafter and must continue until such confirmation is
3252 received, unless the minor is released at the end of the 72-hour
3253 examination period, or until a petition for involuntary services
3254 placement is filed with the court pursuant to s. 394.463(2)(g)
3255 ~~s. 394.463(2)(i)~~. The receiving facility may seek assistance
3256 from a law enforcement agency to notify the minor's parent,
3257 guardian, caregiver, or guardian advocate if the facility has
3258 not received within the first 24 hours after the minor's arrival
3259 a confirmation by the parent, guardian, caregiver, or guardian
3260 advocate that notification has been received. The receiving
3261 facility must document notification attempts in the minor's
3262 clinical record.

3263 Section 39. Subsection (3) of section 394.495, Florida
3264 Statutes, is amended to read:

3265 394.495 Child and adolescent mental health system of care;
3266 programs and services.—

3267 (3) Assessments must be performed by:

3268 (a) A professional as defined in s. 394.455(6), (8), (34),
3269 (37), or (38) s. 394.455(2), (4), (21), (23), or (24);

3270 (b) A professional licensed under chapter 491; or

3271 (c) A person who is under the direct supervision of a
3272 professional as defined in s. 394.455(6), (8), (34), (37), or
3273 (38) s. 394.455(2), (4), (21), (23), or (24) or a professional
3274 licensed under chapter 491.

3275 Section 40. Subsection (5) of section 394.496, Florida



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3276 Statutes, is amended to read:

3277 394.496 Service planning.—

3278 (5) A professional as defined in s. 394.455(6), (8), (34),
3279 (37), or (38) s. 394.455(2), (4), (21), (23), or (24) or a
3280 professional licensed under chapter 491 must be included among
3281 those persons developing the services plan.

3282 Section 41. Subsection (6) of section 394.9085, Florida
3283 Statutes, is amended to read:

3284 394.9085 Behavioral provider liability.—

3285 (6) For purposes of this section, the terms "detoxification
3286 services," "addictions receiving facility," and "receiving
3287 facility" have the same meanings as those provided in ss.
3288 397.311(23)(a)4., 397.311(23)(a)1., and 394.455(41) s-
3289 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(26),
3290 respectively.

3291 Section 42. Subsection (8) of section 397.405, Florida
3292 Statutes, is amended to read:

3293 397.405 Exemptions from licensure.—The following are exempt
3294 from the licensing provisions of this chapter:

3295 (8) A legally cognizable church or nonprofit religious
3296 organization or denomination providing substance abuse services,
3297 including prevention services, which are solely religious,
3298 spiritual, or ecclesiastical in nature. A church or nonprofit
3299 religious organization or denomination providing any of the
3300 licensed service components itemized under s. 397.311(23) s-
3301 397.311(22) is not exempt from substance abuse licensure but
3302 retains its exemption with respect to all services which are
3303 solely religious, spiritual, or ecclesiastical in nature.

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3305 The exemptions from licensure in this section do not apply to
3306 any service provider that receives an appropriation, grant, or
3307 contract from the state to operate as a service provider as
3308 defined in this chapter or to any substance abuse program
3309 regulated pursuant to s. 397.406. Furthermore, this chapter may
3310 not be construed to limit the practice of a physician or
3311 physician assistant licensed under chapter 458 or chapter 459, a
3312 psychologist licensed under chapter 490, a psychotherapist
3313 licensed under chapter 491, or an advanced registered nurse
3314 practitioner licensed under part I of chapter 464, who provides
3315 substance abuse treatment, so long as the physician, physician
3316 assistant, psychologist, psychotherapist, or advanced registered
3317 nurse practitioner does not represent to the public that he or
3318 she is a licensed service provider and does not provide services
3319 to individuals pursuant to part V of this chapter. Failure to
3320 comply with any requirement necessary to maintain an exempt
3321 status under this section is a misdemeanor of the first degree,
3322 punishable as provided in s. 775.082 or s. 775.083.

3323 Section 43. Subsections (1) and (5) of section 397.407,
3324 Florida Statutes, are amended to read:

3325 397.407 Licensure process; fees.—

3326 (1) The department shall establish the licensure process to
3327 include fees and categories of licenses and must prescribe a fee
3328 range that is based, at least in part, on the number and
3329 complexity of programs listed in s. 397.311(23) ~~s. 397.311(22)~~
3330 which are operated by a licensee. The fees from the licensure of
3331 service components are sufficient to cover at least 50 percent
3332 of the costs of regulating the service components. The
3333 department shall specify a fee range for public and privately



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3334 funded licensed service providers. Fees for privately funded
3335 licensed service providers must exceed the fees for publicly
3336 funded licensed service providers.

3337 (5) The department may issue probationary, regular, and
3338 interim licenses. The department shall issue one license for
3339 each service component that is operated by a service provider
3340 and defined pursuant to s. 397.311(23) ~~s. 397.311(22)~~. The
3341 license is valid only for the specific service components listed
3342 for each specific location identified on the license. The
3343 licensed service provider shall apply for a new license at least
3344 60 days before the addition of any service components or 30 days
3345 before the relocation of any of its service sites. Provision of
3346 service components or delivery of services at a location not
3347 identified on the license may be considered an unlicensed
3348 operation that authorizes the department to seek an injunction
3349 against operation as provided in s. 397.401, in addition to
3350 other sanctions authorized by s. 397.415. Probationary and
3351 regular licenses may be issued only after all required
3352 information has been submitted. A license may not be
3353 transferred. As used in this subsection, the term "transfer"
3354 includes, but is not limited to, the transfer of a majority of
3355 the ownership interest in the licensed entity or transfer of
3356 responsibilities under the license to another entity by
3357 contractual arrangement.

3358 Section 44. Section 397.416, Florida Statutes, is amended
3359 to read:

3360 397.416 Substance abuse treatment services; qualified
3361 professional.—Notwithstanding any other provision of law, a
3362 person who was certified through a certification process



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3363 recognized by the former Department of Health and Rehabilitative
3364 Services before January 1, 1995, may perform the duties of a
3365 qualified professional with respect to substance abuse treatment
3366 services as defined in this chapter, and need not meet the
3367 certification requirements contained in s. 397.311(31) ~~or~~
3368 ~~397.311(30)~~.

3369 Section 45. Paragraph (b) of subsection (1) of section
3370 409.972, Florida Statutes, is amended to read:

3371 409.972 Mandatory and voluntary enrollment.—

3372 (1) The following Medicaid-eligible persons are exempt from
3373 mandatory managed care enrollment required by s. 409.965, and
3374 may voluntarily choose to participate in the managed medical
3375 assistance program:

3376 (b) Medicaid recipients residing in residential commitment
3377 facilities operated through the Department of Juvenile Justice
3378 or a mental health treatment facility ~~facilities~~ as defined in
3379 s. 394.455(50) ~~by s. 394.455(32)~~.

3380 Section 46. Paragraphs (d) and (g) of subsection (1) of
3381 section 440.102, Florida Statutes, are amended to read:

3382 440.102 Drug-free workplace program requirements.—The
3383 following provisions apply to a drug-free workplace program
3384 implemented pursuant to law or to rules adopted by the Agency
3385 for Health Care Administration:

3386 (1) DEFINITIONS.—Except where the context otherwise
3387 requires, as used in this act:

3388 (d) "Drug rehabilitation program" means a service provider,
3389 established pursuant to s. 397.311(40) ~~s. 397.311(39)~~, that
3390 provides confidential, timely, and expert identification,
3391 assessment, and resolution of employee drug abuse.



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3392 (g) "Employee assistance program" means an established
3393 program capable of providing expert assessment of employee
3394 personal concerns; confidential and timely identification
3395 services with regard to employee drug abuse; referrals of
3396 employees for appropriate diagnosis, treatment, and assistance;
3397 and followup services for employees who participate in the
3398 program or require monitoring after returning to work. If, in
3399 addition to the above activities, an employee assistance program
3400 provides diagnostic and treatment services, these services shall
3401 in all cases be provided by service providers pursuant to s.
3402 397.311(40) ~~s. 397.311(39)~~.

3403 Section 47. Subsection (7) of section 744.704, Florida
3404 Statutes, is amended to read:

3405 744.704 Powers and duties.—

3406 (7) A public guardian may ~~shall~~ not commit a ward to a
3407 mental health treatment facility, as defined in s. 394.455(50)
3408 ~~s. 394.455(32)~~, without an involuntary placement proceeding as
3409 provided by law.

3410 Section 48. Paragraph (a) of subsection (2) of section
3411 790.065, Florida Statutes, is amended to read:

3412 790.065 Sale and delivery of firearms.—

3413 (2) Upon receipt of a request for a criminal history record
3414 check, the Department of Law Enforcement shall, during the
3415 licensee's call or by return call, forthwith:

3416 (a) Review any records available to determine if the
3417 potential buyer or transferee:

- 3418 1. Has been convicted of a felony and is prohibited from
- 3419 receipt or possession of a firearm pursuant to s. 790.23;
- 3420 2. Has been convicted of a misdemeanor crime of domestic



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3421 violence, and therefore is prohibited from purchasing a firearm;

3422 3. Has had adjudication of guilt withheld or imposition of
3423 sentence suspended on any felony or misdemeanor crime of
3424 domestic violence unless 3 years have elapsed since probation or
3425 any other conditions set by the court have been fulfilled or
3426 expunction has occurred; or

3427 4. Has been adjudicated mentally defective or has been
3428 committed to a mental institution by a court or as provided in
3429 sub-sub-paragraph b.(II), and as a result is prohibited by
3430 state or federal law from purchasing a firearm.

3431 a. As used in this subparagraph, "adjudicated mentally
3432 defective" means a determination by a court that a person, as a
3433 result of marked subnormal intelligence, or mental illness,
3434 incompetency, condition, or disease, is a danger to himself or
3435 herself or to others or lacks the mental capacity to contract or
3436 manage his or her own affairs. The phrase includes a judicial
3437 finding of incapacity under s. 744.331(6) (a), an acquittal by
3438 reason of insanity of a person charged with a criminal offense,
3439 and a judicial finding that a criminal defendant is not
3440 competent to stand trial.

3441 b. As used in this subparagraph, "committed to a mental
3442 institution" means:

3443 (I) Involuntary commitment, commitment for mental
3444 defectiveness or mental illness, and commitment for substance
3445 abuse. The phrase includes involuntary inpatient placement as
3446 defined in s. 394.467, involuntary outpatient services placement
3447 as defined in s. 394.4655, involuntary assessment and
3448 stabilization under s. 397.6818, and involuntary substance abuse
3449 treatment under s. 397.6957, but does not include a person in a



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3450 mental institution for observation or discharged from a mental
3451 institution based upon the initial review by the physician or a
3452 voluntary admission to a mental institution; or

3453 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
3454 admission to a mental institution for outpatient or inpatient
3455 treatment of a person who had an involuntary examination under
3456 s. 394.463, where each of the following conditions have been
3457 met:

3458 (A) An examining physician found that the person is an
3459 imminent danger to himself or herself or others.

3460 (B) The examining physician certified that if the person
3461 did not agree to voluntary treatment, a petition for involuntary
3462 outpatient or inpatient services treatment would have been filed
3463 under s. 394.463(2) (g) ~~s. 394.463(2) (i)4~~, or the examining
3464 physician certified that a petition was filed and the person
3465 subsequently agreed to voluntary treatment before ~~prior to~~ a
3466 court hearing on the petition.

3467 (C) Before agreeing to voluntary treatment, the person
3468 received written notice of that finding and certification, and
3469 written notice that as a result of such finding, he or she may
3470 be prohibited from purchasing a firearm, and may not be eligible
3471 to apply for or retain a concealed weapon or firearms license
3472 under s. 790.06 and the person acknowledged such notice in
3473 writing, in substantially the following form:

3474
3475 "I understand that the doctor who examined me believes
3476 I am a danger to myself or to others. I understand
3477 that if I do not agree to voluntary treatment, a
3478 petition will be filed in court to require me to



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3479 receive involuntary treatment. I understand that if
3480 that petition is filed, I have the right to contest
3481 it. In the event a petition has been filed, I
3482 understand that I can subsequently agree to voluntary
3483 treatment prior to a court hearing. I understand that
3484 by agreeing to voluntary treatment in either of these
3485 situations, I may be prohibited from buying firearms
3486 and from applying for or retaining a concealed weapons
3487 or firearms license until I apply for and receive
3488 relief from that restriction under Florida law.”
3489

3490 (D) A judge or a magistrate has, pursuant to sub-sub-
3491 subparagraph c.(II), reviewed the record of the finding,
3492 certification, notice, and written acknowledgment classifying
3493 the person as an imminent danger to himself or herself or
3494 others, and ordered that such record be submitted to the
3495 department.

3496 c. In order to check for these conditions, the department
3497 shall compile and maintain an automated database of persons who
3498 are prohibited from purchasing a firearm based on court records
3499 of adjudications of mental defectiveness or commitments to
3500 mental institutions.

3501 (I) Except as provided in sub-sub-subparagraph (II), clerks
3502 of court shall submit these records to the department within 1
3503 month after the rendition of the adjudication or commitment.
3504 Reports shall be submitted in an automated format. The reports
3505 must, at a minimum, include the name, along with any known alias
3506 or former name, the sex, and the date of birth of the subject.

3507 (II) For persons committed to a mental institution pursuant



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3508 to sub-sub-subparagraph b.(II), within 24 hours after the
3509 person's agreement to voluntary admission, a record of the
3510 finding, certification, notice, and written acknowledgment must
3511 be filed by the administrator of the receiving or treatment
3512 facility, as defined in s. 394.455, with the clerk of the court
3513 for the county in which the involuntary examination under s.
3514 394.463 occurred. No fee shall be charged for the filing under
3515 this sub-sub-subparagraph. The clerk must present the records to
3516 a judge or magistrate within 24 hours after receipt of the
3517 records. A judge or magistrate is required and has the lawful
3518 authority to review the records ex parte and, if the judge or
3519 magistrate determines that the record supports the classifying
3520 of the person as an imminent danger to himself or herself or
3521 others, to order that the record be submitted to the department.
3522 If a judge or magistrate orders the submittal of the record to
3523 the department, the record must be submitted to the department
3524 within 24 hours.

3525 d. A person who has been adjudicated mentally defective or
3526 committed to a mental institution, as those terms are defined in
3527 this paragraph, may petition the circuit court that made the
3528 adjudication or commitment, or the court that ordered that the
3529 record be submitted to the department pursuant to sub-sub-
3530 subparagraph c.(II), for relief from the firearm disabilities
3531 imposed by such adjudication or commitment. A copy of the
3532 petition shall be served on the state attorney for the county in
3533 which the person was adjudicated or committed. The state
3534 attorney may object to and present evidence relevant to the
3535 relief sought by the petition. The hearing on the petition may
3536 be open or closed as the petitioner may choose. The petitioner



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3537 may present evidence and subpoena witnesses to appear at the
3538 hearing on the petition. The petitioner may confront and cross-
3539 examine witnesses called by the state attorney. A record of the
3540 hearing shall be made by a certified court reporter or by court-
3541 approved electronic means. The court shall make written findings
3542 of fact and conclusions of law on the issues before it and issue
3543 a final order. The court shall grant the relief requested in the
3544 petition if the court finds, based on the evidence presented
3545 with respect to the petitioner's reputation, the petitioner's
3546 mental health record and, if applicable, criminal history
3547 record, the circumstances surrounding the firearm disability,
3548 and any other evidence in the record, that the petitioner will
3549 not be likely to act in a manner that is dangerous to public
3550 safety and that granting the relief would not be contrary to the
3551 public interest. If the final order denies relief, the
3552 petitioner may not petition again for relief from firearm
3553 disabilities until 1 year after the date of the final order. The
3554 petitioner may seek judicial review of a final order denying
3555 relief in the district court of appeal having jurisdiction over
3556 the court that issued the order. The review shall be conducted
3557 de novo. Relief from a firearm disability granted under this
3558 sub-subparagraph has no effect on the loss of civil rights,
3559 including firearm rights, for any reason other than the
3560 particular adjudication of mental defectiveness or commitment to
3561 a mental institution from which relief is granted.

3562 e. Upon receipt of proper notice of relief from firearm
3563 disabilities granted under sub-subparagraph d., the department
3564 shall delete any mental health record of the person granted
3565 relief from the automated database of persons who are prohibited



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3566 from purchasing a firearm based on court records of
3567 adjudications of mental defectiveness or commitments to mental
3568 institutions.

3569 f. The department is authorized to disclose data collected
3570 pursuant to this subparagraph to agencies of the Federal
3571 Government and other states for use exclusively in determining
3572 the lawfulness of a firearm sale or transfer. The department is
3573 also authorized to disclose this data to the Department of
3574 Agriculture and Consumer Services for purposes of determining
3575 eligibility for issuance of a concealed weapons or concealed
3576 firearms license and for determining whether a basis exists for
3577 revoking or suspending a previously issued license pursuant to
3578 s. 790.06(10). When a potential buyer or transferee appeals a
3579 nonapproval based on these records, the clerks of court and
3580 mental institutions shall, upon request by the department,
3581 provide information to help determine whether the potential
3582 buyer or transferee is the same person as the subject of the
3583 record. Photographs and any other data that could confirm or
3584 negate identity must be made available to the department for
3585 such purposes, notwithstanding any other provision of state law
3586 to the contrary. Any such information that is made confidential
3587 or exempt from disclosure by law shall retain such confidential
3588 or exempt status when transferred to the department.

3589 Section 49. This act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/SB 12

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Senator Garcia and others

SUBJECT: Mental Health and Substance Abuse

DATE: February 22, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Fav/CS
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 12 addresses Florida’s system for the delivery of behavioral health services. The bill provides for mental health services for children, parents, and others seeking custody of children involved in dependency court proceedings. The bill creates a coordinated system of care to be provided either by a community or a region for those suffering from mental illness or substance use disorder through a “No Wrong Door” system of single access points.

The Agency for Health Care Administration (AHCA) and the Department of Children and Families (DCF) are directed to modify licensure requirements to create an option for a single, consolidated license to provide both mental health and substance use disorder services. Additionally, the AHCA and the DCF are directed to develop a plan to increase federal funding for behavioral health care.

To the extent possible, the bill aligns the legal processes, timelines, and processes for assessment, evaluation, and receipt of available services of the Baker Act (mental illness) and Marchman Act (substance abuse) to assist individuals in recovery and reduce readmission to the system.

The duties and responsibilities of the DCF are revised to set performance measures and standards for managing entities¹ and to enter into contracts with the managing entities that support efficient and effective administration of the behavioral health system and ensure accountability for performance. The duties and responsibilities of managing entities are revised accordingly. Additionally, the bill would allow behavioral health organizations to be eligible to bid for managing entity contracts under certain circumstances.

The bill expands the membership of the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee, allows not-for-profit community providers or managing entities to apply for grants, and creates a grant review and selection committee to select grant recipients.

Under the bill, Medicaid managed care plans are required to work toward integration and coordination of primary care and behavioral health services for Medicaid recipients.

A person who holds a provisional license in clinical social work, marriage and family therapy, or mental health counseling may not apply for intern registration in the same profession once the intern registration expires in five years without obtaining full licensure under the bill.

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Mental Health and Substance Abuse

Mental illness creates enormous social and economic costs.² Unemployment rates for persons with mental disorders are high relative to the overall population.³ People with severe mental illness have exceptionally high rates of unemployment, between 60 percent and 100 percent.⁴ Mental illness increases a person's risk of homelessness in America threefold.⁵ Studies show that approximately 33 percent of our nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are not receiving treatment.⁶ Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future re-offenses.⁷

¹ See s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida which is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.

² Mental Illness: The Invisible Menace, *Economic Impact* <http://www.mentalmenace.com/economicimpact.php>

³ Mental Illness: The Invisible Menace, *More impacts and facts* <http://www.mentalmenace.com/impactsfacts.php>

⁴ *Id.*

⁵ Family Guidance Center, *How does Mental Illness Impact Rates of Homelessness?* (February 4, 2014) available at <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/>

⁶ *Id.*

⁷ *Id.*

According to the National Alliance on Mental Illness (NAMI), approximately 50 percent of individuals with severe mental health disorders are affected by substance abuse.⁸ NAMI also estimates that 29 percent of all people diagnosed as mentally ill abuse alcohol or other drugs.⁹ When mental health disorders are left untreated, substance abuse is likely to increase. When substance abuse increases, mental health symptoms often increase as well or new symptoms may be triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.¹⁰

Behavioral Health Managing Entities

In 2008, the Legislature required the Department of Children and Families (DCF) to implement a system of behavioral health managing entities that would serve as regional agencies to manage and pay for mental health and substance abuse services.¹¹ Prior to this time, the DCF, through its regional offices, contracted directly with behavioral health service providers. The Legislature found that a management structure that places the responsibility for publicly-financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level, would promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. There are currently seven managing entities across the state.¹² The managing entities are required to be not-for-profit organizations and were awarded contracts by DCF through the competitive procurement process. The current managing entity contracts were awarded for an initial five-year term with a renewal option of up to five years based on satisfactory performance. All seven managing entities contracts have been or will be renewed for five years as of July 1, 2016.¹³

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹⁴ The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

⁸ Donna M. White, LPCI, CACP, Psych Central.com, *Living with Co-Occurring Mental & Substance Abuse Disorders*, (October 2, 2013) available at <http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance-abuse-disorders/>

⁹ *Id.*

¹⁰ *Id.*

¹¹ See s. 394.9082, F.S., as created by Chapter 2008-243, Laws of Fla.

¹² Department of Children and Families website, <http://www.myflfamilies.com/service-programs/substance-abuse/managing-entities>, (last visited Jan. 11, 2016).

¹³ Telephone discussion between DCF contract management staff and staff of the Senate Committee on Children, Families, and Elder Affairs, Feb, 19, 2016.

¹⁴ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.¹⁵

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.¹⁶

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.¹⁷ However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.¹⁸

Involuntary Admission to a Facility

Criteria for Involuntary Admission

The Marchman Act provides that a person meets the criteria for involuntary admission if a good-faith reason exists to believe that the person is substance-impaired and, because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
 - Has inflicted, threatened to or attempted to inflict self-harm; or
 - Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.¹⁹

¹⁵ Section 397.6795, F.S.

¹⁶ Section 394.462(1)(f) and (g), F.S.

¹⁷ Section 397.6772(1), F.S.

¹⁸ Section 394.459(1), F.S.

¹⁹ Section 397.675, F.S.

Protective Custody

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.²⁰ The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.²¹ If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.²²

Time Limits

A critical 72-hour period applies under both the Marchman Act and the Baker Act. Under the Marchman Act, a person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.²³

The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.²⁴ Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.²⁵

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of five days to a facility for involuntary assessment and stabilization.²⁶ If the facility needs more time, the facility may request a seven-day extension from the court.²⁷ Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.²⁸

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.²⁹ The petitioner must show, by clear and convincing evidence, all available less-restrictive treatment alternatives are inappropriate and that the individual:

²⁰ Section 397.677, F.S.

²¹ Section 397.6771, F.S.

²² Section 397.6772(1), F.S.

²³ Section 397.6773(1) and (2), F.S.

²⁴ Section 394.463(2)(f), F.S.

²⁵ Section 394.463(2)(i)4., F.S.

²⁶ Section 397.6811, F.S.

²⁷ Section 397.6821, F.S.

²⁸ Section 397.6822, F.S.

²⁹ Sections 394.4655(6) and 394.467(6), F.S.

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect that poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.³⁰

Social Work, Therapy and Counseling Interns

In Florida, an individual may register as an intern in clinical social work, marriage and family therapy, or mental health counseling. Registering as an intern enables an individual to gain the required postgraduate or post-master's clinical experience that is required for full licensure. Currently, 1,500 hours of face-to-face psychotherapy is required, which may not be accrued in fewer than 100 weeks.³¹

An applicant seeking registration as an intern must:³²

- Submit the application form and the nonrefundable fee;
- Complete the education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

Currently, an intern may renew his or her registration every biennium, with no limit on the number of times a registration may be renewed.

A provisional license allows individual practice, under supervision of a licensed mental health professional, while not meeting all of the clinical experience requirements. Individuals must meet minimum coursework requirements, and possess the appropriate graduate degree. A provisional license is valid for two years.³³

Suitability Assessments for Children in the Child Welfare System

Current law provides a process for assessing a child in the legal custody of the DCF for suitability for residential mental health treatment. This assessment must be conducted by a qualified evaluator and evaluate whether the child appears to have an emotional disturbance serious enough to require treatment. The child must have the treatment explained to him or her.³⁴

³⁰ Section 394.467(1), F.S.

³¹ Rule 67B4-2.001, F.A.C.

³² Section 491.005, F.S.

³³ Section 491.0046, F.S. and Rule 64B-3.0075, F.A.C.

³⁴ Section 39.407, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 29.004, F.S., to allow courts to use state revenue to provide case management services such as service referral, monitoring, and tracking for mental health programs under s. 394, F.S.

Section 2 amends s. 39.001(6), F.S., to include mental health treatment in dependency court services and directs the state to contract with mental health service providers for such services.

Section 3 amends s. 39.407, F.S., to allow a Medicaid managed care plan that may be financially responsible for a child's placement in a residential treatment center to receive a copy of the evaluation and suitability assessment performed by a qualified evaluator.

Section 4 amends s. 39.507(10), F.S., to allow a dependency court to order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation, require participation of such person in a mental health program or a treatment-based drug court program, and to oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

Section 5 amends s. 39.521(1)(b), F.S., to authorize a court, with jurisdiction of a child that has been adjudicated dependent, to require the person who has custody or is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation, to require the person to participate in and comply with the mental health program or drug court program, and to oversee the progress and compliance by the person who has custody or is requesting custody of a child.

Section 6 amends s. 394.455, F.S., to add, update, or revise definitions as appropriate.

Section 7 amends s. 394.4573, F.S., to create a coordinated system of care in the context of the No Wrong Door model which is defined as a delivery system of health care services to persons with mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the system.

The bill also defines a coordinated system of care to mean the full array of behavioral and related services in a region or community offered by all service providers, whether under contract with the managing entity or another method of community partnership or mutual agreement.

Additionally, the Department of Children and Families (DCF) is required to submit, on or before October 1 of each year, an annual assessment of the behavioral health services in the state to the Governor and the Legislature. The assessment must include comparison of the status and performance of behavioral health systems, the capacity of contracted services providers to meet estimated needs, the degree to which services are offered in the least restrictive and most appropriate therapeutic environment, and the scope of system-wide accountability activities used to monitor patient outcomes and measure continuous improvement of the behavioral health system.

The bill authorizes the DCF, subject to a specific appropriation, to award system improvement grants to managing entities based on the submission of detailed plans to enhance services, coordination of services, or a performance measurement in accordance with the No Wrong Door model. The grants must be awarded through a performance-based contract that links payments to documented and measurable system improvements.

The essential elements of a coordinated system of care under the bill must include community interventions, a designated receiving system that consists of one or more facilities serving a defined geographic area, transportation, crisis services, case management, including intensive case management, and various other services.

Section 8 amends s. 394.4597(2)(d) and (e), F.S., to specify the persons who are prohibited from being named as a patient's representative.

Section 9 amends s. 394.4598(2) through (7), F.S., to specify the persons who are prohibited from appointment as a patient's guardian advocate when a court has determined that a person is incompetent to consent to treatment but the person has not been adjudicated incapacitated. The bill also sets out the training requirements for persons appointed as guardian advocates. Public and professional guardians are not included in the exemption of persons providing substantial professional services to act as a patient's guardian advocate.

Section 10 amends s. 394.462, F.S., to direct that a transportation plan must be developed and implemented in each county or, if applicable, counties that intend to share a transportation plan. The plan must specify methods of transport to a facility within the designated receiving system and may delegate responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that persons meeting the criteria for involuntary assessment and evaluation pursuant to s. 394.463 and 397.675 will be transported. For the transportation of a voluntary or involuntary patient to a treatment facility, the plan must specify how the hospitalized patient will be transported to, from, and between facilities.

Section 11 amends s. 394.463(2), F.S., to allow a circuit or county court to enter an ex parte order stating that a person appears to meet the criteria for involuntary examination. The ex parte order must be based on written or oral sworn testimony that includes specific facts supporting the findings. Facilities accepting patients based on ex parte orders must send a copy of the order to the managing entity in its region the next working day. A facility admitting a person for involuntary examination who is not accompanied by an ex parte order must notify the DCF and the managing entity the next working day.

The bill also adds language that a person may not be held for involuntary examination for more than 72 hours without specified actions being taken.

Section 12 amends s. 394.4655, F.S., to allow a court to order a person to involuntary outpatient services, upon a finding by clear and convincing evidence, that the person meets the criteria specified. The recommendation by the administrator of a facility of a person for involuntary outpatient services must be supported by two qualified professionals, both of whom have personally examined the person within the preceding 72 hours. A court may not order services in a proposed treatment plan which are not available. The service provider must notify the

managing entity as to the availability of the requested services, and the managing entity must document its efforts to obtain the requested services. The recommendation for involuntary outpatient services by an administrator of a facility must be supported by the opinion of two qualified professionals.

When a petition for involuntary outpatient services is filed, a hearing is held, and the court must appoint the public defender to represent the person who is the subject of the petition. The state attorney in the circuit in which the person is located shall represent the state as the real party in interest and be provided access to the person's clinical records and witnesses. The state attorney is also authorized to independently evaluate the sufficiency and appropriateness of the petition.

Section 13 amends s. 394.467, F.S., to add to the criteria for involuntary inpatient placement for mental illness the present threat of substantial physical or mental harm to a person's well-being. The bill prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility.

When a petition for involuntary inpatient placement is filed, a hearing is held, and the court must appoint the public defender to represent the person who is the subject of the petition. The state attorney in the circuit in which the person is located shall represent the state as the real party in interest and be provided access to the person's clinical records and witnesses. The state attorney is also authorized to independently evaluate the sufficiency and appropriateness of the petition.

Section 14 amends s. 394.46715, F.S., to provide the DCF rulemaking authority.

Section 15 amends 2. 394.656, F.S., to convert the Statewide Grant Review Committee to the Statewide Grant Policy Committee. The Policy Committee will consist of the existing members of the Review Committee and will have 10 additional members. The Policy Committee will serve as the advisory body to review policy and funding issues that help reduce the impact of persons with mental illnesses and substance abuse disorders on communities. The DCF is required to create a grant review selection committee which will be responsible for evaluating grant applications and selecting recipients.

The bill authorizes the DCF to require, at its discretion, an applicant for a grant to conduct sequential intercept mapping for a project. The bill defines sequential intercept mapping as a process for reviewing a local community's mental health, substance abuse, criminal justice, and related systems and identifying points of interceptions where interventions may be made to prevent an individual with a substance use disorder or mental illness from penetrating further into the criminal justice system.

Section 16 creates s. 394.761, F.S., to direct the DCF, in coordination with the managing entities, to compile detailed documentation of the cost and reimbursements for Medicaid-covered services provided to Medicaid-eligible individuals by providers of behavioral health services that are also funded through the DCF. The DCF's documentation, along with a report of general revenue funds supporting behavioral health services that are not spent as matching funds for federal programs or otherwise required under federal regulations, must be submitted to the Agency for Health Care Administration (AHCA) by December 31, 2016. Copies of the report

must also be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If the report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the AHCA and the DCF will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal year to draw additional federal funding to increase Medicaid funding for behavioral health service providers receiving the unmatched general revenue. Such payments must be made to providers in accordance with federal law and regulations.

Section 17 amends s. 394.875, F.S., to direct the DCF and the AHCA, by January 1, 2017, to modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under chs. 394 and 397, F.S.

Section 18 amends s. 394.9082, F.S., to revise and update the duties and responsibilities of the managing entities and the DCF and to provide definitions, contracting requirements, and accountability measures.

The DCF's duties and responsibilities are revised to include the designation of facilities into the receiving system developed by one or more counties; contract with the managing entities; specify data reporting and use of shared data systems; develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice system; support the development and implementation of a coordinated system of care to require providers receiving state funds through a direct contract with the DCF to work with the managing entity to coordinate the provision of behavioral health services; set performance measures and standards for managing entities; develop a unique identifier for clients receiving services; and coordinate procedures for referral and admission of patients to, and discharge from, state treatment facilities.

This section sets out the DCF's duties regarding its contracts with the managing entities. The contracts must support efficient and effective administration of the behavioral health system and ensure accountability for performance. The DCF must first attempt to contract with not-for-profit organizations to serve as managing entities. Under certain circumstances, the DCF may contract with a managed behavioral health organization. The DCF may continue its contract with a managing entity for up to five years, including any and all renewals and extensions, if it is determined that the managing entity has made progress toward the implementation of a coordinated system of care in its geographic region.

The revised and updated duties and responsibilities of the managing entities under the bill include conducting an assessment of community behavioral health care needs in each managing entity's geographic area. The assessment must be updated annually and include, at a minimum, information the DCF needs for its annual report to the Governor and Legislature. Managing entities must also develop local resources by pursuing third-party payments for services, applying for grants, and other methods to ensure services are available and accessible; provide assistance to counties to develop a designated receiving system and a transportation plan; enter into cooperative agreements with local homeless councils and organizations to address the homelessness of persons suffering from a behavioral health crisis; provide or contract for case management; and collaborate with local criminal and juvenile justice systems to divert persons

with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

Section 19 amends s. 397.311, F.S., to create a definition for “involuntary services”, “informed consent”, and revise the definition of “qualified professional.”

Section 20 amends s. 397.675, F.S., to revise the criteria for assessment, stabilization, and involuntary treatment for persons with a substance abuse or co-occurring mental health disorder to include that without care or treatment, the person is likely to suffer from neglect or to refuse to care for himself or herself and that neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or is likely to inflict, physical harm on himself or herself, or another.

Section 21 amends s. 397.679, F.S., to expand the types of professionals who may execute a certificate for application for emergency admission of a person to a hospital or licensed detoxification facility to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master’s level certified addictions professional if the certification is specific to substance abuse disorders.

Section 22 amends s. 397.6791, F.S., to expand the types of professionals who may initiate a certificate for emergency assessment or admission of a person who may meet the criteria for substance abuse disorder to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master’s level certified addictions professional if the certification is specific to substance abuse disorders

Section 23 amends s. 397.6793, F.S., to revise the criteria for a person to be examined or assessed to include a reasonable belief that without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being. The professional’s certificate authorizing the involuntary admission of a person is valid for seven days after issuance.

Section 24 amends s. 397.6795, F.S., to allow a person’s spouse or guardian, or a law enforcement officer, to deliver a person named in a professional’s certificate for emergency admission to a hospital or licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 25 amends s. 397.681, F.S., to specify that a court clerk may not charge a filing fee for the filing of a petition for involuntary assessment and stabilization.

Section 26 amends s. 397.6811(1), F.S., to allow a petition for assessment and stabilization to be filed by a person who has direct personal knowledge of a person’s substance abuse disorder.

Section 27 amends s. 397.6814, F.S., to remove the requirement that a petition for involuntary assessment and stabilization contain a statement regarding the person's ability to afford an attorney. This section also directs that a fee may not be charged for the filing of a petition pursuant to this section.

Section 28 amends s. 397.6819, F.S., to allow a licensed service provider to admit a person for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated pending further order of the court.

Section 29 amends s. 397.695, F.S., to provide for the filing of a petition for involuntary outpatient services and the professionals that must support such a recommendation. If the person has been stabilized and no longer meets the criteria for involuntary assessment and stabilization, he or she must be released while waiting for the hearing. The service provider must prepare certain reports and a treatment plan, including certification to the court that the recommended services are available. If the services are unavailable, the petition may not be filed with the court.

Section 30 amends s. 397.6951, F.S., to amend the content requirements of the petition for involuntary outpatient services to include the person's history of failure to comply with treatment requirements, a factual allegation that the person is unlikely to voluntarily participate in the recommended services, and a factual allegation that the person is in need of the involuntary outpatient services.

Section 31 amends s. 397.6955, F.S., to update the duties of the court upon the filing of a petition for involuntary outpatient services by including the requirement to schedule a hearing within five days unless a continuance is granted.

Section 32 amends s. 397.6957, F.S., to update the requirements of the court to hear and review all relevant evidence at a hearing for involuntary outpatient services, including the requirement that the petitioner has the burden of proving by clear and convincing evidence that the respondent has a history of lack of compliance with treatment for substance abuse, is unlikely to voluntarily participate in the recommended treatment, and that, without services, is likely to suffer from neglect or to refuse to care for himself or herself. One of the qualified professionals that executed the involuntary outpatient services certificate must be a witness at the hearing.

Section 33 amends s. 397.697, F.S., to allow courts to order involuntary services when the court finds the conditions have been proven by clear and convincing evidence; however, the court cannot order involuntary services if the recommended services are not available. The bill allows for the court to order involuntary services and removes the term "outpatient" from the type of services that may be provided.

Section 34 amends s. 397.6971, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term "outpatient" from the type of services that may be provided.

Section 35 amends s. 397.6975, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term “outpatient” from the type of services that may be provided.

Section 36 amends s. 397.6977, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term “outpatient” from the type of services that may be provided.

Section 37 creates s. 397.6978, F.S., to allow for the appointment of a guardian advocate for a person determined incompetent to consent to treatment. The bill lists the persons prohibited from being appointed the patient’s guardian advocate. Public guardians and professional guardians are excluded from the persons that are exempt from appointment as an individual’s guardian advocate.

Section 38 amends s. 409.967, F.S., to direct Medicaid managed care plans to provide services in a manner that integrates behavioral health services and primary care.

Section 39 amends s. 409.973, F.S., to direct each Medicaid managed care plan to work with the managing entity in its area to enhance integration and coordination of primary care and behavioral health services for Medicaid recipients.

Section 40 amends s. 491.0045, F.S., to provide that an intern registration is valid for five years. Registrations issued on or before March 31, 2017, expire March 31, 2022 and may not be renewed or reissued. Registrations issued after March 31, 2017, expire 60 months after the date issued. Subsequent intern registrations may not be issued unless the candidate has passed the theory and practice examination.

Repeals

This bill repeals a number of obsolete and duplicative sections of statute, as follows:

- Section 394.4674, F.S., which requires the DCF to complete a deinstitutionalization plan. This section was enacted in 1980 and is obsolete following further developments in federal law.
- Section 394.4985, F.S., which requires the DCF’s regions to develop and maintain an information and referral network. This duplicates other requirements.
- Section 394.745, F.S., which requires an annual report to the Legislature of compliance of substance abuse and mental health treatment providers under contract with the DCF.
- Section 397.331, F.S., which provides definitions and legislative intent related to state drug control.
- Sections 397.6772, 397.697 and 397.801, F.S., requiring the Departments of Education, Corrections, Law Enforcement and Children and Families to each designate substance abuse impairment coordinators, and for the DCF to also designate full-time substance abuse impairment coordinators in each of its regions.
- Section 397.811, F.S., which expresses the Legislature’s intent that substance abuse prevention an early intervention programs be funded.

- Section 397.821, F.S., authorizing each judicial circuit to establish juvenile substance abuse impairment prevention and early intervention councils to identify needs. Managing entities now perform these duties.
- Section 397.901, F.S., authorizing the DCF to establish prototype juvenile addiction receiving facilities. This section was enacted in 1993 and these projects are completed.
- Section 397.93, F.S., specifying target populations for children's substance abuse services, which duplicates other statutory requirements. This duplicates other provisions of law.
- Section 397.94, F.S., requiring the DCF's regions to plan and provide for information and referral services regarding children's substance abuse services.
- Section 397.951, F.S., requiring the DCF to ensure that treatment providers use sanctions provided elsewhere in law to keep children in substance abuse treatment.
- Sections 397.97 and 397.98, F.S., relating to the Children's Network of Care Demonstration Models, authorizing their operation for four years. These were originally established in 1999.

Section 41 amends s. 39.407, F.S., to correct cross-references.

Section 42 amends s. 212.055, F.S., to correct cross-references.

Section 43 amends s. 394.4599, F.S., to correct cross-references.

Section 44 amends s. 394.495(3), F.S., to correct cross-references.

Section 45 amends s. 394.496(5), F.S., to correct cross-references.

Section 46 amends s. 394.9085(6), F.S., to correct cross-references.

Section 47 amends s. 397.321, F.S., to correct cross-references.

Section 48 amends s. 397.405(8), F.S., to correct cross-references.

Section 49 amends s. 397.407(1) and (5), F.S., to correct cross-references.

Section 50 amends s. 397.416, F.S., to correct cross-references.

Section 51 amends s. 397.4871, F.S., to correct cross-references.

Section 52 amends s. 409.966, F.S., to correct cross-references.

Section 53 amends s. 409.972(1)(b), F.S., to correct cross-references.

Section 54 amends s. 440.102(1)(d) and (g), F.S., to correct cross-references.

Section 55 amends s. 744.704(7), F.S., to correct cross-references.

Section 56 amends s. 790.065(2)(a), F.S., to correct cross-references.

Section 57 provides an effective date of July 1, 2016.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Since the bill requires a transportation plan to be developed and implemented in each county or, if applicable, in counties that intend to share a transportation plan, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an “insignificant fiscal impact.” The fiscal impact of this requirement is indeterminate because the number of rides needed by residents cannot be predicted. If the costs exceed the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

CS/SB 12 prohibits a filing fee being charged for Marchman Act petitions; however, this does not create a fiscal impact on the clerks of court or the state court system because no fees are currently assessed.³⁵

B. Private Sector Impact:

Persons appointed by the court as guardian advocates for individuals in need of behavioral health services will have increased training requirements under the bill.

Behavioral health managing entities that have made progress towards the implementation of a coordinated care system in its region may have its contract continued for no more than five years by the DCF.

Affected clinical social work, marriage and family therapist, and mental health counselor interns will have to meet new minimum qualifications for practice and will experience new requirements for supervision, which will have an indeterminate impact on their ability to practice. Intern registrations will be valid for five years but may not be renewed unless the intern has passed the applicable theory and practice examination. The affected

³⁵ E-mail received from Florida Court Clerks & Comptroller, Nov. 6, 2015, and on file in the Senate Committee on Children, Families & Elder Affairs.

interns will also be relieved of having to pay a biennial fee to renew their intern registrations but will be required to pass the applicable theory and practice examination.

C. Government Sector Impact:

State

To the extent that the bill encourages the use of involuntary outpatient services rather than inpatient placement, the state would experience a positive fiscal impact. The cost of care in state treatment facilities is more expensive than community based behavioral health care. The amount of this potential cost savings is indeterminate.

Under the bill, the DCF has revised duties to review local behavioral health care plans, write or revise rules, and award any grants for implementation of the No Wrong Door policy. Similar administrative duties are currently performed by the DCF so these revised duties are not expected to create a fiscal impact.

Local

Local governments must revise their transportation plans for acute behavioral health care under the Baker Act and Marchman Act. The bill requires that as part of the transportation plan for the No Wrong Door policy, the local government must describe how transportation will be provided between the single point of entry for behavioral health care and other treatment providers or settings as appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 29.004, 39.001, 39.407, 39.507, 39.521, 394.455, 394.4573, 394.4597, 394.4598, 394.462, 394.463, 394.4655, 394.467, 394.46715, 394.656, 394.761, 394.875, 394.9082, 397.311, 397.321, 397.4871, 397.675, 397.679, 397.6791, 397.6793, 397.6795, 397.681, 397.6811, 397.6814, 397.6819, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, 397.6977, 397.6978, 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.966, 409.967, 409.972, 440.102, 491.0045, 744.704, and 790.065.

This bill creates the following sections of the Florida Statutes: 394.761 and 397.6978.

This bill repeals the following sections of the Florida Statutes: 394.4674, 394.4985, 394.745, 397.331, 397.6772, 397.697, 397.801, 397.811, 397.821, 397.901, 397.93, 397.94, 397.951, 397.97, and 397.98.

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

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

CS by Appropriations on February 18, 2016:

The CS:

- Expands the membership of the Criminal Justice, Mental health, and Substance Abuse Statewide Grant Review Committee; allows not-for-profit community providers or managing entities to apply for grants; and creates a grant review and selection committee that will select grant recipients;
- Allows the state attorney to have access to clinical records and witnesses when representing the state in Baker Act hearings;
- Revises the DCF's contracting requirements for managing entities; allows managed behavioral health organizations to be eligible to bid for managing entity contracts under certain circumstances;
- Requires Medicaid managed care plans to work toward integration and coordination of primary care and behavioral health services for Medicaid recipients; and
- Requires intern registration for clinical social work, marriage and family therapists, or mental health counselors to be valid for five years, and subsequent intern registrations may not be issued unless the candidate has passed the theory and practice examination required under current law.

B. Amendments:

None.

By Senator Garcia

38-01698B-16

201612__

A bill to be entitled

1 An act relating to mental health and substance abuse;
 2 amending s. 29.004, F.S.; including services provided
 3 to treatment-based mental health programs within case
 4 management funded from state revenues as an element of
 5 the state courts system; amending s. 39.001, F.S.;
 6 providing legislative intent regarding mental illness
 7 for purposes of the child welfare system; amending s.
 8 39.507, F.S.; providing for consideration of mental
 9 health issues and involvement in treatment-based
 10 mental health programs in adjudicatory hearings and
 11 orders; amending s. 39.521, F.S.; providing for
 12 consideration of mental health issues and involvement
 13 in treatment-based mental health programs in
 14 disposition hearings; amending s. 394.455, F.S.;
 15 defining terms; revising definitions; amending s.
 16 394.4573, F.S.; requiring the Department of Children
 17 and Families to submit a certain assessment to the
 18 Governor and the Legislature by a specified date;
 19 redefining terms; providing essential elements of a
 20 coordinated system of care; providing requirements for
 21 the department's annual assessment; authorizing the
 22 department to award certain grants; deleting duties
 23 and measures of the department regarding continuity of
 24 care management systems; amending s. 394.4597, F.S.;
 25 revising the prioritization of health care surrogates
 26 to be selected for involuntary patients; specifying
 27 certain persons who are prohibited from being selected
 28 as an individual's representative; amending s.
 29 394.4598, F.S.; specifying certain persons who are
 30 prohibited from being appointed as a person's guardian
 31 advocate; amending s. 394.462, F.S.; requiring that
 32

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38-01698B-16

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33 counties develop and implement transportation plans;
 34 providing requirements for the plans; revising
 35 requirements for transportation to a receiving
 36 facility and treatment facility; deleting exceptions
 37 to such requirements; amending s. 394.463, F.S.;
 38 authorizing county or circuit courts to enter ex parte
 39 orders for involuntary examinations; requiring a
 40 facility to provide copies of ex parte orders,
 41 reports, and certifications to managing entities and
 42 the department, rather than the Agency for Health Care
 43 Administration; requiring the managing entity and
 44 department to receive certain orders, certificates,
 45 and reports; requiring the department to provide such
 46 documents to the Agency for Health Care
 47 Administration; requiring certain individuals to be
 48 released to law enforcement custody; providing
 49 exceptions; amending s. 394.4655, F.S.; providing for
 50 involuntary outpatient services; requiring a service
 51 provider to document certain inquiries; requiring the
 52 managing entity to document certain efforts; making
 53 technical changes; amending s. 394.467, F.S.; revising
 54 criteria for involuntary inpatient placement;
 55 requiring a facility filing a petition for involuntary
 56 inpatient placement to send a copy to the department
 57 and managing entity; revising criteria for a hearing
 58 on involuntary inpatient placement; revising criteria
 59 for a procedure for continued involuntary inpatient
 60 services; specifying requirements for a certain waiver
 61 of the patient's attendance at a hearing; requiring

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62 the court to consider certain testimony and evidence
 63 regarding a patient's incompetence; amending s.
 64 394.46715, F.S.; revising rulemaking authority of the
 65 department; creating s. 394.761, F.S.; authorizing the
 66 agency and the department to develop a plan for
 67 revenue maximization; requiring the plan to be
 68 submitted to the Legislature by a certain date;
 69 amending s. 394.875, F.S.; requiring the department to
 70 modify licensure rules and procedures to create an
 71 option for a single, consolidated license for certain
 72 providers by a specified date; amending s. 394.9082,
 73 F.S.; providing a purpose for behavioral health
 74 managing entities; revising definitions; providing
 75 duties of the department; requiring the department to
 76 revise its contracts with managing entities; providing
 77 duties for managing entities; deleting provisions
 78 relating to legislative findings and intent, service
 79 delivery strategies, essential elements, reporting
 80 requirements, and rulemaking authority; amending s.
 81 397.311, F.S.; defining the term "involuntary
 82 services"; revising the definition of the term
 83 "qualified professional"; conforming a cross-
 84 reference; amending s. 397.675, F.S.; revising the
 85 criteria for involuntary admissions due to substance
 86 abuse or co-occurring mental health disorders;
 87 amending s. 397.679, F.S.; specifying the licensed
 88 professionals who may complete a certificate for the
 89 involuntary admission of an individual; amending s.
 90 397.6791, F.S.; providing a list of professionals

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91 authorized to initiate a certificate for an emergency
 92 assessment or admission of a person with a substance
 93 abuse disorder; amending s. 397.6793, F.S.; revising
 94 the criteria for initiation of a certificate for an
 95 emergency admission for a person who is substance
 96 abuse impaired; amending s. 397.6795, F.S.; revising
 97 the list of persons who may deliver a person for an
 98 emergency assessment; amending s. 397.681, F.S.;
 99 prohibiting the court from charging a fee for
 100 involuntary petitions; amending s. 397.6811, F.S.;
 101 revising the list of persons who may file a petition
 102 for an involuntary assessment and stabilization;
 103 amending s. 397.6814, F.S.; prohibiting a fee from
 104 being charged for the filing of a petition for
 105 involuntary assessment and stabilization; amending s.
 106 397.6819, F.S.; revising the responsibilities of
 107 service providers who admit an individual for an
 108 involuntary assessment and stabilization; amending s.
 109 397.695, F.S.; authorizing certain persons to file a
 110 petition for involuntary outpatient services of an
 111 individual; providing procedures and requirements for
 112 such petitions; amending s. 397.6951, F.S.; requiring
 113 that certain additional information be included in a
 114 petition for involuntary outpatient services; amending
 115 s. 397.6955, F.S.; requiring a court to fulfill
 116 certain additional duties upon the filing of petition
 117 for involuntary outpatient services; amending s.
 118 397.6957, F.S.; providing additional requirements for
 119 a hearing on a petition for involuntary outpatient

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120 services; amending s. 397.697, F.S.; authorizing a
 121 court to make a determination of involuntary
 122 outpatient services; prohibiting a court from ordering
 123 involuntary outpatient services under certain
 124 circumstances; requiring the service provider to
 125 document certain inquiries; requiring the managing
 126 entity to document certain efforts; requiring a copy
 127 of the court's order to be sent to the department and
 128 managing entity; providing procedures for
 129 modifications to such orders; amending s. 397.6971,
 130 F.S.; establishing the requirements for an early
 131 release from involuntary outpatient services; amending
 132 s. 397.6975, F.S.; requiring the court to appoint
 133 certain counsel; providing requirements for hearings
 134 on petitions for continued involuntary outpatient
 135 services; requiring notice of such hearings; amending
 136 s. 397.6977, F.S.; conforming provisions to changes
 137 made by the act; creating s. 397.6978, F.S.; providing
 138 for the appointment of guardian advocates if an
 139 individual is found incompetent to consent to
 140 treatment; providing a list of persons prohibited from
 141 being appointed as an individual's guardian advocate;
 142 providing requirements for a facility requesting the
 143 appointment of a guardian advocate; requiring a
 144 training course for guardian advocates; providing
 145 requirements for the training course; providing
 146 requirements for the prioritization of individuals to
 147 be selected as guardian advocates; authorizing certain
 148 guardian advocates to consent to medical treatment;

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149 providing exceptions; providing procedures for the
 150 discharge of a guardian advocate; amending ss. 39.407,
 151 212.055, 394.4599, 394.495, 394.496, 394.9085,
 152 397.405, 397.407, 397.416, 409.972, 440.102, 744.704,
 153 and 790.065, F.S.; conforming cross-references;
 154 providing an effective date.
 155

156 Be It Enacted by the Legislature of the State of Florida:
 157

158 Section 1. Paragraph (e) is added to subsection (10) of
 159 section 29.004, Florida Statutes, to read:

160 29.004 State courts system.—For purposes of implementing s.
 161 14, Art. V of the State Constitution, the elements of the state
 162 courts system to be provided from state revenues appropriated by
 163 general law are as follows:

164 (10) Case management. Case management includes:

165 (e) Service referral, coordination, monitoring, and
 166 tracking for mental health programs under chapter 394.
 167

168 Case management may not include costs associated with the
 169 application of therapeutic jurisprudence principles by the
 170 courts. Case management also may not include case intake and
 171 records management conducted by the clerk of court.

172 Section 2. Subsection (6) of section 39.001, Florida
 173 Statutes, is amended to read:

174 39.001 Purposes and intent; personnel standards and
 175 screening.—

176 (6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

177 (a) The Legislature recognizes that early referral and

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178 comprehensive treatment can help combat mental illness and
 179 substance abuse disorders in families and that treatment is
 180 cost-effective.

181 (b) The Legislature establishes the following goals for the
 182 state related to mental illness and substance abuse treatment
 183 services in the dependency process:

184 1. To ensure the safety of children.

185 2. To prevent and remediate the consequences of mental
 186 illness and substance abuse disorders on families involved in
 187 protective supervision or foster care and reduce the occurrences
 188 of mental illness and substance abuse disorders, including
 189 alcohol abuse or other related disorders, for families who are
 190 at risk of being involved in protective supervision or foster
 191 care.

192 3. To expedite permanency for children and reunify healthy,
 193 intact families, when appropriate.

194 4. To support families in recovery.

195 (c) The Legislature finds that children in the care of the
 196 state's dependency system need appropriate health care services,
 197 that the impact of mental illnesses and substance abuse on
 198 health indicates the need for health care services to include
 199 treatment for mental health and substance abuse disorders for
 200 services to children and parents where appropriate, and that it
 201 is in the state's best interest that such children be provided
 202 the services they need to enable them to become and remain
 203 independent of state care. In order to provide these services,
 204 the state's dependency system must have the ability to identify
 205 and provide appropriate intervention and treatment for children
 206 with personal or family-related mental illness and substance

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207 abuse problems.

208 (d) It is the intent of the Legislature to encourage the
 209 use of the mental health programs established under chapter 394
 210 and the drug court program model established under ~~by~~ s. 397.334
 211 and authorize courts to assess children and persons who have
 212 custody or are requesting custody of children where good cause
 213 is shown to identify and address mental illnesses and substance
 214 abuse disorders ~~problems~~ as the court deems appropriate at every
 215 stage of the dependency process. Participation in treatment,
 216 including a treatment-based mental health court program or a
 217 treatment-based drug court program, may be required by the court
 218 following adjudication. Participation in assessment and
 219 treatment ~~before~~ prior to adjudication is ~~shall be~~ voluntary,
 220 except as provided in s. 39.407(16).

221 (e) It is therefore the purpose of the Legislature to
 222 provide authority for the state to contract with mental health
 223 service providers and community substance abuse treatment
 224 providers for the development and operation of specialized
 225 support and overlay services for the dependency system, which
 226 will be fully implemented and used as resources permit.

227 (f) Participation in a treatment-based mental health court
 228 program or a ~~the~~ treatment-based drug court program does not
 229 divest any public or private agency of its responsibility for a
 230 child or adult, but is intended to enable these agencies to
 231 better meet their needs through shared responsibility and
 232 resources.

233 Section 3. Subsection (10) of section 39.507, Florida
 234 Statutes, is amended to read:

235 39.507 Adjudicatory hearings; orders of adjudication.—

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236 (10) After an adjudication of dependency, or a finding of
 237 dependency where adjudication is withheld, the court may order a
 238 person who has custody or is requesting custody of the child to
 239 submit to a mental health or substance abuse disorder assessment
 240 or evaluation. The assessment or evaluation must be administered
 241 by a qualified professional, as defined in s. 397.311. The court
 242 may also require such person to participate in and comply with
 243 treatment and services identified as necessary, including, when
 244 appropriate and available, participation in and compliance with
 245 a mental health program established under chapter 394 or a
 246 treatment-based drug court program established under s. 397.334.
 247 In addition to supervision by the department, the court,
 248 including a treatment-based mental health court program or a the
 249 treatment-based drug court program, may oversee the progress and
 250 compliance with treatment by a person who has custody or is
 251 requesting custody of the child. The court may impose
 252 appropriate available sanctions for noncompliance upon a person
 253 who has custody or is requesting custody of the child or make a
 254 finding of noncompliance for consideration in determining
 255 whether an alternative placement of the child is in the child's
 256 best interests. Any order entered under this subsection may be
 257 made only upon good cause shown. This subsection does not
 258 authorize placement of a child with a person seeking custody,
 259 other than the parent or legal custodian, who requires mental
 260 health or substance abuse disorder treatment.

261 Section 4. Paragraph (b) of subsection (1) of section
 262 39.521, Florida Statutes, is amended to read:

263 39.521 Disposition hearings; powers of disposition.-

264 (1) A disposition hearing shall be conducted by the court,

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265 if the court finds that the facts alleged in the petition for
 266 dependency were proven in the adjudicatory hearing, or if the
 267 parents or legal custodians have consented to the finding of
 268 dependency or admitted the allegations in the petition, have
 269 failed to appear for the arraignment hearing after proper
 270 notice, or have not been located despite a diligent search
 271 having been conducted.

272 (b) When any child is adjudicated by a court to be
 273 dependent, the court having jurisdiction of the child has the
 274 power by order to:

275 1. Require the parent and, when appropriate, the legal
 276 custodian and the child to participate in treatment and services
 277 identified as necessary. The court may require the person who
 278 has custody or who is requesting custody of the child to submit
 279 to a mental illness or substance abuse disorder assessment or
 280 evaluation. The assessment or evaluation must be administered by
 281 a qualified professional, as defined in s. 397.311. The court
 282 may also require such person to participate in and comply with
 283 treatment and services identified as necessary, including, when
 284 appropriate and available, participation in and compliance with
 285 a mental health program established under chapter 394 or a
 286 treatment-based drug court program established under s. 397.334.
 287 In addition to supervision by the department, the court,
 288 including a treatment-based mental health court program or a the
 289 treatment-based drug court program, may oversee the progress and
 290 compliance with treatment by a person who has custody or is
 291 requesting custody of the child. The court may impose
 292 appropriate available sanctions for noncompliance upon a person
 293 who has custody or is requesting custody of the child or make a

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294 finding of noncompliance for consideration in determining
 295 whether an alternative placement of the child is in the child's
 296 best interests. Any order entered under this subparagraph may be
 297 made only upon good cause shown. This subparagraph does not
 298 authorize placement of a child with a person seeking custody of
 299 the child, other than the child's parent or legal custodian, who
 300 requires mental health or substance abuse treatment.

301 2. Require, if the court deems necessary, the parties to
 302 participate in dependency mediation.

303 3. Require placement of the child either under the
 304 protective supervision of an authorized agent of the department
 305 in the home of one or both of the child's parents or in the home
 306 of a relative of the child or another adult approved by the
 307 court, or in the custody of the department. Protective
 308 supervision continues until the court terminates it or until the
 309 child reaches the age of 18, whichever date is first. Protective
 310 supervision shall be terminated by the court whenever the court
 311 determines that permanency has been achieved for the child,
 312 whether with a parent, another relative, or a legal custodian,
 313 and that protective supervision is no longer needed. The
 314 termination of supervision may be with or without retaining
 315 jurisdiction, at the court's discretion, and shall in either
 316 case be considered a permanency option for the child. The order
 317 terminating supervision by the department ~~must shall~~ set forth
 318 the powers of the custodian of the child and ~~shall~~ include the
 319 powers ordinarily granted to a guardian of the person of a minor
 320 unless otherwise specified. Upon the court's termination of
 321 supervision by the department, ~~no~~ further judicial reviews are
 322 not required if, so long as permanency has been established for

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323 the child.

324 Section 5. Section 394.455, Florida Statutes, is amended to
 325 read:

326 394.455 Definitions.—As used in this part, ~~unless the~~
 327 ~~context clearly requires otherwise~~, the term:

328 (1) "Access center" or "drop-off center" means a facility
 329 staffed by medical, behavioral, and substance abuse
 330 professionals which provides emergency screening and evaluation
 331 for mental health or substance abuse disorders and may provide
 332 transportation to an appropriate facility if an individual is in
 333 need of more intensive services.

334 (2) "Addictions receiving facility" means a secure, acute
 335 care facility that, at a minimum, provides emergency screening,
 336 evaluation, and short-term stabilization services; is operated
 337 24 hours per day, 7 days per week; and is designated by the
 338 department to serve individuals found to have substance abuse
 339 impairment who qualify for services under this part.

340 (3) ~~(1)~~ "Administrator" means the chief administrative
 341 officer of a receiving or treatment facility or his or her
 342 designee.

343 (4) "Adult" means an individual who is 18 years of age or
 344 older or who has had the disability of nonage removed under
 345 chapter 743.

346 (5) "Advanced registered nurse practitioner" means any
 347 person licensed in this state to practice professional nursing
 348 who is certified in advanced or specialized nursing practice
 349 under s. 464.012.

350 ~~(2) "Clinical psychologist" means a psychologist as defined~~
 351 ~~in s. 490.003(7) with 3 years of postdoctoral experience in the~~

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352 ~~practice of clinical psychology, inclusive of the experience~~
 353 ~~required for licensure, or a psychologist employed by a facility~~
 354 ~~operated by the United States Department of Veterans Affairs~~
 355 ~~that qualifies as a receiving or treatment facility under this~~
 356 ~~part.~~

357 (6)(3) "Clinical record" means all parts of the record
 358 required to be maintained and includes all medical records,
 359 progress notes, charts, and admission and discharge data, and
 360 all other information recorded by a facility staff which
 361 pertains to the patient's hospitalization or treatment.

362 (7)(4) "Clinical social worker" means a person licensed as
 363 a clinical social worker under s. 491.005 or s. 491.006 ~~chapter~~
 364 ~~491.~~

365 (8)(5) "Community facility" means a any community service
 366 provider that contracts ~~contracting~~ with the department to
 367 furnish substance abuse or mental health services under part IV
 368 of this chapter.

369 (9)(6) "Community mental health center or clinic" means a
 370 publicly funded, not-for-profit center that ~~which~~ contracts with
 371 the department for the provision of inpatient, outpatient, day
 372 treatment, or emergency services.

373 (10)(7) "Court," unless otherwise specified, means the
 374 circuit court.

375 (11)(8) "Department" means the Department of Children and
 376 Families.

377 (12) "Designated receiving facility" means a facility
 378 approved by the department which provides, at a minimum,
 379 emergency screening, evaluation, and short-term stabilization
 380 for mental health or substance abuse disorders, and which may

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381 have an agreement with a corresponding facility for
 382 transportation and services.

383 (13) "Detoxification facility" means a facility licensed to
 384 provide detoxification services under chapter 397.

385 (14) "Electronic means" is a form of telecommunication
 386 which requires all parties to maintain visual as well as audio
 387 communication.

388 (15)(9) "Express and informed consent" means consent
 389 voluntarily given ~~in writing~~, by a competent person, after
 390 sufficient explanation and disclosure of the subject matter
 391 involved to enable the person to make a knowing and willful
 392 decision without any element of force, fraud, deceit, duress, or
 393 other form of constraint or coercion.

394 (16)(10) "Facility" means any hospital, community facility,
 395 public or private facility, or receiving or treatment facility
 396 providing for the evaluation, diagnosis, care, treatment,
 397 training, or hospitalization of persons who appear to have a
 398 ~~mental illness~~ or who have been diagnosed as having a mental
 399 illness or substance abuse impairment. The term "Facility" does
 400 not include a any program or an entity licensed under pursuant
 401 ~~to~~ chapter 400 or chapter 429.

402 (17) "Governmental facility" means a facility owned,
 403 operated, or administered by the Department of Corrections or
 404 the United States Department of Veterans Affairs.

405 (18)(11) "Guardian" means the natural guardian of a minor,
 406 or a person appointed by a court to act on behalf of a ward's
 407 person if the ward is a minor or has been adjudicated
 408 incapacitated.

409 (19)(12) "Guardian advocate" means a person appointed by a

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410 court to make decisions regarding mental health or substance
 411 abuse treatment on behalf of a patient who has been found
 412 incompetent to consent to treatment pursuant to this part. ~~The~~
 413 ~~guardian advocate may be granted specific additional powers by~~
 414 ~~written order of the court, as provided in this part.~~

415 ~~(20)(13)~~ "Hospital" means a hospital ~~facility as defined in~~
 416 ~~s. 395.002 and licensed under chapter 395 and part II of chapter~~
 417 408.

418 ~~(21)(14)~~ "Incapacitated" means that a person has been
 419 adjudicated incapacitated pursuant to part V of chapter 744 and
 420 a guardian of the person has been appointed.

421 ~~(22)(15)~~ "Incompetent to consent to treatment" means a
 422 state in which ~~that~~ a person's judgment is so affected by a his
 423 ~~or her~~ mental illness, a substance abuse impairment, or any
 424 medical or organic cause that he or she ~~the person~~ lacks the
 425 capacity to make a well-reasoned, willful, and knowing decision
 426 concerning his or her medical, ~~or~~ mental health, or substance
 427 abuse treatment.

428 ~~(23)~~ "Involuntary examination" means an examination
 429 performed under s. 394.463 or s. 397.675 to determine whether a
 430 person qualifies for involuntary outpatient services or
 431 involuntary inpatient placement.

432 ~~(24)~~ "Involuntary services" means court-ordered outpatient
 433 services or inpatient placement for mental health treatment
 434 pursuant to s. 394.4655 or s. 394.467.

435 ~~(25)(16)~~ "Law enforcement officer" has the same meaning as
 436 provided means a law enforcement officer as defined in s.
 437 943.10.

438 ~~(26)~~ "Marriage and family therapist" means a person

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439 licensed to practice marriage and family therapy under s.
 440 491.005 or s. 491.006.

441 ~~(27)~~ "Mental health counselor" means a person licensed to
 442 practice mental health counseling under s. 491.005 or s.
 443 491.006.

444 ~~(28)(17)~~ "Mental health overlay program" means a mobile
 445 service that which provides an independent examination for
 446 voluntary admission ~~admissions~~ and a range of supplemental
 447 onsite services to persons with a mental illness in a
 448 residential setting such as a nursing home, an assisted living
 449 facility, or an adult family-care home, or a nonresidential
 450 setting such as an adult day care center. Independent
 451 examinations provided ~~pursuant to this part~~ through a mental
 452 health overlay program must only be provided under contract with
 453 the department ~~for this service~~ or be attached to a public
 454 receiving facility that is also a community mental health
 455 center.

456 ~~(29)(18)~~ "Mental illness" means an impairment of the mental
 457 or emotional processes that exercise conscious control of one's
 458 actions or of the ability to perceive or understand reality,
 459 which impairment substantially interferes with the person's
 460 ability to meet the ordinary demands of living. For the purposes
 461 of this part, the term does not include a developmental
 462 disability as defined in chapter 393, intoxication, or
 463 conditions manifested only by antisocial behavior or substance
 464 abuse impairment.

465 ~~(30)~~ "Minor" means an individual who is 17 years of age or
 466 younger and who has not had the disability of nonage removed
 467 pursuant to s. 743.01 or s. 743.015.

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468 ~~(31)(19)~~ "Mobile crisis response service" means a
 469 nonresidential crisis service ~~attached to a public receiving~~
 470 ~~facility and available 24 hours a day, 7 days a week, through~~
 471 which provides immediate intensive assessments and
 472 interventions, including screening for admission into a mental
 473 health receiving facility, an addictions receiving facility, or
 474 a detoxification facility, take place for the purpose of
 475 identifying appropriate treatment services.

476 ~~(32)(20)~~ "Patient" means any person who is held or accepted
 477 for mental health or substance abuse treatment.

478 ~~(33)(21)~~ "Physician" means a medical practitioner licensed
 479 under chapter 458 or chapter 459 ~~who has experience in the~~
 480 ~~diagnosis and treatment of mental and nervous disorders~~ or a
 481 physician employed by a facility operated by the United States
 482 Department of Veterans Affairs or the United States Department
 483 of Defense which qualifies as a receiving or treatment facility
 484 under this part.

485 ~~(34)~~ "Physician assistant" means a person licensed under
 486 chapter 458 or chapter 459 who has experience in the diagnosis
 487 and treatment of mental disorders.

488 ~~(35)(22)~~ "Private facility" means any hospital or facility
 489 operated by a for-profit or not-for-profit corporation or
 490 association which that provides mental health or substance abuse
 491 services and is not a public facility.

492 ~~(36)(23)~~ "Psychiatric nurse" means an advanced registered
 493 nurse practitioner certified under s. 464.012 who has a master's
 494 or doctoral degree in psychiatric nursing, holds a national
 495 advanced practice certification as a psychiatric mental health
 496 advanced practice nurse, and has 2 years of post-master's

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497 clinical experience under the supervision of a physician.

498 ~~(37)(24)~~ "Psychiatrist" means a medical practitioner
 499 licensed under chapter 458 or chapter 459 ~~who has primarily~~
 500 ~~diagnosed and treated mental and nervous disorders for at least~~
 501 ~~a period of not less than 3 years, inclusive of psychiatric~~
 502 ~~residency.~~

503 ~~(38)~~ "Psychologist" has the same meaning as provided in s.
 504 490.003 or means a psychologist employed by a facility operated
 505 by the United States Department of Veterans Affairs which
 506 qualifies as a receiving or treatment facility under this part.

507 ~~(39)(25)~~ "Public facility" means a ~~any~~ facility that has
 508 contracted with the department to provide mental health or
 509 substance abuse services to all persons, regardless of ~~their~~
 510 ability to pay, and is receiving state funds for such purpose.

511 ~~(40)~~ "Qualified professional" means a physician or a
 512 physician assistant licensed under chapter 458 or chapter 459; a
 513 professional licensed under chapter 490 or chapter 491; a
 514 psychiatrist licensed under chapter 458 or chapter 459; or a
 515 psychiatric nurse as defined in subsection (36).

516 ~~(41)(26)~~ "Receiving facility" means any public or private
 517 facility designated by the department to receive and hold or
 518 refer, as appropriate, involuntary patients under emergency
 519 conditions ~~or~~ for mental health or substance abuse psychiatric
 520 evaluation and to provide short-term treatment or transportation
 521 to the appropriate service provider. The term does not include a
 522 county jail.

523 ~~(42)(27)~~ "Representative" means a person selected to
 524 receive notice of proceedings during the time a patient is held
 525 in or admitted to a receiving or treatment facility.

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526 ~~(43)(28) (a) "Restraint" means: a physical device, method,~~
 527 ~~or drug used to control behavior.~~

528 (a) A physical restraint, including is any manual method or
 529 physical or mechanical device, material, or equipment attached
 530 or adjacent to an the individual's body so that he or she cannot
 531 easily remove the restraint and which restricts freedom of
 532 movement or normal access to one's body. Physical restraint
 533 includes the physical holding of a person during a procedure to
 534 forcibly administer psychotropic medication. Physical restraint
 535 does not include physical devices such as orthopedically
 536 prescribed appliances, surgical dressings and bandages,
 537 supportive body bands, or other physical holding when necessary
 538 for routine physical examinations and tests or for purposes of
 539 orthopedic, surgical, or other similar medical treatment, when
 540 used to provide support for the achievement of functional body
 541 position or proper balance, or when used to protect a person
 542 from falling out of bed.

543 ~~(b) A drug or used as a restraint is a medication used to~~
 544 ~~control a the person's behavior or to restrict his or her~~
 545 ~~freedom of movement which and is not part of the standard~~
 546 ~~treatment regimen of a person with a diagnosed mental illness~~
 547 ~~who is a client of the department. Physically holding a person~~
 548 ~~during a procedure to forcibly administer psychotropic~~
 549 ~~medication is a physical restraint.~~

550 ~~(c) Restraint does not include physical devices, such as~~
 551 ~~orthopedically prescribed appliances, surgical dressings and~~
 552 ~~bandages, supportive body bands, or other physical holding when~~
 553 ~~necessary for routine physical examinations and tests; or for~~
 554 ~~purposes of orthopedic, surgical, or other similar medical~~

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555 ~~treatment, when used to provide support for the achievement of~~
 556 ~~functional body position or proper balance; or when used to~~
 557 ~~protect a person from falling out of bed.~~

558 (44) "School psychologist" has the same meaning as in s.
 559 490.003.

560 ~~(45)(29) "Seclusion" means the physical segregation of a~~
 561 ~~person in any fashion or involuntary isolation of a person in a~~
 562 ~~room or area from which the person is prevented from leaving.~~
 563 ~~The prevention may be by physical barrier or by a staff member~~
 564 ~~who is acting in a manner, or who is physically situated, so as~~
 565 ~~to prevent the person from leaving the room or area. For~~
 566 ~~purposes of this part chapter, the term does not mean isolation~~
 567 ~~due to a person's medical condition or symptoms.~~

568 ~~(46)(30) "Secretary" means the Secretary of Children and~~
 569 ~~Families.~~

570 (47) "Service provider" means a receiving facility, any
 571 facility licensed under chapter 397, a treatment facility, an
 572 entity under contract with the department to provide mental
 573 health or substance abuse services, a community mental health
 574 center or clinic, a psychologist, a clinical social worker, a
 575 marriage and family therapist, a mental health counselor, a
 576 physician, a psychiatrist, an advanced registered nurse
 577 practitioner, a psychiatric nurse, or a qualified professional
 578 as defined in this section.

579 (48) "Substance abuse impairment" means a condition
 580 involving the use of alcoholic beverages or any psychoactive or
 581 mood-altering substance in such a manner as to induce mental,
 582 emotional, or physical problems and cause socially dysfunctional
 583 behavior.

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584 ~~(49)(31)~~ "Transfer evaluation" means the process by which
 585 ~~as approved by the appropriate district office of the~~
 586 ~~department, whereby~~ a person who is being considered for
 587 placement in a state treatment facility is ~~first~~ evaluated for
 588 appropriateness of admission to a state treatment ~~the~~ facility
 589 ~~by a community-based public receiving facility or by a community~~
 590 ~~mental health center or clinic if the public receiving facility~~
 591 ~~is not a community mental health center or clinic.~~

592 ~~(50)(32)~~ "Treatment facility" means a ~~any~~ state-owned,
 593 state-operated, or state-supported hospital, center, or clinic
 594 designated by the department for extended treatment and
 595 hospitalization, beyond that provided for by a receiving
 596 facility, of persons who have a mental illness or substance
 597 abuse disorders, including facilities of the United States
 598 Government, and any private facility designated by the
 599 department when rendering such services to a person pursuant to
 600 the provisions of this part. Patients treated in facilities of
 601 the United States Government shall be solely those whose care is
 602 the responsibility of the United States Department of Veterans
 603 Affairs.

604 ~~(51)~~ "Triage center" means a facility that is staffed by
 605 medical, behavioral, and substance abuse professionals who
 606 provide emergency screening and evaluation of individuals
 607 transported to the center by a law enforcement officer.

608 ~~(33)~~ "Service provider" means ~~any public or private~~
 609 ~~receiving facility, an entity under contract with the Department~~
 610 ~~of Children and Families to provide mental health services, a~~
 611 ~~clinical psychologist, a clinical social worker, a marriage and~~
 612 ~~family therapist, a mental health counselor, a physician, a~~

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613 ~~psychiatric nurse as defined in subsection (23), or a community~~
 614 ~~mental health center or clinic as defined in this part.~~

615 ~~(34)~~ "Involuntary examination" means ~~an examination~~
 616 ~~performed under s. 394.463 to determine if an individual~~
 617 ~~qualifies for involuntary inpatient treatment under s.~~
 618 ~~394.467(1) or involuntary outpatient treatment under s.~~
 619 ~~394.4655(1).~~

620 ~~(35)~~ "Involuntary placement" means ~~either involuntary~~
 621 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~
 622 ~~inpatient treatment pursuant to s. 394.467.~~

623 ~~(36)~~ "Marriage and family therapist" means ~~a person~~
 624 ~~licensed as a marriage and family therapist under chapter 491.~~

625 ~~(37)~~ "Mental health counselor" means ~~a person licensed as a~~
 626 ~~mental health counselor under chapter 491.~~

627 ~~(38)~~ "Electronic means" means ~~a form of telecommunication~~
 628 ~~that requires all parties to maintain visual as well as audio~~
 629 ~~communication.~~

630 Section 6. Section 394.4573, Florida Statutes, is amended
 631 to read:

632 394.4573 Coordinated system of care; annual assessment;
 633 essential elements Continuity of care management system;
 634 measures of performance; system improvement grants; reports.—On
 635 or before October 1 of each year, the department shall submit to
 636 the Governor, the President of the Senate, and the Speaker of
 637 the House of Representatives an assessment of the behavioral
 638 health services in this state in the context of the No-Wrong-
 639 Door model and standards set forth in this section. The
 640 department's assessment shall be based on both quantitative and
 641 qualitative data and must identify any significant regional

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642 variations. The assessment must include information gathered
 643 from managing entities, service providers, law enforcement,
 644 judicial officials, local governments, behavioral health
 645 consumers and their family members, and the public.

646 (1) ~~As used in For the purposes of~~ this section:

647 (a) "Case management" means those direct services provided
 648 to a client in order to assess his or her activities aimed at
 649 assessing client needs, plan or arrange planning services,
 650 coordinate service providers, monitor linking the service system
 651 to a client, coordinating the various system components,
 652 monitoring service delivery, and evaluate patient outcomes
 653 evaluating the effect of service delivery.

654 (b) "Case manager" means an individual who works with
 655 clients, and their families and significant others, to provide
 656 case management.

657 (c) "Client manager" means an employee of the managing
 658 entity or entity under contract with the managing entity
 659 department who is assigned to specific provider agencies and
 660 geographic areas to ensure that the full range of needed
 661 services is available to clients.

662 (d) "Coordinated system ~~Continuity of care management~~
 663 ~~system"~~ means a ~~system that assures, within available resources,~~
 664 ~~that clients have access to~~ the full array of behavioral and
 665 related services in a region or community offered by all service
 666 providers, whether participating under contract with the
 667 managing entity or another method of community partnership or
 668 mutual agreement within the mental health services delivery
 669 system.

670 (e) "No-Wrong-Door model" means a model for the delivery of

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671 health care services to persons who have mental health or
 672 substance abuse disorders, or both, which optimizes access to
 673 care, regardless of the entry point to the behavioral health
 674 care system.

675 (2) The essential elements of a coordinated system of care
 676 include:

677 (a) Community interventions, such as prevention, primary
 678 care for behavioral health needs, therapeutic and supportive
 679 services, crisis response services, and diversion programs.

680 (b) A designated receiving system consisting of one or more
 681 facilities serving a defined geographic area and responsible for
 682 assessment and evaluation, both voluntary and involuntary, and
 683 treatment or triage for patients who present with mental
 684 illness, substance abuse disorder, or co-occurring disorders.
 685 The system must be authorized by each county or by several
 686 counties, planned through an inclusive process, approved by the
 687 managing entity, and documented through written memoranda of
 688 agreement or other binding arrangements. The designated
 689 receiving system may be organized in any of the following ways
 690 so long as it functions as a No-Wrong-Door model that responds
 691 to individual needs and integrates services among various
 692 providers:

693 1. A central receiving system, which consists of a
 694 designated central receiving facility that serves as a single
 695 entry point for persons with mental health or substance abuse
 696 disorders, or both. The designated receiving facility must be
 697 capable of assessment, evaluation, and triage or treatment for
 698 various conditions and circumstances.

699 2. A coordinated receiving system, which consists of

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700 multiple entry points that are linked by shared data systems,
 701 formal referral agreements, and cooperative arrangements for
 702 care coordination and case management. Each entry point must be
 703 a designated receiving facility and must provide or arrange for
 704 necessary services following an initial assessment and
 705 evaluation.

706 3. A tiered receiving system, which consists of multiple
 707 entry points, some of which offer only specialized or limited
 708 services. Each service provider participating in the tiered
 709 receiving system must be classified as a designated receiving
 710 facility, a triage center, or an access center. All
 711 participating service providers must be linked by shared data
 712 systems, formal referral agreements, and cooperative
 713 arrangements for care coordination and case management. An
 714 accurate inventory of the participating service providers which
 715 specifies the capabilities and limitations of each provider must
 716 be maintained and made available at all times to all first
 717 responders in the service area.

718 (c) Transportation in accordance with a plan developed
 719 under s. 394.462.

720 (d) Crisis services, including mobile response teams,
 721 crisis stabilization units, addiction receiving facilities, and
 722 detoxification facilities.

723 (e) Case management, including intensive case management
 724 for individuals determined to be high-need or high-utilization
 725 individuals under s. 394.9082(2)(e).

726 (f) Outpatient services.

727 (g) Residential services.

728 (h) Hospital inpatient care.

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729 (i) Aftercare and other post-discharge services.

730 (j) Medication assistance and management.

731 (k) Recovery support, including housing assistance and
 732 support for competitive employment, educational attainment,
 733 independent living skills development, family support and
 734 education, and wellness management and self-care.

735 (3) The department's annual assessment must compare the
 736 status and performance of the extant behavioral health system
 737 with the following standards and any other standards or measures
 738 that the department determines to be applicable.

739 (a) The capacity of the contracted service providers to
 740 meet estimated need when such estimates are based on credible
 741 evidence and sound methodologies.

742 (b) The extent to which the behavioral health system uses
 743 evidence-based practices and broadly disseminates the results of
 744 quality improvement activities to all service providers.

745 (c) The degree to which services are offered in the least
 746 restrictive and most appropriate therapeutic environment.

747 (d) The scope of systemwide accountability activities used
 748 to monitor patient outcomes and measure continuous improvement
 749 in the behavioral health system.

750 (4) Subject to a specific appropriation by the Legislature,
 751 the department may award system improvement grants to managing
 752 entities based on the submission of a detailed plan to enhance
 753 services, coordination, or performance measurement in accordance
 754 with the model and standards specified in this section. Such a
 755 grant must be awarded through a performance-based contract that
 756 links payments to the documented and measurable achievement of
 757 system improvements ~~The department is directed to implement a~~

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758 ~~continuity of care management system for the provision of mental~~
 759 ~~health care, through the provision of client and case~~
 760 ~~management, including clients referred from state treatment~~
 761 ~~facilities to community mental health facilities. Such system~~
 762 ~~shall include a network of client managers and case managers~~
 763 ~~throughout the state designed to:~~

764 ~~(a) Reduce the possibility of a client's admission or~~
 765 ~~readmission to a state treatment facility.~~

766 ~~(b) Provide for the creation or designation of an agency in~~
 767 ~~each county to provide single intake services for each person~~
 768 ~~seeking mental health services. Such agency shall provide~~
 769 ~~information and referral services necessary to ensure that~~
 770 ~~clients receive the most appropriate and least restrictive form~~
 771 ~~of care, based on the individual needs of the person seeking~~
 772 ~~treatment. Such agency shall have a single telephone number,~~
 773 ~~operating 24 hours per day, 7 days per week, where practicable,~~
 774 ~~at a central location, where each client will have a central~~
 775 ~~record.~~

776 ~~(c) Advocate on behalf of the client to ensure that all~~
 777 ~~appropriate services are afforded to the client in a timely and~~
 778 ~~dignified manner.~~

779 ~~(d) Require that any public receiving facility initiating a~~
 780 ~~patient transfer to a licensed hospital for acute care mental~~
 781 ~~health services not accessible through the public receiving~~
 782 ~~facility shall notify the hospital of such transfer and send all~~
 783 ~~records relating to the emergency psychiatric or medical~~
 784 ~~condition.~~

785 ~~(3) The department is directed to develop and include in~~
 786 ~~contracts with service providers measures of performance with~~

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787 ~~regard to goals and objectives as specified in the state plan.~~
 788 ~~Such measures shall use, to the extent practical, existing data~~
 789 ~~collection methods and reports and shall not require, as a~~
 790 ~~result of this subsection, additional reports on the part of~~
 791 ~~service providers. The department shall plan monitoring visits~~
 792 ~~of community mental health facilities with other state, federal,~~
 793 ~~and local governmental and private agencies charged with~~
 794 ~~monitoring such facilities.~~

795 Section 7. Paragraphs (d) and (e) of subsection (2) of
 796 section 394.4597, Florida Statutes, are amended to read:

797 394.4597 Persons to be notified; patient's representative.-

798 (2) INVOLUNTARY PATIENTS.-

799 (d) When the receiving or treatment facility selects a
 800 representative, first preference shall be given to a health care
 801 surrogate, if one has been previously selected by the patient.
 802 If the patient has not previously selected a health care
 803 surrogate, the selection, except for good cause documented in
 804 the patient's clinical record, shall be made from the following
 805 list in the order of listing:

- 806 1. The patient's spouse.
- 807 2. An adult child of the patient.
- 808 3. A parent of the patient.
- 809 4. The adult next of kin of the patient.
- 810 5. An adult friend of the patient.

811 ~~6. The appropriate Florida local advocacy council as~~
 812 ~~provided in s. 402.166.~~

813 (e) The following persons are prohibited from selection as
 814 a patient's representative:

- 815 1. A professional providing clinical services to the

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816 patient under this part.

817 2. The licensed professional who initiated the involuntary
818 examination of the patient, if the examination was initiated by
819 professional certificate.

820 3. An employee, an administrator, or a board member of the
821 facility providing the examination of the patient.

822 4. An employee, an administrator, or a board member of a
823 treatment facility providing treatment for the patient.

824 5. A person providing any substantial professional services
825 to the patient, including clinical and nonclinical services.

826 6. A creditor of the patient.

827 7. A person subject to an injunction for protection against
828 domestic violence under s. 741.30, whether the order of
829 injunction is temporary or final, and for which the patient was
830 the petitioner.

831 8. A person subject to an injunction for protection against
832 repeat violence, sexual violence, or dating violence under s.
833 784.046, whether the order of injunction is temporary or final,
834 and for which the patient was the petitioner ~~A licensed~~
835 ~~professional providing services to the patient under this part,~~
836 ~~an employee of a facility providing direct services to the~~
837 ~~patient under this part, a department employee, a person~~
838 ~~providing other substantial services to the patient in a~~
839 ~~professional or business capacity, or a creditor of the patient~~
840 ~~shall not be appointed as the patient's representative.~~

841 Section 8. Present subsections (2) through (7) of section
842 394.4598, Florida Statutes, are redesignated as subsections (3)
843 through (8), respectively, a new subsection (2) is added to that
844 section, and present subsections (3) and (4) of that section are

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845 amended, to read:

846 394.4598 Guardian advocate.—

847 (2) The following persons are prohibited from appointment
848 as a patient's guardian advocate:

849 (a) A professional providing clinical services to the
850 patient under this part.

851 (b) The licensed professional who initiated the involuntary
852 examination of the patient, if the examination was initiated by
853 professional certificate.

854 (c) An employee, an administrator, or a board member of the
855 facility providing the examination of the patient.

856 (d) An employee, an administrator, or a board member of a
857 treatment facility providing treatment of the patient.

858 (e) A person providing any substantial professional
859 services to the patient, including clinical and nonclinical
860 services.

861 (f) A creditor of the patient.

862 (g) A person subject to an injunction for protection
863 against domestic violence under s. 741.30, whether the order of
864 injunction is temporary or final, and for which the patient was
865 the petitioner.

866 (h) A person subject to an injunction for protection
867 against repeat violence, sexual violence, or dating violence
868 under s. 784.046, whether the order of injunction is temporary
869 or final, and for which the patient was the petitioner.

870 (4)-(3) In lieu of the training required of guardians
871 appointed pursuant to chapter 744, ~~Prior to~~ a guardian advocate
872 must attend at least a 4-hour training course approved by the
873 court before exercising his or her authority, ~~the guardian~~

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874 ~~advocate shall attend a training course approved by the court.~~
 875 ~~At a minimum, this training course, of not less than 4 hours,~~
 876 ~~must include, at minimum, information about the patient rights,~~
 877 ~~psychotropic medications, the diagnosis of mental illness, the~~
 878 ~~ethics of medical decisionmaking, and duties of guardian~~
 879 ~~advocates. This training course shall take the place of the~~
 880 ~~training required for guardians appointed pursuant to chapter~~
 881 ~~744.~~

882 (5)(4) The required training course and the information to
 883 be supplied to prospective guardian advocates before prior to
 884 their appointment and the training course for guardian advocates
 885 must be developed and completed through a course developed by
 886 the department, and approved by the chief judge of the circuit
 887 court, and taught by a court-approved organization, which-
 888 Court-approved organizations may include, but is are not limited
 889 to, a community college ecommunity or junior colleges, a
 890 guardianship organization guardianship organizations, a and the
 891 local bar association, or The Florida Bar. The court may, in its
 892 discretion, waive some or all of the training requirements for
 893 guardian advocates or impose additional requirements. The court
 894 shall make its decision on a case-by-case basis and, in making
 895 its decision, shall consider the experience and education of the
 896 guardian advocate, the duties assigned to the guardian advocate,
 897 and the needs of the patient.

898 Section 9. Section 394.462, Florida Statutes, is amended to
 899 read:

900 394.462 Transportation.-A transportation plan must be
 901 developed and implemented in each county in accordance with this
 902 section. A county may enter into a memorandum of understanding

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903 with the governing boards of nearby counties to establish a
 904 shared transportation plan. When multiple counties enter into a
 905 memorandum of understanding for this purpose, the managing
 906 entity must be notified and provided a copy of the agreement.
 907 The transportation plan must specify methods of transport to a
 908 facility within the designated receiving system and may delegate
 909 responsibility for other transportation to a participating
 910 facility when necessary and agreed to by the facility. The plan
 911 must ensure that individuals who meet the criteria for
 912 involuntary assessment and evaluation pursuant to ss. 394.463
 913 and 397.675 will be transported. The plan may rely on emergency
 914 medical transport services or private transport companies as
 915 appropriate.

916 (1) TRANSPORTATION TO A RECEIVING FACILITY.-

917 (a) Each county shall designate a single law enforcement
 918 agency within the county, or portions thereof, to take a person
 919 into custody upon the entry of an ex parte order or the
 920 execution of a certificate for involuntary examination by an
 921 authorized professional and to transport that person to an
 922 appropriate facility within the designated receiving system the
 923 nearest receiving facility for examination.

924 (b)1. The designated law enforcement agency may decline to
 925 transport the person to a receiving facility only if:

926 a.1- The jurisdiction designated by the county has
 927 contracted on an annual basis with an emergency medical
 928 transport service or private transport company for
 929 transportation of persons to receiving facilities pursuant to
 930 this section at the sole cost of the county; and

931 b.2- The law enforcement agency and the emergency medical

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932 transport service or private transport company agree that the
 933 continued presence of law enforcement personnel is not necessary
 934 for the safety of the person or others.

935 ~~2.3-~~ The entity providing transportation jurisdiction
 936 ~~designated by the county~~ may seek reimbursement for
 937 transportation expenses. The party responsible for payment for
 938 such transportation is the person receiving the transportation.
 939 The county shall seek reimbursement from the following sources
 940 in the following order:

941 a. From a private or public third-party payor an insurancee
 942 ~~company, health care corporation, or other source,~~ if the person
 943 receiving the transportation has applicable coverage is covered
 944 ~~by an insurance policy or subscribes to a health care~~
 945 ~~corporation or other source for payment of such expenses.~~

946 b. From the person receiving the transportation.

947 c. From a financial settlement for medical care, treatment,
 948 hospitalization, or transportation payable or accruing to the
 949 injured party.

950 ~~(c)(b)~~ A Any company that transports a patient pursuant to
 951 this subsection is considered an independent contractor and is
 952 solely liable for the safe and dignified transport
 953 ~~transportation~~ of the patient. Such company must be insured and
 954 provide no less than \$100,000 in liability insurance with
 955 respect to the transport transportation of patients.

956 ~~(d)(e)~~ Any company that contracts with a governing board of
 957 a county to transport patients shall comply with the applicable
 958 rules of the department to ensure the safety and dignity of ~~the~~
 959 patients.

960 ~~(e)(d)~~ When a law enforcement officer takes custody of a

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961 person pursuant to this part, the officer may request assistance
 962 from emergency medical personnel if such assistance is needed
 963 for the safety of the officer or the person in custody.

964 ~~(f)(e)~~ When a member of a mental health overlay program or
 965 a mobile crisis response service is a professional authorized to
 966 initiate an involuntary examination pursuant to s. 394.463 or s.
 967 397.675 and that professional evaluates a person and determines
 968 that transportation to a receiving facility is needed, the
 969 service, at its discretion, may transport the person to the
 970 facility or may call on the law enforcement agency or other
 971 transportation arrangement best suited to the needs of the
 972 patient.

973 ~~(g)(f)~~ When any law enforcement officer has custody of a
 974 person based on either noncriminal or minor criminal behavior
 975 that meets the statutory guidelines for involuntary examination
 976 under this part, the law enforcement officer shall transport the
 977 person to an appropriate the nearest receiving facility within
 978 the designated receiving system for examination.

979 ~~(h)(g)~~ When any law enforcement officer has arrested a
 980 person for a felony and it appears that the person meets the
 981 statutory guidelines for involuntary examination or placement
 982 under this part, such person must shall first be processed in
 983 the same manner as any other criminal suspect. The law
 984 enforcement agency shall thereafter immediately notify the
 985 appropriate nearest public receiving facility within the
 986 designated receiving system, which shall be responsible for
 987 promptly arranging for the examination and treatment of the
 988 person. A receiving facility is not required to admit a person
 989 charged with a crime for whom the facility determines and

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990 documents that it is unable to provide adequate security, but
 991 shall provide ~~mental health~~ examination and treatment to the
 992 person where he or she is held.

993 ~~(i)(h)~~ If the appropriate law enforcement officer believes
 994 that a person has an emergency medical condition as defined in
 995 s. 395.002, the person may be first transported to a hospital
 996 for emergency medical treatment, regardless of whether the
 997 hospital is a designated receiving facility.

998 ~~(j)(i)~~ The costs of transportation, evaluation,
 999 hospitalization, and treatment incurred under this subsection by
 1000 persons who have been arrested for violations of any state law
 1001 or county or municipal ordinance may be recovered as provided in
 1002 s. 901.35.

1003 ~~(k)(j)~~ The ~~nearest receiving~~ facility within the designated
 1004 receiving system must accept persons brought by law enforcement
 1005 officers, an emergency medical transport service, or a private
 1006 transport company for involuntary examination.

1007 ~~(l)(k)~~ Each law enforcement agency designated pursuant to
 1008 paragraph (a) shall establish a policy that develop a memorandum
 1009 of understanding with each receiving facility within the law
 1010 enforcement agency's jurisdiction which reflects a single set of
 1011 protocols approved by the managing entity for the safe and
 1012 secure transportation ~~of the person~~ and transfer of custody of
 1013 the person. ~~These protocols must also address crisis~~
 1014 ~~intervention measures.~~

1015 ~~(m)(l)~~ When a jurisdiction has entered into a contract with
 1016 an emergency medical transport service or a private transport
 1017 company for transportation of persons to ~~receiving~~ facilities
 1018 within the designated receiving system, such service or company

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1019 shall be given preference for transportation of persons from
 1020 nursing homes, assisted living facilities, adult day care
 1021 centers, or adult family-care homes, unless the behavior of the
 1022 person being transported is such that transportation by a law
 1023 enforcement officer is necessary.

1024 ~~(n)(m)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed
 1025 to limit emergency examination and treatment of incapacitated
 1026 persons provided in accordance with ~~the provisions of~~ s.
 1027 401.445.

1028 (2) TRANSPORTATION TO A TREATMENT FACILITY.—

1029 (a) If neither the patient nor any person legally obligated
 1030 or responsible for the patient is able to pay for the expense of
 1031 transporting a voluntary or involuntary patient to a treatment
 1032 facility, the transportation plan established by the governing
 1033 board of the county or counties must specify how in which the
 1034 hospitalized patient will be transported to, from, and between
 1035 facilities in a is hospitalized shall arrange for such required
 1036 transportation and shall ensure the safe and dignified manner
 1037 transportation of the patient. The governing board of each
 1038 county is authorized to contract with private transport
 1039 companies for the transportation of such patients to and from a
 1040 treatment facility.

1041 (b) A Any company that transports a patient pursuant to
 1042 this subsection is considered an independent contractor and is
 1043 solely liable for the safe and dignified transportation of the
 1044 patient. Such company must be insured and provide no less than
 1045 \$100,000 in liability insurance with respect to the transport
 1046 transportation of patients.

1047 (c) A Any company that contracts with one or more counties

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1048 ~~the governing board of a county to transport patients in~~
 1049 ~~accordance with this section~~ shall comply with the applicable
 1050 rules of the department to ensure the safety and dignity of the
 1051 patients.

1052 (d) County or municipal law enforcement and correctional
 1053 personnel and equipment ~~may shall~~ not be used to transport
 1054 patients adjudicated incapacitated or found by the court to meet
 1055 the criteria for involuntary placement pursuant to s. 394.467,
 1056 except in small rural counties where there are no cost-efficient
 1057 alternatives.

1058 (3) TRANSFER OF CUSTODY.—Custody of a person who is
 1059 transported pursuant to this part, along with related
 1060 documentation, shall be relinquished to a responsible individual
 1061 at the appropriate receiving or treatment facility.

1062 ~~(4) EXCEPTIONS.—An exception to the requirements of this~~
 1063 ~~section may be granted by the secretary of the department for~~
 1064 ~~the purposes of improving service coordination or better meeting~~
 1065 ~~the special needs of individuals. A proposal for an exception~~
 1066 ~~must be submitted by the district administrator after being~~
 1067 ~~approved by the governing boards of any affected counties, prior~~
 1068 ~~to submission to the secretary.~~

1069 ~~(a) A proposal for an exception must identify the specific~~
 1070 ~~provision from which an exception is requested; describe how the~~
 1071 ~~proposal will be implemented by participating law enforcement~~
 1072 ~~agencies and transportation authorities; and provide a plan for~~
 1073 ~~the coordination of services such as case management.~~

1074 ~~(b) The exception may be granted only for:~~

1075 ~~1. An arrangement centralizing and improving the provision~~
 1076 ~~of services within a district, which may include an exception to~~

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1077 ~~the requirement for transportation to the nearest receiving~~
 1078 ~~facility;~~

1079 ~~2. An arrangement by which a facility may provide, in~~
 1080 ~~addition to required psychiatric services, an environment and~~
 1081 ~~services which are uniquely tailored to the needs of an~~
 1082 ~~identified group of persons with special needs, such as persons~~
 1083 ~~with hearing impairments or visual impairments, or elderly~~
 1084 ~~persons with physical frailties; or~~

1085 ~~3. A specialized transportation system that provides an~~
 1086 ~~efficient and humane method of transporting patients to~~
 1087 ~~receiving facilities, among receiving facilities, and to~~
 1088 ~~treatment facilities.~~

1089 ~~(c) Any exception approved pursuant to this subsection~~
 1090 ~~shall be reviewed and approved every 5 years by the secretary.~~

1091 Section 10. Subsection (2) of section 394.463, Florida
 1092 Statutes, is amended to read:

1093 394.463 Involuntary examination.—

1094 (2) INVOLUNTARY EXAMINATION.—

1095 (a) An involuntary examination may be initiated by any one
 1096 of the following means:

1097 1. A circuit or county court may enter an ex parte order
 1098 stating that a person appears to meet the criteria for
 1099 involuntary examination and specifying, ~~giving~~ the findings on
 1100 which that conclusion is based. The ex parte order for
 1101 involuntary examination must be based on written or oral sworn
 1102 testimony that includes specific facts that support the
 1103 findings, ~~written or oral~~. If other, less restrictive, means are
 1104 not available, such as voluntary appearance for outpatient
 1105 evaluation, a law enforcement officer, or other designated agent

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1106 of the court, shall take the person into custody and deliver him
 1107 or her to an appropriate nearest receiving facility within
 1108 the designated receiving system for involuntary examination. The
 1109 order of the court shall be made a part of the patient's
 1110 clinical record. ~~A No fee may not shall~~ be charged for the
 1111 filing of an order under this subsection. Any ~~receiving~~ facility
 1112 accepting the patient based on this order must send a copy of
 1113 the order to the managing entity in the region and to the
 1114 department Agency for Health Care Administration on the next
 1115 working day. The order shall be valid only until the person is
 1116 delivered to the appropriate facility ~~executed or, if not~~
 1117 ~~executed~~, for the period specified in the order itself,
 1118 whichever comes first. If no time limit is specified in the
 1119 order, the order shall be valid for 7 days after the date that
 1120 the order was signed.

1121 2. A law enforcement officer shall take a person who
 1122 appears to meet the criteria for involuntary examination into
 1123 custody and deliver the person or have him or her delivered to
 1124 the appropriate nearest receiving facility within the designated
 1125 receiving system for examination. The officer shall execute a
 1126 written report detailing the circumstances under which the
 1127 person was taken into custody, which must ~~and the report shall~~
 1128 be made a part of the patient's clinical record. Any ~~receiving~~
 1129 facility accepting the patient based on this report must send a
 1130 copy of the report to the department and the managing entity
 1131 Agency for Health Care Administration on the next working day.

1132 3. A physician, ~~clinical~~ psychologist, psychiatric nurse,
 1133 mental health counselor, marriage and family therapist, or
 1134 clinical social worker may execute a certificate stating that he

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1135 or she has examined a person within the preceding 48 hours and
 1136 finds that the person appears to meet the criteria for
 1137 involuntary examination and stating the observations upon which
 1138 that conclusion is based. If other, less restrictive means, such
 1139 as voluntary appearance for outpatient evaluation, are not
 1140 available, ~~such as voluntary appearance for outpatient~~
 1141 ~~evaluation~~, a law enforcement officer shall take into custody
 1142 the person named in the certificate ~~into custody~~ and deliver him
 1143 or her to the appropriate nearest receiving facility within the
 1144 designated receiving system for involuntary examination. The law
 1145 enforcement officer shall execute a written report detailing the
 1146 circumstances under which the person was taken into custody. The
 1147 report and certificate shall be made a part of the patient's
 1148 clinical record. Any ~~receiving~~ facility accepting the patient
 1149 based on this certificate must send a copy of the certificate to
 1150 the managing entity and the department Agency for Health Care
 1151 Administration on the next working day.

1152 (b) A person ~~may shall~~ not be removed from any program or
 1153 residential placement licensed under chapter 400 or chapter 429
 1154 and transported to a receiving facility for involuntary
 1155 examination unless an ex parte order, a professional
 1156 certificate, or a law enforcement officer's report is first
 1157 prepared. If the condition of the person is such that
 1158 preparation of a law enforcement officer's report is not
 1159 practicable before removal, the report shall be completed as
 1160 soon as possible after removal, but in any case before the
 1161 person is transported to a receiving facility. A ~~receiving~~
 1162 facility admitting a person for involuntary examination who is
 1163 not accompanied by the required ex parte order, professional

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1164 certificate, or law enforcement officer's report shall notify
 1165 the ~~managing entity and the department Agency for Health Care~~
 1166 ~~Administration~~ of such admission by certified mail or by
 1167 electronic means if available, by no later than the next working
 1168 day. The provisions of this paragraph do not apply when
 1169 transportation is provided by the patient's family or guardian.

1170 (c) A law enforcement officer acting in accordance with an
 1171 ex parte order issued pursuant to this subsection may serve and
 1172 execute such order on any day of the week, at any time of the
 1173 day or night.

1174 (d) A law enforcement officer acting in accordance with an
 1175 ex parte order issued pursuant to this subsection may use such
 1176 reasonable physical force as is necessary to gain entry to the
 1177 premises, and any dwellings, buildings, or other structures
 1178 located on the premises, and to take custody of the person who
 1179 is the subject of the ex parte order.

1180 (e) The ~~managing entity and the department Agency for~~
 1181 ~~Health Care Administration~~ shall receive and maintain the copies
 1182 of ex parte petitions and orders, involuntary outpatient
 1183 services placement orders issued pursuant to s. 394.4655,
 1184 involuntary inpatient placement orders issued pursuant to s.
 1185 394.467, professional certificates, and law enforcement
 1186 officers' reports. These documents shall be considered part of
 1187 the clinical record, governed by the provisions of s. 394.4615.
 1188 These documents shall be provided by the department to the
 1189 Agency for Health Care Administration and used by the agency to
 1190 ~~The agency shall~~ prepare annual reports analyzing the data
 1191 obtained from these documents, without information identifying
 1192 patients, and shall provide copies of reports to the department,

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1193 the President of the Senate, the Speaker of the House of
 1194 Representatives, and the minority leaders of the Senate and the
 1195 House of Representatives.

1196 (f) A patient shall be examined by a physician ~~or~~ a
 1197 psychologist ~~clinical psychologist~~, or by a psychiatric nurse
 1198 performing within the framework of an established protocol with
 1199 a psychiatrist at a ~~receiving~~ facility without unnecessary delay
 1200 to determine if the criteria for involuntary services are met.
 1201 Emergency treatment may be provided and may, upon the order of a
 1202 physician, if the physician determines ~~be given emergency~~
 1203 ~~treatment if it is determined~~ that such treatment is necessary
 1204 for the safety of the patient or others. The patient may not be
 1205 released by the receiving facility or its contractor without the
 1206 documented approval of a psychiatrist or a psychologist ~~clinical~~
 1207 ~~psychologist or, if the receiving facility is owned or operated~~
 1208 ~~by a hospital or health system, the release may also be approved~~
 1209 ~~by a psychiatric nurse performing within the framework of an~~
 1210 ~~established protocol with a psychiatrist, or an attending~~
 1211 ~~emergency department physician with experience in the diagnosis~~
 1212 ~~and treatment of mental illness and nervous disorders and after~~
 1213 ~~completion of an involuntary examination pursuant to this~~
 1214 ~~subsection. A psychiatric nurse may not approve the release of a~~
 1215 ~~patient if the involuntary examination was initiated by a~~
 1216 ~~psychiatrist unless the release is approved by the initiating~~
 1217 ~~psychiatrist. However, a patient may not be held in a receiving~~
 1218 ~~facility for involuntary examination longer than 72 hours.~~

1219 (g) A person may not be held for involuntary examination
 1220 for more than 72 hours from the time of his or her arrival at
 1221 the facility. Based on the person's needs, one of the following

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1222 actions must be taken within the involuntary examination period:

1223 1. The person must be released with the approval of a
 1224 physician, psychiatrist, psychiatric nurse, or psychologist.
 1225 However, if the examination is conducted in a hospital, an
 1226 attending emergency department physician with experience in the
 1227 diagnosis and treatment of mental illness may approve the
 1228 release. The professional approving the release must have
 1229 personally conducted the involuntary examination.

1230 2. The person must be asked to give express and informed
 1231 consent for voluntary admission if a physician, psychiatrist,
 1232 psychiatric nurse, or psychologist has determined that the
 1233 individual is competent to consent to treatment.

1234 3. A petition for involuntary services must be completed
 1235 and filed in the circuit court by the facility administrator. If
 1236 electronic filing of the petition is not available in the county
 1237 and the 72-hour period ends on a weekend or legal holiday, the
 1238 petition must be filed by the next working day. If involuntary
 1239 services are deemed necessary, the least restrictive treatment
 1240 consistent with the optimum improvement of the person's
 1241 condition must be made available.

1242 (h) An individual discharged from a facility on a voluntary
 1243 or an involuntary basis who is currently charged with a crime
 1244 shall be released to the custody of a law enforcement officer,
 1245 unless the individual has been released from law enforcement
 1246 custody by posting of a bond, by a pretrial conditional release,
 1247 or by other judicial release.

1248 (i) ~~(g)~~ A person for whom an involuntary examination has
 1249 been initiated who is being evaluated or treated at a hospital
 1250 for an emergency medical condition specified in s. 395.002 must

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1251 be examined by an appropriate ~~a receiving~~ facility within 72
 1252 hours. The 72-hour period begins when the patient arrives at the
 1253 hospital and ceases when the attending physician documents that
 1254 the patient has an emergency medical condition. If the patient
 1255 is examined at a hospital providing emergency medical services
 1256 by a professional qualified to perform an involuntary
 1257 examination and is found as a result of that examination not to
 1258 meet the criteria for involuntary outpatient ~~services placement~~
 1259 pursuant to s. 394.4655(1) or involuntary inpatient placement
 1260 pursuant to s. 394.467(1), the patient may be offered voluntary
 1261 placement, if appropriate, or released directly from the
 1262 hospital providing emergency medical services. The finding by
 1263 the professional that the patient has been examined and does not
 1264 meet the criteria for involuntary inpatient placement or
 1265 involuntary outpatient ~~services placement~~ must be entered into
 1266 the patient's clinical record. ~~Nothing in~~ This paragraph is not
 1267 intended to prevent a hospital providing emergency medical
 1268 services from appropriately transferring a patient to another
 1269 hospital before ~~prior to~~ stabilization if, provided the
 1270 requirements of s. 395.1041(3)(c) have been met.

1271 (j) ~~(h)~~ One of the following must occur within 12 hours
 1272 after the patient's attending physician documents that the
 1273 patient's medical condition has stabilized or that an emergency
 1274 medical condition does not exist:

1275 1. The patient must be examined by an appropriate ~~a~~
 1276 ~~designated receiving~~ facility and released; or

1277 2. The patient must be transferred to a designated
 1278 ~~receiving~~ facility in which appropriate medical treatment is
 1279 available. However, the ~~receiving~~ facility must be notified of

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1280 the transfer within 2 hours after the patient's condition has
 1281 been stabilized or after determination that an emergency medical
 1282 condition does not exist.

1283 ~~(i) Within the 72-hour examination period or, if the 72~~
 1284 ~~hours ends on a weekend or holiday, no later than the next~~
 1285 ~~working day thereafter, one of the following actions must be~~
 1286 ~~taken, based on the individual needs of the patient:~~

1287 ~~1. The patient shall be released, unless he or she is~~
 1288 ~~charged with a crime, in which case the patient shall be~~
 1289 ~~returned to the custody of a law enforcement officer;~~

1290 ~~2. The patient shall be released, subject to the provisions~~
 1291 ~~of subparagraph 1., for voluntary outpatient treatment;~~

1292 ~~3. The patient, unless he or she is charged with a crime,~~
 1293 ~~shall be asked to give express and informed consent to placement~~
 1294 ~~as a voluntary patient, and, if such consent is given, the~~
 1295 ~~patient shall be admitted as a voluntary patient; or~~

1296 ~~4. A petition for involuntary placement shall be filed in~~
 1297 ~~the circuit court when outpatient or inpatient treatment is~~
 1298 ~~deemed necessary. When inpatient treatment is deemed necessary,~~
 1299 ~~the least restrictive treatment consistent with the optimum~~
 1300 ~~improvement of the patient's condition shall be made available.~~
 1301 ~~When a petition is to be filed for involuntary outpatient~~
 1302 ~~placement, it shall be filed by one of the petitioners specified~~
 1303 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~
 1304 ~~placement shall be filed by the facility administrator.~~

1305 Section 11. Section 394.4655, Florida Statutes, is amended
 1306 to read:

1307 394.4655 Involuntary outpatient services placement.

1308 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES

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1309 ~~PLACEMENT~~.—A person may be ordered to involuntary outpatient
 1310 services placement upon a finding of the court, by clear and
 1311 convincing evidence, that the person meets all of the following
 1312 criteria by clear and convincing evidence:

1313 (a) The person is 18 years of age or older.†

1314 (b) The person has a mental illness.†

1315 (c) The person is unlikely to survive safely in the
 1316 community without supervision, based on a clinical
 1317 determination.†

1318 (d) The person has a history of lack of compliance with
 1319 treatment for mental illness.†

1320 (e) The person has:

1321 1. At least twice within the immediately preceding 36
 1322 months been involuntarily admitted to a receiving or treatment
 1323 facility as defined in s. 394.455, or has received mental health
 1324 services in a forensic or correctional facility. The 36-month
 1325 period does not include any period during which the person was
 1326 admitted or incarcerated; or

1327 2. Engaged in one or more acts of serious violent behavior
 1328 toward self or others, or attempts at serious bodily harm to
 1329 himself or herself or others, within the preceding 36 months.†

1330 (f) The person is, as a result of his or her mental
 1331 illness, unlikely to voluntarily participate in the recommended
 1332 treatment plan and either ~~he or she~~ has refused voluntary
 1333 services placement for treatment after sufficient and
 1334 conscientious explanation and disclosure of why the services are
 1335 necessary purpose of placement for treatment or ~~he or she~~ is
 1336 unable to determine for himself or herself whether services are
 1337 placement is necessary.†

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1338 (g) In view of the person's treatment history and current
 1339 behavior, the person is in need of involuntary outpatient
 1340 ~~services placement~~ in order to prevent a relapse or
 1341 deterioration that would be likely to result in serious bodily
 1342 harm to himself or herself or others, or a substantial harm to
 1343 his or her well-being as set forth in s. 394.463(1).~~7~~

1344 (h) It is likely that the person will benefit from
 1345 involuntary outpatient ~~services, placement, and~~

1346 (i) All available, less restrictive alternatives that would
 1347 offer an opportunity for improvement of his or her condition
 1348 have been judged to be inappropriate or unavailable.

1349 (2) INVOLUNTARY OUTPATIENT SERVICES PLACEMENT.—

1350 (a)1. A patient who is being recommended for involuntary
 1351 outpatient ~~services placement~~ by the administrator of the
 1352 ~~receiving~~ facility where the patient has been examined may be
 1353 retained by the facility after adherence to the notice
 1354 procedures provided in s. 394.4599. The recommendation must be
 1355 supported by the opinion of two qualified professionals ~~a~~
 1356 ~~psychiatrist and the second opinion of a clinical psychologist~~
 1357 ~~or another psychiatrist~~, both of whom have personally examined
 1358 the patient within the preceding 72 hours, that the criteria for
 1359 involuntary outpatient ~~services placement~~ are met. However, in a
 1360 county having a population of fewer than 50,000, if the
 1361 administrator certifies that a qualified professional
 1362 ~~psychiatrist or clinical psychologist~~ is not available to
 1363 provide the second opinion, the second opinion may be provided
 1364 by a ~~licensed~~ physician who has postgraduate training and
 1365 experience in diagnosis and treatment of mental ~~and nervous~~
 1366 disorders or by a psychiatric nurse. Any second opinion

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1367 authorized in this subparagraph may be conducted through a face-
 1368 to-face examination, in person or by electronic means, including
 1369 telemedicine. Such recommendation must be entered on an
 1370 involuntary outpatient ~~services placement~~ certificate that
 1371 authorizes the ~~receiving~~ facility to retain the patient pending
 1372 completion of a hearing. The certificate must ~~shall~~ be made a
 1373 part of the patient's clinical record.

1374 2. If the patient has been stabilized and no longer meets
 1375 the criteria for involuntary examination pursuant to s.
 1376 394.463(1), the patient must be released from the ~~receiving~~
 1377 facility while awaiting the hearing for involuntary outpatient
 1378 ~~services placement~~. Before filing a petition for involuntary
 1379 outpatient ~~services treatment~~, the administrator of the ~~a~~
 1380 ~~receiving~~ facility or a designated department representative
 1381 must identify the service provider that will have primary
 1382 responsibility for service provision under an order for
 1383 involuntary outpatient ~~services placement~~, unless the person is
 1384 otherwise participating in outpatient psychiatric treatment and
 1385 is not in need of public financing for that treatment, in which
 1386 case the individual, if eligible, may be ordered to involuntary
 1387 treatment pursuant to the existing psychiatric treatment
 1388 relationship.

1389 3. The service provider shall prepare a written proposed
 1390 treatment plan in consultation with the patient or the patient's
 1391 guardian advocate, if appointed, for the court's consideration
 1392 for inclusion in the involuntary outpatient ~~services placement~~
 1393 order. The service provider shall also provide a copy of the
 1394 proposed treatment plan to the patient and the administrator of
 1395 the ~~receiving~~ facility. The treatment plan must specify the

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1396 nature and extent of the patient's mental illness, address the
 1397 reduction of symptoms that necessitate involuntary outpatient
 1398 services placement, and include measurable goals and objectives
 1399 for the services ~~and treatment~~ that are provided to treat the
 1400 person's mental illness and assist the person in living and
 1401 functioning in the community or to prevent a relapse or
 1402 deterioration. Service providers may select and supervise other
 1403 individuals to implement specific aspects of the treatment plan.
 1404 The services in the ~~treatment~~ plan must be deemed clinically
 1405 appropriate by a physician, ~~clinical~~ psychologist, psychiatric
 1406 nurse, mental health counselor, marriage and family therapist,
 1407 or clinical social worker who consults with, or is employed or
 1408 contracted by, the service provider. The service provider must
 1409 certify to the court in the proposed treatment plan whether
 1410 sufficient services for improvement and stabilization are
 1411 currently available and whether the service provider agrees to
 1412 provide those services. If the service provider certifies that
 1413 the services in the proposed treatment plan are not available,
 1414 the petitioner may not file the petition. The service provider
 1415 must document its inquiry with the department and the managing
 1416 entity as to the availability of the requested services. The
 1417 managing entity must document such efforts to obtain the
 1418 requested services.

1419 (b) If a patient in involuntary inpatient placement meets
 1420 the criteria for involuntary outpatient services placement, the
 1421 administrator of the ~~treatment~~ facility may, before the
 1422 expiration of the period during which the ~~treatment~~ facility is
 1423 authorized to retain the patient, recommend involuntary
 1424 outpatient services placement. The recommendation must be

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1425 supported by the opinion of two qualified professionals a
 1426 ~~psychiatrist and the second opinion of a clinical psychologist~~
 1427 ~~or another psychiatrist~~, both of whom have personally examined
 1428 the patient within the preceding 72 hours, that the criteria for
 1429 involuntary outpatient services placement are met. However, in a
 1430 county having a population of fewer than 50,000, if the
 1431 administrator certifies that a qualified professional
 1432 ~~psychiatrist or clinical psychologist~~ is not available to
 1433 provide the second opinion, the second opinion may be provided
 1434 by a ~~licensed~~ physician who has postgraduate training and
 1435 experience in diagnosis and treatment of mental ~~and nervous~~
 1436 disorders or by a psychiatric nurse. Any second opinion
 1437 authorized in this paragraph ~~subparagraph~~ may be conducted
 1438 through a face-to-face examination, in person or by electronic
 1439 means including telemedicine. Such recommendation must be
 1440 entered on an involuntary outpatient services placement
 1441 certificate, and the certificate must be made a part of the
 1442 patient's clinical record.

1443 (c)1. The administrator of the ~~treatment~~ facility shall
 1444 provide a copy of the involuntary outpatient services placement
 1445 certificate and a copy of the state mental health discharge form
 1446 to a department representative in the county where the patient
 1447 will be residing. For persons who are leaving a state mental
 1448 health treatment facility, the petition for involuntary
 1449 outpatient services placement must be filed in the county where
 1450 the patient will be residing.

1451 2. The service provider that will have primary
 1452 responsibility for service provision shall be identified by the
 1453 designated department representative before ~~prior to~~ the order

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1454 for involuntary outpatient services placement and must, before
 1455 ~~prior to~~ filing a petition for involuntary outpatient services
 1456 ~~placement~~, certify to the court whether the services recommended
 1457 in the patient's discharge plan are available ~~in the local~~
 1458 ~~community~~ and whether the service provider agrees to provide
 1459 those services. The service provider must develop with the
 1460 patient, or the patient's guardian advocate, if appointed, a
 1461 treatment or service plan that addresses the needs identified in
 1462 the discharge plan. The plan must be deemed to be clinically
 1463 appropriate by a physician, ~~clinical~~ psychologist, psychiatric
 1464 nurse, mental health counselor, marriage and family therapist,
 1465 or clinical social worker, as defined in this chapter, who
 1466 consults with, or is employed or contracted by, the service
 1467 provider.

1468 3. If the service provider certifies that the services in
 1469 the proposed treatment or service plan are not available, the
 1470 petitioner may not file the petition. The service provider must
 1471 document its inquiry with the department and the managing entity
 1472 as to the availability of the requested services. The managing
 1473 entity must document such efforts to obtain the requested
 1474 services.

1475 (3) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES
 1476 ~~PLACEMENT.~~-

1477 (a) A petition for involuntary outpatient services
 1478 ~~placement~~ may be filed by:

- 1479 1. The administrator of a receiving facility; or
- 1480 2. The administrator of a treatment facility.

1481 (b) Each required criterion for involuntary outpatient
 1482 services placement must be alleged and substantiated in the

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1483 petition for involuntary outpatient services placement. A copy
 1484 of the certificate recommending involuntary outpatient services
 1485 ~~placement~~ completed by two a qualified professionals
 1486 ~~professional specified in subsection (2)~~ must be attached to the
 1487 petition. A copy of the proposed treatment plan must be attached
 1488 to the petition. Before the petition is filed, the service
 1489 provider shall certify that the services in the proposed
 1490 treatment plan are available. If the necessary services are not
 1491 available ~~in the patient's local community to respond to the~~
 1492 ~~person's individual needs~~, the petition may not be filed. The
 1493 service provider must document its inquiry with the department
 1494 and the managing entity as to the availability of the requested
 1495 services. The managing entity must document such efforts to
 1496 obtain the requested services.

1497 (c) The petition for involuntary outpatient services
 1498 ~~placement~~ must be filed in the county where the patient is
 1499 located, unless the patient is being placed from a state
 1500 treatment facility, in which case the petition must be filed in
 1501 the county where the patient will reside. When the petition has
 1502 been filed, the clerk of the court shall provide copies of the
 1503 petition and the proposed treatment plan to the department, the
 1504 managing entity, the patient, the patient's guardian or
 1505 representative, the state attorney, and the public defender or
 1506 the patient's private counsel. A fee may not be charged for
 1507 filing a petition under this subsection.

1508 (4) APPOINTMENT OF COUNSEL.-Within 1 court working day
 1509 after the filing of a petition for involuntary outpatient
 1510 services placement, the court shall appoint the public defender
 1511 to represent the person who is the subject of the petition,

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1512 unless the person is otherwise represented by counsel. The clerk
 1513 of the court shall immediately notify the public defender of the
 1514 appointment. The public defender shall represent the person
 1515 until the petition is dismissed, the court order expires, or the
 1516 patient is discharged from involuntary outpatient services
 1517 ~~placement~~. An attorney who represents the patient must be
 1518 ~~provided shall have~~ access to the patient, witnesses, and
 1519 records relevant to the presentation of the patient's case and
 1520 shall represent the interests of the patient, regardless of the
 1521 source of payment to the attorney.

1522 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
 1523 the concurrence of the patient's counsel, to at least one
 1524 continuance of the hearing. The continuance shall be for a
 1525 period of up to 4 weeks.

1526 (6) HEARING ON INVOLUNTARY OUTPATIENT SERVICES PLACEMENT.—

1527 (a)1. The court shall hold the hearing on involuntary
 1528 outpatient services placement within 5 working days after the
 1529 filing of the petition, unless a continuance is granted. The
 1530 hearing must shall be held in the county where the petition is
 1531 filed, must shall be as convenient to the patient as is
 1532 consistent with orderly procedure, and must shall be conducted
 1533 in physical settings not likely to be injurious to the patient's
 1534 condition. If the court finds that the patient's attendance at
 1535 the hearing is not consistent with the best interests of the
 1536 patient and if the patient's counsel does not object, the court
 1537 may waive the presence of the patient from all or any portion of
 1538 the hearing. The state attorney for the circuit in which the
 1539 patient is located shall represent the state, rather than the
 1540 petitioner, as the real party in interest in the proceeding.

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1541 2. The court may appoint a general or special master to
 1542 preside at the hearing. One of the professionals who executed
 1543 the involuntary outpatient services placement certificate shall
 1544 be a witness. The patient and the patient's guardian or
 1545 representative shall be informed by the court of the right to an
 1546 independent expert examination. If the patient cannot afford
 1547 such an examination, the court shall ensure that one is
 1548 provided, as otherwise provided by law ~~provide for one~~. The
 1549 independent expert's report is shall be confidential and not
 1550 discoverable, unless the expert is to be called as a witness for
 1551 the patient at the hearing. The court shall allow testimony from
 1552 individuals, including family members, deemed by the court to be
 1553 relevant under state law, regarding the person's prior history
 1554 and how that prior history relates to the person's current
 1555 condition. The testimony in the hearing must be given under
 1556 oath, and the proceedings must be recorded. The patient may
 1557 refuse to testify at the hearing.

1558 (b)1. If the court concludes that the patient meets the
 1559 criteria for involuntary outpatient services placement pursuant
 1560 to subsection (1), the court shall issue an order for
 1561 involuntary outpatient services placement. The court order shall
 1562 be for a period of up to 90 days 6 months. However, an order for
 1563 involuntary services in a state treatment facility may be for up
 1564 to 6 months. The order must specify the nature and extent of the
 1565 patient's mental illness. The order of the court and the
 1566 treatment plan must shall be made part of the patient's clinical
 1567 record. The service provider shall discharge a patient from
 1568 involuntary outpatient services placement when the order expires
 1569 or any time the patient no longer meets the criteria for

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1570 involuntary services placement. Upon discharge, the service
 1571 provider shall send a certificate of discharge to the court.

1572 2. The court may not order the department or the service
 1573 provider to provide services if the program or service is not
 1574 available in the patient's local community, if there is no space
 1575 available in the program or service for the patient, or if
 1576 funding is not available for the program or service. The service
 1577 provider must document its inquiry with the department and the
 1578 managing entity as to the availability of the requested
 1579 services. The managing entity must document such efforts to
 1580 obtain the requested services. A copy of the order must be sent
 1581 to the department and the managing entity Agency for Health Care
 1582 Administration by the service provider within 1 working day
 1583 after it is received from the court. After the ~~placement~~ order
 1584 for involuntary services is issued, the service provider and the
 1585 patient may modify ~~provisions of~~ the treatment plan. For any
 1586 material modification of the treatment plan to which the patient
 1587 or, if one is appointed, the patient's guardian advocate agrees,
 1588 ~~if appointed, does agree~~, the service provider shall send notice
 1589 of the modification to the court. Any material modifications of
 1590 the treatment plan which are contested by the patient or the
 1591 patient's guardian advocate, if applicable appointed, must be
 1592 approved or disapproved by the court consistent with subsection
 1593 (2).

1594 3. If, in the clinical judgment of a physician, the patient
 1595 has failed or ~~has~~ refused to comply with the treatment ordered
 1596 by the court, and, in the clinical judgment of the physician,
 1597 efforts were made to solicit compliance and the patient may meet
 1598 the criteria for involuntary examination, a person may be

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1599 brought to a receiving facility pursuant to s. 394.463. If,
 1600 after examination, the patient does not meet the criteria for
 1601 involuntary inpatient placement pursuant to s. 394.467, the
 1602 patient must be discharged from the ~~receiving~~ facility. The
 1603 involuntary outpatient services placement order shall remain in
 1604 effect unless the service provider determines that the patient
 1605 no longer meets the criteria for involuntary outpatient services
 1606 ~~placement~~ or until the order expires. The service provider must
 1607 determine whether modifications should be made to the existing
 1608 treatment plan and must attempt to continue to engage the
 1609 patient in treatment. For any material modification of the
 1610 treatment plan to which the patient or the patient's guardian
 1611 advocate, if applicable appointed, agrees does agree, the
 1612 service provider shall send notice of the modification to the
 1613 court. Any material modifications of the treatment plan which
 1614 are contested by the patient or the patient's guardian advocate,
 1615 if applicable appointed, must be approved or disapproved by the
 1616 court consistent with subsection (2).

1617 (c) If, at any time before the conclusion of the initial
 1618 hearing on involuntary outpatient services placement, it appears
 1619 to the court that the person does not meet the criteria for
 1620 involuntary outpatient services placement under this section
 1621 but, instead, meets the criteria for involuntary inpatient
 1622 placement, the court may order the person admitted for
 1623 involuntary inpatient examination under s. 394.463. If the
 1624 person instead meets the criteria for involuntary assessment,
 1625 protective custody, or involuntary admission pursuant to s.
 1626 397.675, the court may order the person to be admitted for
 1627 involuntary assessment for a period of 5 days pursuant to s.

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1628 397.6811. Thereafter, all proceedings ~~are shall be~~ governed by
1629 chapter 397.

1630 (d) At the hearing on involuntary outpatient services
1631 ~~placement~~, the court shall consider testimony and evidence
1632 regarding the patient's competence to consent to treatment. If
1633 the court finds that the patient is incompetent to consent to
1634 treatment, it shall appoint a guardian advocate as provided in
1635 s. 394.4598. The guardian advocate shall be appointed or
1636 discharged in accordance with s. 394.4598.

1637 (e) The administrator of the receiving facility or the
1638 designated department representative shall provide a copy of the
1639 court order and adequate documentation of a patient's mental
1640 illness to the service provider for involuntary outpatient
1641 services placement. Such documentation must include any advance
1642 directives made by the patient, a psychiatric evaluation of the
1643 patient, and any evaluations of the patient performed by a
1644 ~~clinical~~ psychologist or a clinical social worker.

1645 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES
1646 PLACEMENT.-

1647 (a)1. If the person continues to meet the criteria for
1648 involuntary outpatient services placement, the service provider
1649 shall, at least 10 days before the expiration of the period
1650 during which the treatment is ordered for the person, file in
1651 the county or circuit court a petition for continued involuntary
1652 outpatient services placement. The court shall immediately
1653 schedule a hearing on the petition to be held within 15 days
1654 after the petition is filed.

1655 2. The existing involuntary outpatient services placement
1656 order remains in effect until disposition on the petition for

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1657 continued involuntary outpatient services placement.

1658 3. A certificate shall be attached to the petition which
1659 includes a statement from the person's physician or ~~clinical~~
1660 psychologist justifying the request, a brief description of the
1661 patient's treatment during the time he or she was receiving
1662 involuntarily services placed, and an individualized plan of
1663 continued treatment.

1664 4. The service provider shall develop the individualized
1665 plan of continued treatment in consultation with the patient or
1666 the patient's guardian advocate, if applicable appointed. When
1667 the petition has been filed, the clerk of the court shall
1668 provide copies of the certificate and the individualized plan of
1669 continued treatment to the department, the patient, the
1670 patient's guardian advocate, the state attorney, and the
1671 patient's private counsel or the public defender.

1672 (b) Within 1 court working day after the filing of a
1673 petition for continued involuntary outpatient services
1674 placement, the court shall appoint the public defender to
1675 represent the person who is the subject of the petition, unless
1676 the person is otherwise represented by counsel. The clerk of the
1677 court shall immediately notify the public defender of such
1678 appointment. The public defender shall represent the person
1679 until the petition is dismissed or the court order expires or
1680 the patient is discharged from involuntary outpatient services
1681 placement. Any attorney representing the patient shall have
1682 access to the patient, witnesses, and records relevant to the
1683 presentation of the patient's case and shall represent the
1684 interests of the patient, regardless of the source of payment to
1685 the attorney.

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1686 (c) Hearings on petitions for continued involuntary
 1687 outpatient services must ~~placement shall~~ be before the circuit
 1688 court. The court may appoint a general or special master to
 1689 preside at the hearing. The procedures for obtaining an order
 1690 pursuant to this paragraph must meet the requirements of ~~shall~~
 1691 ~~be in accordance with~~ subsection (6), except that the time
 1692 period included in paragraph (1) (e) does not apply when is not
 1693 ~~applicable in~~ determining the appropriateness of additional
 1694 periods of involuntary outpatient services placement.

1695 (d) Notice of the hearing must ~~shall~~ be provided as set
 1696 forth in s. 394.4599. The patient and the patient's attorney may
 1697 agree to a period of continued outpatient services placement
 1698 without a court hearing.

1699 (e) The same procedure must ~~shall~~ be repeated before the
 1700 expiration of each additional period the patient is placed in
 1701 treatment.

1702 (f) If the patient has previously been found incompetent to
 1703 consent to treatment, the court shall consider testimony and
 1704 evidence regarding the patient's competence. Section 394.4598
 1705 governs the discharge of the guardian advocate if the patient's
 1706 competency to consent to treatment has been restored.

1707 Section 12. Section 394.467, Florida Statutes, is amended
 1708 to read:

1709 394.467 Involuntary inpatient placement.—

1710 (1) CRITERIA.—A person may be ordered for ~~placed in~~
 1711 involuntary inpatient placement for treatment upon a finding of
 1712 the court by clear and convincing evidence that:

1713 (a) He or she has a mental illness ~~is mentally ill~~ and
 1714 because of his or her mental illness:

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1715 1.a. He or she has refused voluntary inpatient placement
 1716 for treatment after sufficient and conscientious explanation and
 1717 disclosure of the purpose of inpatient placement for treatment;
 1718 or

1719 b. He or she is unable to determine for himself or herself
 1720 whether inpatient placement is necessary; and

1721 2.a. He or she is ~~manifestly~~ incapable of surviving alone
 1722 or with the help of willing and responsible family or friends,
 1723 including available alternative services, and, without
 1724 treatment, is likely to suffer from neglect or refuse to care
 1725 for himself or herself, and such neglect or refusal poses a real
 1726 and present threat of substantial physical or mental harm to his
 1727 or her well-being; or

1728 b. There is substantial likelihood that in the near future
 1729 he or she will inflict serious bodily harm on self or others
 1730 ~~himself or herself or another person~~, as evidenced by recent
 1731 behavior causing, attempting, or threatening such harm; and

1732 (b) All available, less restrictive treatment alternatives
 1733 that which would offer an opportunity for improvement of his or
 1734 her condition have been judged to be inappropriate.

1735 (2) ADMISSION TO A TREATMENT FACILITY.—A patient may be
 1736 retained by a ~~receiving~~ facility or involuntarily placed in a
 1737 treatment facility upon the recommendation of the administrator
 1738 of the ~~receiving~~ facility where the patient has been examined
 1739 and after adherence to the notice and hearing procedures
 1740 provided in s. 394.4599. The recommendation must be supported by
 1741 the opinion of a psychiatrist and the second opinion of a
 1742 psychiatric nurse, clinical psychologist, or another
 1743 psychiatrist, both of whom have personally examined the patient

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1744 within the preceding 72 hours, that the criteria for involuntary
 1745 inpatient placement are met. However, in a county that has a
 1746 population of fewer than 50,000, if the administrator certifies
 1747 that a psychiatrist, psychiatric nurse, or ~~clinical~~ psychologist
 1748 is not available to provide the second opinion, the second
 1749 opinion may be provided by a ~~licensed~~ physician who has
 1750 postgraduate training and experience in diagnosis and treatment
 1751 of mental ~~illness and nervous disorders~~ or by a psychiatric
 1752 nurse. Any second opinion authorized in this subsection may be
 1753 conducted through a face-to-face examination, in person or by
 1754 electronic means, including telemedicine. Such recommendation
 1755 shall be entered on a petition for an involuntary inpatient
 1756 placement certificate that authorizes the receiving facility to
 1757 retain the patient pending transfer to a treatment facility or
 1758 completion of a hearing.

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

1759 (a) The administrator of the facility shall file a petition
 1760 for involuntary inpatient placement in the court in the county
 1761 where the patient is located. Upon filing, the clerk of the
 1762 court shall provide copies to the department, the patient, the
 1763 patient's guardian or representative, and the state attorney and
 1764 public defender of the judicial circuit in which the patient is
 1765 located. ~~A No fee may not shall~~ be charged for the filing of a
 1766 petition under this subsection.

1767 (b) A facility filing a petition under this subsection for
 1768 involuntary inpatient placement shall send a copy of the
 1769 petition to the department and the managing entity in its area.

1770 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
 1771 after the filing of a petition for involuntary inpatient
 1772

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1773 placement, the court shall appoint the public defender to
 1774 represent the person who is the subject of the petition, unless
 1775 the person is otherwise represented by counsel. The clerk of the
 1776 court shall immediately notify the public defender of such
 1777 appointment. Any attorney representing the patient shall have
 1778 access to the patient, witnesses, and records relevant to the
 1779 presentation of the patient's case and shall represent the
 1780 interests of the patient, regardless of the source of payment to
 1781 the attorney.

1782 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
 1783 the concurrence of the patient's counsel, to at least one
 1784 continuance of the hearing. ~~The continuance shall be for a~~
 1785 ~~period of~~ up to 4 weeks.

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

1786 (a)1. The court shall hold the hearing on involuntary
 1787 inpatient placement within 5 court working days, unless a
 1788 continuance is granted.

1789 2. Except for good cause documented in the court file, the
 1790 hearing ~~must shall~~ be held in the county or the facility, as
 1791 appropriate, where the patient is located, must and shall be as
 1792 convenient to the patient as is may be consistent with orderly
 1793 procedure, and shall be conducted in physical settings not
 1794 likely to be injurious to the patient's condition. If the court
 1795 finds that the patient's attendance at the hearing is not
 1796 consistent with the best interests of the patient, and the
 1797 patient's counsel does not object, the court may waive the
 1798 presence of the patient from all or any portion of the hearing.
 1799 The state attorney for the circuit in which the patient is
 1800 located shall represent the state, rather than the petitioning
 1801

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1802 facility administrator, as the real party in interest in the
1803 proceeding.

1804 ~~3.2-~~ The court may appoint a general or special magistrate
1805 to preside at the hearing. One of the two professionals who
1806 executed the petition for involuntary inpatient placement
1807 certificate shall be a witness. The patient and the patient's
1808 guardian or representative shall be informed by the court of the
1809 right to an independent expert examination. If the patient
1810 cannot afford such an examination, the court shall ensure that
1811 one is provided, as otherwise provided for by law ~~provide for~~
1812 ~~one~~. The independent expert's report is is ~~shall be~~ confidential
1813 and not discoverable, unless the expert is to be called as a
1814 witness for the patient at the hearing. The testimony in the
1815 hearing must be given under oath, and the proceedings must be
1816 recorded. The patient may refuse to testify at the hearing.

1817 (b) If the court concludes that the patient meets the
1818 criteria for involuntary inpatient placement, it may ~~shall~~ order
1819 that the patient be transferred to a treatment facility or, if
1820 the patient is at a treatment facility, that the patient be
1821 retained there or be treated at any other appropriate ~~receiving~~
1822 ~~or treatment~~ facility, or that the patient receive services from
1823 such a receiving or treatment facility or service provider, on
1824 an involuntary basis, for a period of up to 90 days ~~6 months~~.
1825 However, any order for involuntary mental health services in a
1826 state treatment facility may be for up to 6 months. The order
1827 shall specify the nature and extent of the patient's mental
1828 illness. The facility shall discharge a patient any time the
1829 patient no longer meets the criteria for involuntary inpatient
1830 placement, unless the patient has transferred to voluntary

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1831 status.

1832 (c) If at any time ~~before~~ prior to the conclusion of the
1833 hearing on involuntary inpatient placement it appears to the
1834 court that the person does not meet the criteria for involuntary
1835 inpatient placement under this section, but instead meets the
1836 criteria for involuntary outpatient services ~~placement~~, the
1837 court may order the person evaluated for involuntary outpatient
1838 services ~~placement~~ pursuant to s. 394.4655. The petition and
1839 hearing procedures set forth in s. 394.4655 shall apply. If the
1840 person instead meets the criteria for involuntary assessment,
1841 protective custody, or involuntary admission pursuant to s.
1842 397.675, then the court may order the person to be admitted for
1843 involuntary assessment for a period of 5 days pursuant to s.
1844 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by
1845 chapter 397.

1846 (d) At the hearing on involuntary inpatient placement, the
1847 court shall consider testimony and evidence regarding the
1848 patient's competence to consent to treatment. If the court finds
1849 that the patient is incompetent to consent to treatment, it
1850 shall appoint a guardian advocate as provided in s. 394.4598.

1851 (e) The administrator of the petitioning ~~receiving~~ facility
1852 shall provide a copy of the court order and adequate
1853 documentation of a patient's mental illness to the administrator
1854 of a treatment facility if the ~~whenever~~ a patient is ordered for
1855 involuntary inpatient placement, whether by civil or criminal
1856 court. The documentation must ~~shall~~ include any advance
1857 directives made by the patient, a psychiatric evaluation of the
1858 patient, and any evaluations of the patient performed by a
1859 clinical psychologist, a marriage and family therapist, a mental

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1860 health counselor, or a clinical social worker. The administrator
 1861 of a treatment facility may refuse admission to any patient
 1862 directed to its facilities on an involuntary basis, whether by
 1863 civil or criminal court order, who is not accompanied ~~at the~~
 1864 ~~same time~~ by adequate orders and documentation.

1865 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
 1866 PLACEMENT.—

1867 (a) Hearings on petitions for continued involuntary
 1868 inpatient placement of an individual placed at any state
 1869 treatment facility ~~shall be~~ administrative hearings and must
 1870 ~~shall be~~ conducted in accordance with ~~the provisions of~~ s.

1871 120.57(1), except that any order entered by the administrative
 1872 law judge is ~~shall be~~ final and subject to judicial review in
 1873 accordance with s. 120.68. Orders concerning patients committed
 1874 after successfully pleading not guilty by reason of insanity are
 1875 ~~shall be~~ governed by ~~the provisions of~~ s. 916.15.

1876 (b) If the patient continues to meet the criteria for
 1877 involuntary inpatient placement and is being treated at a state
 1878 treatment facility, the administrator shall, before ~~prior to~~ the
 1879 expiration of the period ~~during which~~ the state treatment
 1880 facility is authorized to retain the patient, file a petition
 1881 requesting authorization for continued involuntary inpatient
 1882 placement. The request must ~~shall~~ be accompanied by a statement
 1883 from the patient's physician, psychiatrist, psychiatric nurse,
 1884 or ~~clinical~~ psychologist justifying the request, a brief
 1885 description of the patient's treatment during the time he or she
 1886 was involuntarily placed, and an individualized plan of
 1887 continued treatment. Notice of the hearing must ~~shall~~ be
 1888 provided as provided ~~set forth~~ in s. 394.4599. If a patient's

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1889 attendance at the hearing is voluntarily waived, the
 1890 administrative law judge must determine that the waiver is
 1891 knowing and voluntary before waiving the presence of the patient
 1892 from all or a portion of the hearing. Alternatively, if at the
 1893 hearing the administrative law judge finds that attendance at
 1894 the hearing is not consistent with the best interests of the
 1895 patient, the administrative law judge may waive the presence of
 1896 the patient from all or any portion of the hearing, unless the
 1897 patient, through counsel, objects to the waiver of presence. The
 1898 testimony in the hearing must be under oath, and the proceedings
 1899 must be recorded.

1900 (c) Unless the patient is otherwise represented or is
 1901 ineligible, he or she shall be represented at the hearing on the
 1902 petition for continued involuntary inpatient placement by the
 1903 public defender of the circuit in which the facility is located.

1904 (d) If at a hearing it is shown that the patient continues
 1905 to meet the criteria for involuntary inpatient placement, the
 1906 administrative law judge shall sign the order for continued
 1907 involuntary inpatient placement for a period of up to 90 days
 1908 ~~not to exceed 6 months. However, any order for involuntary~~
 1909 mental health services in a state treatment facility may be for
 1910 up to 6 months ~~The same procedure shall be repeated prior to the~~
 1911 ~~expiration of each additional period the patient is retained.~~

1912 (e) If continued involuntary inpatient placement is
 1913 necessary for a patient admitted while serving a criminal
 1914 sentence, but his or her ~~whose~~ sentence is about to expire, or
 1915 for a minor patient involuntarily placed, ~~while a minor~~ but who
 1916 is about to reach the age of 18, the administrator shall
 1917 petition the administrative law judge for an order authorizing

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1918 continued involuntary inpatient placement.

1919 (f) If the patient has been previously found incompetent to
 1920 consent to treatment, the administrative law judge shall
 1921 consider testimony and evidence regarding the patient's
 1922 competence. If the administrative law judge finds evidence that
 1923 the patient is now competent to consent to treatment, the
 1924 administrative law judge may issue a recommended order to the
 1925 court that found the patient incompetent to consent to treatment
 1926 that the patient's competence be restored and that any guardian
 1927 advocate previously appointed be discharged.

1928 (g) If the patient has been ordered to undergo involuntary
 1929 inpatient placement and has previously been found incompetent to
 1930 consent to treatment, the court shall consider testimony and
 1931 evidence regarding the patient's incompetence. If the patient's
 1932 competency to consent to treatment is restored, the discharge of
 1933 the guardian advocate shall be governed by the provisions of s.
 1934 394.4598.

1935
 1936 The procedure required in this subsection must be followed
 1937 before the expiration of each additional period the patient is
 1938 involuntarily receiving services.

1939 (8) RETURN TO FACILITY OF PATIENTS.-If a patient
 1940 involuntarily held ~~When a patient~~ at a treatment facility under
 1941 this part leaves the facility without the administrator's
 1942 authorization, the administrator may authorize a search for the
 1943 patient and his or her ~~the return of the patient~~ to the
 1944 facility. The administrator may request the assistance of a law
 1945 enforcement agency in this regard ~~the search for and return of~~
 1946 ~~the patient.~~

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1947 Section 13. Section 394.46715, Florida Statutes, is amended
 1948 to read:

1949 394.46715 Rulemaking authority.-The department may adopt
 1950 rules to administer this part ~~Department of Children and~~
 1951 ~~Families shall have rulemaking authority to implement the~~
 1952 ~~provisions of ss. 394.455, 394.4598, 394.4615, 394.463,~~
 1953 ~~394.4655, and 394.467 as amended or created by this act. These~~
 1954 ~~rules shall be for the purpose of protecting the health, safety,~~
 1955 ~~and well-being of persons examined, treated, or placed under~~
 1956 ~~this act.~~

1957 Section 14. Section 394.761, Florida Statutes, is created
 1958 to read:

1959 394.761 Revenue maximization.-The agency and the department
 1960 shall develop a plan to obtain federal approval for increasing
 1961 the availability of federal Medicaid funding for behavioral
 1962 health care. Increased funding shall be used to advance the goal
 1963 of improved integration of behavioral health and primary care
 1964 services through development and effective implementation of
 1965 coordinated care as described in s. 394.9082. The agency and the
 1966 department shall submit the written plan to the President of the
 1967 Senate and the Speaker of the House of Representatives by
 1968 November 1, 2016. The plan shall identify the amount of general
 1969 revenue funding appropriated for mental health and substance
 1970 abuse services which is eligible to be used as state Medicaid
 1971 match. The plan must evaluate alternative uses of increased
 1972 Medicaid funding, including expansion of Medicaid eligibility
 1973 for the severely and persistently mentally ill; increased
 1974 reimbursement rates for behavioral health services; adjustments
 1975 to the capitation rate for Medicaid enrollees with chronic

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 1976 mental illness and substance abuse disorders; supplemental
 1977 payments to mental health and substance abuse providers through
 1978 a designated state health program or other mechanism; and
 1979 innovative programs for incentivizing improved outcomes for
 1980 behavioral health conditions. The plan must identify the
 1981 advantages and disadvantages of each alternative and assess the
 1982 potential of each for achieving improved integration of
 1983 services. The plan must identify the federal approvals necessary
 1984 to implement each alternative and project a timeline for
 1985 implementation.

1986 Section 15. Subsection (11) is added to section 394.875,
 1987 Florida Statutes, to read:

1988 394.875 Crisis stabilization units, residential treatment
 1989 facilities, and residential treatment centers for children and
 1990 adolescents; authorized services; license required.—

1991 (11) By January 1, 2017, the department shall modify
 1992 licensure rules and procedures to create an option for a single,
 1993 consolidated license for a provider who offers multiple types of
 1994 mental health and substance abuse services regulated under this
 1995 chapter and chapter 397. Providers eligible for a consolidated
 1996 license shall operate these services through a single corporate
 1997 entity and a unified management structure. Any provider serving
 1998 adults and children must meet department standards for separate
 1999 facilities and other requirements necessary to ensure children's
 2000 safety and promote therapeutic efficacy.

2001 Section 16. Section 394.9082, Florida Statutes, is amended
 2002 to read:

2003 (Substantial rewording of section. See
 2004 s. 394.9082, F.S., for present text.)

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 2005 394.9082 Behavioral health managing entities' purpose;
 2006 definitions; duties; contracting; accountability.—
 2007 (1) PURPOSE.—The purpose of the behavioral health managing
 2008 entities is to plan for and coordinate the delivery of community
 2009 mental health and substance abuse services, to improve access to
 2010 care, to promote service continuity, and to support efficient
 2011 and effective delivery of services.
 2012 (2) DEFINITIONS.—As used in this section, the term:
 2013 (a) "Behavioral health services" means mental health
 2014 services and substance abuse prevention and treatment services
 2015 as described in this chapter and chapter 397.
 2016 (b) "Case management" means those direct services provided
 2017 to a client in order to assess needs, plan or arrange services,
 2018 coordinate service providers, monitor service delivery, and
 2019 evaluate outcomes.
 2020 (c) "Coordinated system of care" means the full array of
 2021 behavioral health and related services in a region or a
 2022 community offered by all service providers, whether
 2023 participating under contract with the managing entity or through
 2024 another method of community partnership or mutual agreement.
 2025 (d) "Geographic area" means one or more contiguous
 2026 counties, circuits, or regions as described in s. 409.966 or s.
 2027 381.0406.
 2028 (e) "High-need or high-utilization individual" means a
 2029 recipient who meets one or more of the following criteria and
 2030 may be eligible for intensive case management services:
 2031 1. Has resided in a state mental health facility for at
 2032 least 6 months in the last 36 months;
 2033 2. Has had two or more admissions to a state mental health

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2034 facility in the last 36 months; or

2035 3. Has had three or more admissions to a crisis
 2036 stabilization unit, an addictions receiving facility, a short-
 2037 term residential facility, or an inpatient psychiatric unit
 2038 within the last 12 months.

2039 (f) "Managing entity" means a corporation designated or
 2040 filed as a nonprofit organization under s. 501(c)(3) of the
 2041 Internal Revenue Code which is selected by, and is under
 2042 contract with, the department to manage the daily operational
 2043 delivery of behavioral health services through a coordinated
 2044 system of care.

2045 (g) "Provider network" means the group of direct service
 2046 providers, facilities, and organizations under contract with a
 2047 managing entity to provide a comprehensive array of emergency,
 2048 acute care, residential, outpatient, recovery support, and
 2049 consumer support services.

2050 (h) "Receiving facility" means any public or private
 2051 facility designated by the department to receive and hold or to
 2052 refer, as appropriate, involuntary patients under emergency
 2053 conditions for mental health or substance abuse evaluation and
 2054 to provide treatment or transportation to the appropriate
 2055 service provider. County jails may not be used or designated as
 2056 a receiving facility, a triage center, or an access center.

2057 (3) DEPARTMENT DUTIES.—The department shall:

2058 (a) Designate, with input from the managing entity,
 2059 facilities that meet the definitions in s. 394.455(1), (2),
 2060 (12), and (41) and the receiving system developed by one or more
 2061 counties pursuant to s. 394.4573(2)(b).

2062 (b) Contract with organizations to serve as the managing

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2063 entity in accordance with the requirements of this section.

2064 (c) Specify the geographic area served.

2065 (d) Specify data reporting and use of shared data systems.

2066 (e) Develop strategies to divert persons with mental
 2067 illness or substance abuse disorders from the criminal and
 2068 juvenile justice systems.

2069 (f) Support the development and implementation of a
 2070 coordinated system of care by requiring each provider that
 2071 receives state funds for behavioral health services through a
 2072 direct contract with the department to work with the managing
 2073 entity in the provider's service area to coordinate the
 2074 provision of behavioral health services, as part of the contract
 2075 with the department.

2076 (g) Set performance measures and performance standards for
 2077 managing entities based on nationally recognized standards, such
 2078 as those developed by the National Quality Forum, the National
 2079 Committee for Quality Assurance, or similar credible sources.
 2080 Performance standards must include all of the following:

2081 1. Annual improvement in the extent to which the need for
 2082 behavioral health services is met by the coordinated system of
 2083 care in the geographic area served.

2084 2. Annual improvement in the percentage of patients who
 2085 receive services through the coordinated system of care and who
 2086 achieve improved functional status as indicated by health
 2087 condition, employment status, and housing stability.

2088 3. Annual reduction in the rates of readmissions to acute
 2089 care facilities, jails, prisons, and forensic facilities.

2090 4. Annual improvement in consumer and family satisfaction.

2091 (h) Provide technical assistance to the managing entities.

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- 2092 (i) Promote the integration of behavioral health care and
 2093 primary care.
- 2094 (j) Facilitate the coordination between the managing entity
 2095 and other payors of behavioral health care.
- 2096 (k) Develop and provide a unique identifier for clients
 2097 receiving services under the managing entity to coordinate care.
- 2098 (l) Coordinate procedures for the referral and admission of
 2099 patients to, and the discharge of patients from, state treatment
 2100 facilities and their return to the community.
- 2101 (m) Ensure that managing entities comply with state and
 2102 federal laws, rules, and regulations.
- 2103 (n) Develop rules for the operations of, and the
 2104 requirements that must be met by, the managing entity, if
 2105 necessary.
- 2106 (4) CONTRACT WITH MANAGING ENTITIES.—
- 2107 (a) The department's contracts with managing entities must
 2108 support efficient and effective administration of the behavioral
 2109 health system and ensure accountability for performance.
- 2110 (b) Beginning July 1, 2018, managing entities under
 2111 contract with the department are subject to a contract
 2112 performance review. The review must include:
- 2113 1. Analysis of the duties and performance measures
 2114 described in this section;
- 2115 2. The results of contract monitoring compiled during the
 2116 term of the contract; and
- 2117 3. Related compliance and performance issues.
- 2118 (c) For the managing entities whose performance is
 2119 determined satisfactory after completion of the review pursuant
 2120 to paragraph (b), and before the end of the term of the

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- 2121 contract, the department may negotiate and enter into a contract
 2122 with the managing entity for a period of 4 years pursuant to s.
 2123 287.057(3)(e).
- 2124 (d) The performance review must be completed by the
 2125 beginning of the third year of the 4-year contract. In the event
 2126 the managing entity does not meet the requirements of the
 2127 performance review, a corrective action plan must be created by
 2128 the department. The managing entity must complete the corrective
 2129 action plan before the beginning of the fourth year of the
 2130 contract. If the corrective action plan is not satisfactorily
 2131 completed, the department shall provide notice to the managing
 2132 entity that the contract will be terminated at the end of the
 2133 contract term and the department shall initiate a competitive
 2134 procurement process to select a new managing entity pursuant to
 2135 s. 287.057.
- 2136 (5) MANAGING ENTITIES DUTIES.—A managing entity shall:
- 2137 (a) Maintain a board of directors that is representative of
 2138 the community and that, at a minimum, includes consumers and
 2139 family members, community stakeholders and organizations, and
 2140 providers of mental health and substance abuse services,
 2141 including public and private receiving facilities.
- 2142 (b) Conduct a community behavioral health care needs
 2143 assessment in the geographic area served by the managing entity.
 2144 The needs assessment must be updated annually and provided to
 2145 the department. The assessment must include, at a minimum, the
 2146 information the department needs for its annual report to the
 2147 Governor and Legislature pursuant to s. 394.4573.
- 2148 (c) Develop local resources by pursuing third-party
 2149 payments for services, applying for grants, securing local

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- 2150 matching funds and in-kind services, and any other methods
 2151 needed to ensure services are available and accessible.
 2152 (d) Provide assistance to counties to develop a designated
 2153 receiving system pursuant to s. 394.4573(2)(b) and a
 2154 transportation plan pursuant to s. 394.462.
 2155 (e) Promote the development and effective implementation of
 2156 a coordinated system of care pursuant to s. 394.4573.
 2157 (f) Develop a comprehensive network of qualified providers
 2158 to deliver behavioral health services. The managing entity is
 2159 not required to competitively procure network providers, but
 2160 must have a process in place to publicize opportunities to join
 2161 the network and to evaluate providers in the network to
 2162 determine if they can remain in the network. These processes
 2163 must be published on the website of the managing entity. The
 2164 managing entity must ensure continuity of care for clients if a
 2165 provider ceases to provide a service or leaves the network.
 2166 (g) Enter into cooperative agreements with local homeless
 2167 councils and organizations to allow the sharing of available
 2168 resource information, shared client information, client referral
 2169 services, and any other data or information that may be useful
 2170 in addressing the homelessness of persons suffering from a
 2171 behavioral health crisis.
 2172 (h) Monitor network providers' performance and their
 2173 compliance with contract requirements and federal and state
 2174 laws, rules, and regulations.
 2175 (i) Provide or contract for case management services.
 2176 (j) Manage and allocate funds for services to meet the
 2177 requirements of law or rule.
 2178 (k) Promote integration of behavioral health with primary

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- 2179 care.
 2180 (l) Implement shared data systems necessary for the
 2181 delivery of coordinated care and integrated services, the
 2182 assessment of managing entity performance and provider
 2183 performance, and the reporting of outcomes and costs of
 2184 services.
 2185 (m) Operate in a transparent manner, providing public
 2186 access to information, notice of meetings, and opportunities for
 2187 public participation in managing entity decisionmaking.
 2188 (n) Establish and maintain effective relationships with
 2189 community stakeholders, including local governments and other
 2190 organizations that serve individuals with behavioral health
 2191 needs.
 2192 (o) Collaborate with local criminal and juvenile justice
 2193 systems to divert persons with mental illness or substance abuse
 2194 disorders, or both, from the criminal and juvenile justice
 2195 systems.
 2196 (p) Collaborate with the local court system to develop
 2197 procedures to maximize the use of involuntary outpatient
 2198 services; reduce involuntary inpatient treatment; and increase
 2199 diversion from the criminal and juvenile justice systems.
 2200 (6) FUNDING FOR MANAGING ENTITIES.—
 2201 (a) A contract established between the department and a
 2202 managing entity under this section must be funded by general
 2203 revenue, other applicable state funds, or applicable federal
 2204 funding sources. A managing entity may carry forward documented
 2205 unexpended state funds from one fiscal year to the next, but the
 2206 cumulative amount carried forward may not exceed 8 percent of
 2207 the total value of the contract. Any unexpended state funds in

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2208 excess of that percentage must be returned to the department.
 2209 The funds carried forward may not be used in a way that would
 2210 increase future recurring obligations or for any program or
 2211 service that was not authorized as of July 1, 2016, under the
 2212 existing contract with the department. Expenditures of funds
 2213 carried forward must be separately reported to the department.
 2214 Any unexpended funds that remain at the end of the contract
 2215 period must be returned to the department. Funds carried forward
 2216 may be retained through contract renewals and new contract
 2217 procurements as long as the same managing entity is retained by
 2218 the department.

2219 (b) The method of payment for a fixed-price contract with a
 2220 managing entity must provide for a 2-month advance payment at
 2221 the beginning of each fiscal year and equal monthly payments
 2222 thereafter.

2223 (7) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The
 2224 department shall develop, implement, and maintain standards
 2225 under which a managing entity shall collect utilization data
 2226 from all public receiving facilities situated within its
 2227 geographic service area. As used in this subsection, the term
 2228 “public receiving facility” means an entity that meets the
 2229 licensure requirements of, and is designated by, the department
 2230 to operate as a public receiving facility under s. 394.875 and
 2231 that is operating as a licensed crisis stabilization unit.

2232 (a) The department shall develop standards and protocols
 2233 for managing entities and public receiving facilities to be used
 2234 for data collection, storage, transmittal, and analysis. The
 2235 standards and protocols must allow for compatibility of data and
 2236 data transmittal between public receiving facilities, managing

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2237 entities, and the department for the implementation and
 2238 requirements of this subsection.

2239 (b) A managing entity shall require a public receiving
 2240 facility within its provider network to submit data, in real
 2241 time or at least daily, to the managing entity for:

2242 1. All admissions and discharges of clients receiving
 2243 public receiving facility services who qualify as indigent, as
 2244 defined in s. 394.4787; and

2245 2. The current active census of total licensed beds, the
 2246 number of beds purchased by the department, the number of
 2247 clients qualifying as indigent who occupy those beds, and the
 2248 total number of unoccupied licensed beds regardless of funding.

2249 (c) A managing entity shall require a public receiving
 2250 facility within its provider network to submit data, on a
 2251 monthly basis, to the managing entity which aggregates the daily
 2252 data submitted under paragraph (b). The managing entity shall
 2253 reconcile the data in the monthly submission to the data
 2254 received by the managing entity under paragraph (b) to check for
 2255 consistency. If the monthly aggregate data submitted by a public
 2256 receiving facility under this paragraph are inconsistent with
 2257 the daily data submitted under paragraph (b), the managing
 2258 entity shall consult with the public receiving facility to make
 2259 corrections necessary to ensure accurate data.

2260 (d) A managing entity shall require a public receiving
 2261 facility within its provider network to submit data, on an
 2262 annual basis, to the managing entity which aggregates the data
 2263 submitted and reconciled under paragraph (c). The managing
 2264 entity shall reconcile the data in the annual submission to the
 2265 data received and reconciled by the managing entity under

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2266 paragraph (c) to check for consistency. If the annual aggregate
 2267 data submitted by a public receiving facility under this
 2268 paragraph are inconsistent with the data received and reconciled
 2269 under paragraph (c), the managing entity shall consult with the
 2270 public receiving facility to make corrections necessary to
 2271 ensure accurate data.

2272 (e) After ensuring the accuracy of data pursuant to
 2273 paragraphs (c) and (d), the managing entity shall submit the
 2274 data to the department on a monthly and an annual basis. The
 2275 department shall create a statewide database for the data
 2276 described under paragraph (b) and submitted under this paragraph
 2277 for the purpose of analyzing the payments for and the use of
 2278 crisis stabilization services funded by the Baker Act on a
 2279 statewide basis and on an individual public receiving facility
 2280 basis.

2281 Section 17. Present subsections (20) through (45) of
 2282 section 397.311, Florida Statutes, are redesignated as
 2283 subsections (21) through (46), respectively, a new subsection
 2284 (20) is added to that section, and present subsections (30) and
 2285 (38) of that section are amended, to read:

2286 397.311 Definitions.—As used in this chapter, except part
 2287 VIII, the term:

2288 (20) "Involuntary services" means court-ordered outpatient
 2289 services or treatment for substance abuse disorders or services
 2290 provided in an inpatient placement in a receiving facility or
 2291 treatment facility.

2292 (31)(30) "Qualified professional" means a physician or a
 2293 physician assistant licensed under chapter 458 or chapter 459; a
 2294 professional licensed under chapter 490 or chapter 491; an

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2295 advanced registered nurse practitioner ~~having a specialty in~~
 2296 ~~psychiatry~~ licensed under part I of chapter 464; or a person who
 2297 is certified through a department-recognized certification
 2298 process for substance abuse treatment services and who holds, at
 2299 a minimum, a bachelor's degree. A person who is certified in
 2300 substance abuse treatment services by a state-recognized
 2301 certification process in another state at the time of employment
 2302 with a licensed substance abuse provider in this state may
 2303 perform the functions of a qualified professional as defined in
 2304 this chapter but must meet certification requirements contained
 2305 in this subsection no later than 1 year after his or her date of
 2306 employment.

2307 (39)(38) "Service component" or "component" means a
 2308 discrete operational entity within a service provider which is
 2309 subject to licensing as defined by rule. Service components
 2310 include prevention, intervention, and clinical treatment
 2311 described in subsection (23) (22).

2312 Section 18. Section 397.675, Florida Statutes, is amended
 2313 to read:

2314 397.675 Criteria for involuntary admissions, including
 2315 protective custody, emergency admission, and other involuntary
 2316 assessment, involuntary treatment, and alternative involuntary
 2317 assessment for minors, for purposes of assessment and
 2318 stabilization, and for involuntary treatment.—A person meets the
 2319 criteria for involuntary admission if there is good faith reason
 2320 to believe that the person has a substance abuse or co-occurring
 2321 mental health disorder is substance abuse impaired and, because
 2322 of such disorder impairment:

2323 (1) Has lost the power of self-control with respect to

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2324 substance ~~abuse use~~; and ~~either~~

2325 (2) (a) Without care or treatment, is likely to suffer from
 2326 neglect or to refuse to care for himself or herself, that such
 2327 neglect or refusal poses a real and present threat of
 2328 substantial harm to his or her well-being and that it is not
 2329 apparent that such harm may be avoided through the help of
 2330 willing family members or friends or the provision of other
 2331 services, or there is substantial likelihood that the person has
 2332 inflicted, or threatened to or attempted to inflict, or, unless
 2333 admitted, is likely to inflict, physical harm on himself, or
 2334 herself, or another; or

2335 (b) Is in need of substance abuse services and, by reason
 2336 of substance abuse impairment, his or her judgment has been so
 2337 impaired that he or she ~~the person~~ is incapable of appreciating
 2338 his or her need for such services and of making a rational
 2339 decision in that regard, although thereto, however, mere refusal
 2340 to receive such services does not constitute evidence of lack of
 2341 judgment with respect to his or her need for such services.

2342 Section 19. Section 397.679, Florida Statutes, is amended
 2343 to read:

2344 397.679 Emergency admission; circumstances justifying.—A
 2345 person who meets the criteria for involuntary admission in s.
 2346 397.675 may be admitted to a hospital or to a licensed
 2347 detoxification facility or addictions receiving facility for
 2348 emergency assessment and stabilization, or to a less intensive
 2349 component of a licensed service provider for assessment only,
 2350 upon receipt by the facility of a ~~the physician's~~ certificate by
 2351 a physician, an advanced registered nurse practitioner, a
 2352 clinical psychologist, a licensed clinical social worker, a

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2353 licensed marriage and family therapist, a licensed mental health
 2354 counselor, a physician assistant working under the scope of
 2355 practice of the supervising physician, or a master's-level-
 2356 certified addictions professional, if the certificate is
 2357 specific to substance abuse disorders, and the completion of an
 2358 application for emergency admission.

2359 Section 20. Section 397.6791, Florida Statutes, is amended
 2360 to read:

2361 397.6791 Emergency admission; persons who may initiate.—The
 2362 following professionals ~~persons~~ may request a certificate for an
 2363 emergency assessment or admission:

2364 (1) In the case of an adult, physicians, advanced
 2365 registered nurse practitioners, clinical psychologists, licensed
 2366 clinical social workers, licensed marriage and family
 2367 therapists, licensed mental health counselors, physician
 2368 assistants working under the scope of practice of the
 2369 supervising physician, and a master's-level-certified addictions
 2370 professional, if the certificate is specific to substance abuse
 2371 disorders ~~the certifying physician,~~ the person's spouse or legal
 2372 guardian, any relative of the person, or any other responsible
 2373 adult who has personal knowledge of the person's substance abuse
 2374 impairment.

2375 (2) In the case of a minor, the minor's parent, legal
 2376 guardian, or legal custodian.

2377 Section 21. Section 397.6793, Florida Statutes, is amended
 2378 to read:

2379 397.6793 Professional's Physician's ~~Physician's~~ certificate for
 2380 emergency admission.—

2381 (1) The professional's ~~physician's~~ certificate must include

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2382 the name of the person to be admitted, the relationship between
 2383 the person and the professional executing the certificate
 2384 ~~physician~~, the relationship between the applicant and the
 2385 professional physician, any relationship between the
 2386 professional physician and the licensed service provider, ~~and~~ a
 2387 statement that the person has been examined and assessed within
 2388 the preceding 5 days of the application date, and must include
 2389 factual allegations with respect to the need for emergency
 2390 admission, including:

2391 (a) The reason for the ~~physician's~~ belief that the person
 2392 is substance abuse impaired; and

2393 (b) The reason for the ~~physician's~~ belief that because of
 2394 such impairment the person has lost the power of self-control
 2395 with respect to substance abuse; and ~~either~~

2396 (c)1. The reason for the belief physician believes that,
 2397 without care or treatment, the person is likely to suffer from
 2398 neglect or refuse to care for himself or herself; that such
 2399 neglect or refusal poses a real and present threat of
 2400 substantial harm to his or her well-being; and that it is not
 2401 apparent that such harm may be avoided through the help of
 2402 willing family members or friends or the provision of other
 2403 services or there is substantial likelihood that the person has
 2404 inflicted or is likely to inflict physical harm on himself or
 2405 herself or others unless admitted; or

2406 2. The reason for the belief physician believes that the
 2407 person's refusal to voluntarily receive care is based on
 2408 judgment so impaired by reason of substance abuse that the
 2409 person is incapable of appreciating his or her need for care and
 2410 of making a rational decision regarding his or her need for

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2411 care.

2412 (2) The professional's physician's certificate must
 2413 recommend the least restrictive type of service that is
 2414 appropriate for the person. The certificate must be signed by
 2415 the professional physician. If other less restrictive means are
 2416 not available, such as voluntary appearance for outpatient
 2417 evaluation, a law enforcement officer shall take the person
 2418 named in the certificate into custody and deliver him or her to
 2419 the appropriate facility for involuntary examination.

2420 (3) A signed copy of the professional's physician's
 2421 certificate shall accompany the person, and shall be made a part
 2422 of the person's clinical record, together with a signed copy of
 2423 the application. The application and the professional's
 2424 physician's certificate authorize the involuntary admission of
 2425 the person pursuant to, and subject to the provisions of, ss.
 2426 397.679-397.6797.

2427 (4) The professional's certificate is valid for 7 days
 2428 after issuance.

2429 (5) The professional's physician's certificate must
 2430 indicate whether the person requires transportation assistance
 2431 for delivery for emergency admission and specify, pursuant to s.
 2432 397.6795, the type of transportation assistance necessary.

2433 Section 22. Section 397.6795, Florida Statutes, is amended
 2434 to read:

2435 397.6795 Transportation-assisted delivery of persons for
 2436 emergency assessment.—An applicant for a person's emergency
 2437 admission, ~~or~~ the person's spouse or guardian, or a law
 2438 enforcement officer, ~~or a health officer~~ may deliver a person
 2439 named in the professional's physician's certificate for

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2440 emergency admission to a hospital or a licensed detoxification
2441 facility or addictions receiving facility for emergency
2442 assessment and stabilization.

2443 Section 23. Subsection (1) of section 397.681, Florida
2444 Statutes, is amended to read:

2445 397.681 Involuntary petitions; general provisions; court
2446 jurisdiction and right to counsel.—

2447 (1) JURISDICTION.—The courts have jurisdiction of
2448 involuntary assessment and stabilization petitions and
2449 involuntary treatment petitions for substance abuse impaired
2450 persons, and such petitions must be filed with the clerk of the
2451 court in the county where the person is located. The court may
2452 not charge a fee for the filing of a petition under this
2453 section. The chief judge may appoint a general or special
2454 magistrate to preside over all or part of the proceedings. The
2455 alleged impaired person is named as the respondent.

2456 Section 24. Subsection (1) of section 397.6811, Florida
2457 Statutes, is amended to read:

2458 397.6811 Involuntary assessment and stabilization.—A person
2459 determined by the court to appear to meet the criteria for
2460 involuntary admission under s. 397.675 may be admitted for a
2461 period of 5 days to a hospital or to a licensed detoxification
2462 facility or addictions receiving facility, for involuntary
2463 assessment and stabilization or to a less restrictive component
2464 of a licensed service provider for assessment only upon entry of
2465 a court order or upon receipt by the licensed service provider
2466 of a petition. Involuntary assessment and stabilization may be
2467 initiated by the submission of a petition to the court.

2468 (1) If the person upon whose behalf the petition is being

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2469 filed is an adult, a petition for involuntary assessment and
2470 stabilization may be filed by the respondent's spouse ~~or~~, legal
2471 guardian, any relative, a private practitioner, the director of
2472 a licensed service provider or the director's designee, or any
2473 individual ~~three adults~~ who has direct ~~have~~ personal knowledge
2474 of the respondent's substance abuse impairment.

2475 Section 25. Section 397.6814, Florida Statutes, is amended
2476 to read:

2477 397.6814 Involuntary assessment and stabilization; contents
2478 of petition.—A petition for involuntary assessment and
2479 stabilization must contain the name of the respondent, + the name
2480 of the applicant or applicants, + the relationship between the
2481 respondent and the applicant, and ~~+~~ the name of the respondent's
2482 attorney, if known, and a statement of the respondent's ability
2483 to afford an attorney; and must state facts to support the need
2484 for involuntary assessment and stabilization, including:

2485 (1) The reason for the petitioner's belief that the
2486 respondent is substance abuse impaired; ~~and~~

2487 (2) The reason for the petitioner's belief that because of
2488 such impairment the respondent has lost the power of self-
2489 control with respect to substance abuse; and ~~either~~

2490 (3) (a) The reason the petitioner believes that the
2491 respondent has inflicted or is likely to inflict physical harm
2492 on himself or herself or others unless admitted; or

2493 (b) The reason the petitioner believes that the
2494 respondent's refusal to voluntarily receive care is based on
2495 judgment so impaired by reason of substance abuse that the
2496 respondent is incapable of appreciating his or her need for care
2497 and of making a rational decision regarding that need for care.

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2498 If the respondent has refused to submit to an assessment, such
2499 refusal must be alleged in the petition.

2500

2501 A fee may not be charged for the filing of a petition pursuant
2502 to this section.

2503 Section 26. Section 397.6819, Florida Statutes, is amended
2504 to read:

2505 397.6819 Involuntary assessment and stabilization;
2506 responsibility of licensed service provider.—A licensed service
2507 provider may admit an individual for involuntary assessment and
2508 stabilization for a period not to exceed 5 days unless a
2509 petition for involuntary outpatient services has been initiated
2510 which authorizes the licensed service provider to retain
2511 physical custody of the person pending further order of the
2512 court pursuant to s. 397.6822. The individual must be assessed
2513 within 24 hours without unnecessary delay by a qualified
2514 professional. The person may not be held pursuant to this
2515 section beyond the 24-hour assessment period unless the
2516 assessment has been reviewed and authorized by a licensed
2517 physician as necessary for continued stabilization. If an
2518 assessment is performed by a qualified professional who is not a
2519 physician, the assessment must be reviewed by a physician before
2520 the end of the assessment period.

2521 Section 27. Section 397.695, Florida Statutes, is amended
2522 to read:

2523 397.695 Involuntary outpatient services ~~treatment~~; persons
2524 who may petition.—

2525 (1) (a) If the respondent is an adult, a petition for
2526 involuntary outpatient services ~~treatment~~ may be filed by the

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2527 respondent's spouse or legal guardian, any relative, a service
2528 provider, or any individual ~~three adults~~ who has direct ~~have~~
2529 personal knowledge of the respondent's substance abuse
2530 impairment and his or her prior course of assessment and
2531 treatment.

2532 (b) The administrator of a receiving facility, a crisis
2533 stabilization unit, or an addictions receiving facility where
2534 the patient has been examined may retain the patient at the
2535 facility after adherence to the notice procedures provided in s.
2536 397.6955. The recommendation for involuntary outpatient services
2537 must be supported by the opinion of a qualified professional as
2538 defined in s. 397.311(31) or a master's-level-certified
2539 addictions professional and by the second opinion of a
2540 psychologist, a physician, or an advanced registered nurse
2541 practitioner licensed under chapter 464, both of whom have
2542 personally examined the patient within the preceding 72 hours,
2543 that the criteria for involuntary outpatient services are met.
2544 However, in a county having a population of fewer than 50,000,
2545 if the administrator of the facility certifies that a qualified
2546 professional is not available to provide the second opinion, the
2547 second opinion may be provided by a physician who has
2548 postgraduate training and experience in the diagnosis and
2549 treatment of substance abuse disorders. Any second opinion
2550 authorized in this section may be conducted through face-to-face
2551 examination, in person, or by electronic means, including
2552 telemedicine. Such recommendation must be entered on an
2553 involuntary outpatient certificate that authorizes the facility
2554 to retain the patient pending completion of a hearing. The
2555 certificate must be made a part of the patient's clinical

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2556 record.

2557 (c) If the patient has been stabilized and no longer meets
 2558 the criteria for involuntary assessment and stabilization
 2559 pursuant to s. 397.6811, the patient must be released from the
 2560 facility while awaiting the hearing for involuntary outpatient
 2561 services. Before filing a petition for involuntary outpatient
 2562 services, the administrator of the facility must identify the
 2563 service provider that will have responsibility for service
 2564 provision under the order for involuntary outpatient services,
 2565 unless the person is otherwise participating in outpatient
 2566 substance abuse disorder services and is not in need of public
 2567 financing of the services, in which case the person, if
 2568 eligible, may be ordered to involuntary outpatient services
 2569 pursuant to the existing provision-of-services relationship he
 2570 or she has for substance abuse disorder services.

2571 (d) The service provider shall prepare a written proposed
 2572 treatment plan in consultation with the patient or the patient's
 2573 guardian advocate, if applicable, for the order for outpatient
 2574 services and provide a copy of the proposed treatment plan to
 2575 the patient and the administrator of the facility. The treatment
 2576 plan must specify the nature and extent of the patient's
 2577 substance abuse disorder, address the reduction of symptoms that
 2578 necessitate involuntary outpatient services, and include
 2579 measurable goals and objectives for the services and treatment
 2580 that are provided to treat the person's substance abuse disorder
 2581 and to assist the person in living and functioning in the
 2582 community or prevent relapse or further deterioration. Service
 2583 providers may coordinate, select, and supervise other
 2584 individuals to implement specific aspects of the treatment plan.

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2585 The services in the treatment plan must be deemed clinically
 2586 appropriate by a qualified professional who consults with, or is
 2587 employed by, the service provider. The service provider must
 2588 certify that the recommended services in the treatment plan are
 2589 available for the stabilization and improvement of the patient.
 2590 If the service provider certifies that the recommended services
 2591 in the proposed treatment plan are not available, the petition
 2592 may not be filed. The service provider must document its inquiry
 2593 with the department and the managing entity as to the
 2594 availability of the requested services. The managing entity must
 2595 document such efforts to obtain the requested services.

2596 (e) If a patient in involuntary inpatient placement meets
 2597 the criteria for involuntary outpatient services, the
 2598 administrator of the treatment facility may, before the
 2599 expiration of the period during which the treatment facility is
 2600 authorized to retain the patient, recommend involuntary
 2601 outpatient services. The recommendation must be supported by the
 2602 opinion of a qualified professional as defined in s. 397.311(31)
 2603 or a master's-level-certified addictions professional and by the
 2604 second opinion of a psychologist, a physician, an advanced
 2605 registered nurse practitioner licensed under chapter 464, or a
 2606 mental health professional licensed under chapter 491, both of
 2607 whom have personally examined the patient within the preceding
 2608 72 hours, that the criteria for involuntary outpatient services
 2609 are met. However, in a county having a population of fewer than
 2610 50,000, if the administrator of the facility certifies that a
 2611 qualified professional is not available to provide the second
 2612 opinion, the second opinion may be provided by a physician who
 2613 has postgraduate training and experience in the diagnosis and

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2614 treatment of substance abuse disorders. Any second opinion
 2615 authorized in this section may be conducted through face-to-face
 2616 examination, in person, or by electronic means, including
 2617 telemedicine. Such recommendation must be entered on an
 2618 involuntary outpatient certificate that authorizes the facility
 2619 to retain the patient pending completion of a hearing. The
 2620 certificate must be made a part of the patient's clinical
 2621 record.

2622 (f) The service provider who is responsible for providing
 2623 services under the order for involuntary outpatient services
 2624 must be identified before the entry of the order for outpatient
 2625 services. The service provider shall certify to the court that
 2626 the recommended services in the treatment plan are available for
 2627 the stabilization and improvement of the patient. If the service
 2628 provider certifies that the recommended services in the proposed
 2629 treatment plan are not available, the petition may not be filed.
 2630 The service provider must document its inquiry with the
 2631 department and the managing entity as to the availability of the
 2632 requested services. The managing entity must document such
 2633 efforts to obtain the requested services.

2634 (2) If the respondent is a minor, a petition for
 2635 involuntary treatment may be filed by a parent, legal guardian,
 2636 or service provider.

2637 Section 28. Section 397.6951, Florida Statutes, is amended
 2638 to read:

2639 397.6951 Contents of petition for involuntary outpatient
 2640 services treatment.—A petition for involuntary outpatient
 2641 services treatment must contain the name of the respondent ~~to be~~
 2642 ~~admitted~~; the name of the petitioner or petitioners; the

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2643 relationship between the respondent and the petitioner; the name
 2644 of the respondent's attorney, if known, ~~and a statement of the~~
 2645 ~~petitioner's knowledge of the respondent's ability to afford an~~
 2646 ~~attorney~~; the findings and recommendations of the assessment
 2647 performed by the qualified professional; and the factual
 2648 allegations presented by the petitioner establishing the need
 2649 for involuntary outpatient services. The factual allegations
 2650 must demonstrate treatment, including:

2651 (1) The reason for the petitioner's belief that the
 2652 respondent is substance abuse impaired; ~~and~~

2653 (2) The respondent's history of failure to comply with
 2654 requirements for treatment for substance abuse and that the
 2655 respondent has been involuntarily admitted to a receiving or
 2656 treatment facility at least twice within the immediately
 2657 preceding 36 months; The reason for the petitioner's belief that
 2658 because of such impairment the respondent has lost the power of
 2659 self-control with respect to substance abuse; and either

2660 (3) That the respondent is, as a result of his or her
 2661 substance abuse disorder, unlikely to voluntarily participate in
 2662 the recommended services after sufficient and conscientious
 2663 explanation and disclosure of the purpose of the services or he
 2664 or she is unable to determine for himself or herself whether
 2665 outpatient services are necessary;

2666 (4) That, in view of the person's treatment history and
 2667 current behavior, the person is in need of involuntary
 2668 outpatient services; that without services, the person is likely
 2669 to suffer from neglect or to refuse to care for himself or
 2670 herself; that such neglect or refusal poses a real and present
 2671 threat of substantial harm to his or her well-being; and that

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2672 there is a substantial likelihood that without services the
 2673 person will cause serious bodily harm to himself, herself, or
 2674 others in the near future, as evidenced by recent behavior; and

2675 (5) That it is likely that the person will benefit from
 2676 involuntary outpatient services.

2677 ~~(3)(a) The reason the petitioner believes that the~~
 2678 ~~respondent has inflicted or is likely to inflict physical harm~~
 2679 ~~on himself or herself or others unless admitted; or~~

2680 ~~(b) The reason the petitioner believes that the~~
 2681 ~~respondent's refusal to voluntarily receive care is based on~~
 2682 ~~judgment so impaired by reason of substance abuse that the~~
 2683 ~~respondent is incapable of appreciating his or her need for care~~
 2684 ~~and of making a rational decision regarding that need for care.~~

2685 Section 29. Section 397.6955, Florida Statutes, is amended
 2686 to read:

2687 397.6955 Duties of court upon filing of petition for
 2688 involuntary outpatient services treatment.-

2689 (1) Upon the filing of a petition for the involuntary
 2690 outpatient services for treatment of a substance abuse impaired
 2691 person with the clerk of the court, the court shall immediately
 2692 determine whether the respondent is represented by an attorney
 2693 or whether the appointment of counsel for the respondent is
 2694 appropriate. If the court appoints counsel for the person, the
 2695 clerk of the court shall immediately notify the regional
 2696 conflict counsel, created pursuant to s. 27.511, of the
 2697 appointment. The regional conflict counsel shall represent the
 2698 person until the petition is dismissed, the court order expires,
 2699 or the person is discharged from involuntary outpatient
 2700 services. An attorney that represents the person named in the

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2701 petition shall have access to the person, witnesses, and records
 2702 relevant to the presentation of the person's case and shall
 2703 represent the interests of the person, regardless of the source
 2704 of payment to the attorney.

2705 (2) The court shall schedule a hearing to be held on the
 2706 petition within ~~5~~ 10 days unless a continuance is granted. The
 2707 court may appoint a general or special master to preside at the
 2708 hearing.

2709 (3) A copy of the petition and notice of the hearing must
 2710 be provided to the respondent; the respondent's parent,
 2711 guardian, or legal custodian, in the case of a minor; the
 2712 respondent's attorney, if known; the petitioner; the
 2713 respondent's spouse or guardian, if applicable; and such other
 2714 persons as the court may direct. If the respondent is a minor, a
 2715 copy of the petition and notice of the hearing must be ~~and have~~
 2716 such petition and order personally delivered to the respondent
 2717 if he or she is a minor. The court shall also issue a summons to
 2718 the person whose admission is sought.

2719 Section 30. Section 397.6957, Florida Statutes, is amended
 2720 to read:

2721 397.6957 Hearing on petition for involuntary outpatient
 2722 services treatment.-

2723 (1) At a hearing on a petition for involuntary outpatient
 2724 services treatment, the court shall hear and review all relevant
 2725 evidence, including the review of results of the assessment
 2726 completed by the qualified professional in connection with the
 2727 respondent's protective custody, emergency admission,
 2728 involuntary assessment, or alternative involuntary admission.
 2729 The respondent must be present unless the court finds that his

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2730 or her presence is likely to be injurious to himself or herself
 2731 or others, in which event the court must appoint a guardian
 2732 advocate to act in behalf of the respondent throughout the
 2733 proceedings.

2734 (2) The petitioner has the burden of proving by clear and
 2735 convincing evidence that:

2736 (a) The respondent is substance abuse impaired and has a
 2737 history of lack of compliance with treatment for substance
 2738 abuse; ~~and~~

2739 (b) Because of such impairment the respondent is unlikely
 2740 to voluntarily participate in the recommended treatment or is
 2741 unable to determine for himself or herself whether outpatient
 2742 services are necessary the respondent has lost the power of
 2743 self-control with respect to substance abuse; and either

2744 1. Without services, the respondent is likely to suffer
 2745 from neglect or to refuse to care for himself or herself; that
 2746 such neglect or refusal poses a real and present threat of
 2747 substantial harm to his or her well-being; and that there is a
 2748 substantial likelihood that without services the respondent will
 2749 cause serious bodily harm to himself or herself or others in the
 2750 near future, as evidenced by recent behavior ~~The respondent has~~
 2751 ~~inflicted or is likely to inflict physical harm on himself or~~
 2752 ~~herself or others unless admitted; or~~

2753 2. The respondent's refusal to voluntarily receive care is
 2754 based on judgment so impaired by reason of substance abuse that
 2755 the respondent is incapable of appreciating his or her need for
 2756 care and of making a rational decision regarding that need for
 2757 care.

2758 (3) One of the qualified professionals who executed the

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2759 involuntary outpatient services certificate must be a witness.
 2760 The court shall allow testimony from individuals, including
 2761 family members, deemed by the court to be relevant under state
 2762 law, regarding the respondent's prior history and how that prior
 2763 history relates to the person's current condition. The testimony
 2764 in the hearing must be under oath, and the proceedings must be
 2765 recorded. The patient may refuse to testify at the hearing.

2766 ~~(4)(3)~~ At the conclusion of the hearing the court shall
 2767 either dismiss the petition or order the respondent to receive
 2768 undergo involuntary outpatient services from his or her
 2769 substance abuse treatment, with the respondent's chosen licensed
 2770 service provider if to deliver the involuntary substance abuse
 2771 treatment where possible and appropriate.

2772 Section 31. Section 397.697, Florida Statutes, is amended
 2773 to read:

2774 397.697 Court determination; effect of court order for
 2775 involuntary outpatient services ~~substance abuse treatment.~~

2776 (1) When the court finds that the conditions for
 2777 involuntary outpatient services ~~substance abuse treatment~~ have
 2778 been proved by clear and convincing evidence, it may order the
 2779 respondent to receive ~~undergo~~ involuntary outpatient services
 2780 from treatment by a licensed service provider for a period not
 2781 to exceed 60 days. If the court finds it necessary, it may
 2782 direct the sheriff to take the respondent into custody and
 2783 deliver him or her to the licensed service provider specified in
 2784 the court order, or to the nearest appropriate licensed service
 2785 provider, for involuntary outpatient services ~~treatment~~. When
 2786 the conditions justifying involuntary outpatient services
 2787 ~~treatment~~ no longer exist, the individual must be released as

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2788 provided in s. 397.6971. When the conditions justifying
 2789 involuntary outpatient services ~~treatment~~ are expected to exist
 2790 after 60 days of services ~~treatment~~, a renewal of the
 2791 involuntary outpatient services ~~treatment~~ order may be requested
 2792 pursuant to s. 397.6975 before ~~prior to~~ the end of the 60-day
 2793 period.

2794 (2) In all cases resulting in an order for involuntary
 2795 outpatient services ~~substance abuse treatment~~, the court shall
 2796 retain jurisdiction over the case and the parties for the entry
 2797 of such further orders as the circumstances may require. The
 2798 court's requirements for notification of proposed release must
 2799 be included in the original ~~treatment~~ order.

2800 (3) An involuntary outpatient services ~~treatment~~ order
 2801 authorizes the licensed service provider to require the
 2802 individual to receive services that ~~undergo such treatment as~~
 2803 will benefit him or her, including services ~~treatment~~ at any
 2804 licensable service component of a licensed service provider.

2805 (4) The court may not order involuntary outpatient services
 2806 if the service provider certifies to the court that the
 2807 recommended services are not available. The service provider
 2808 must document its inquiry with the department and the managing
 2809 entity as to the availability of the requested services. The
 2810 managing entity must document such efforts to obtain the
 2811 requested services.

2812 (5) If the court orders involuntary outpatient services, a
 2813 copy of the order must be sent to the department and the
 2814 managing entity within 1 working day after it is received from
 2815 the court. After the order for outpatient services is issued,
 2816 the service provider and the patient may modify provisions of

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2817 the treatment plan. For any material modification of the
 2818 treatment plan to which the patient or the patient's guardian
 2819 advocate, if appointed, agrees, the service provider shall send
 2820 notice of the modification to the court. Any material
 2821 modification of the treatment plan which is contested by the
 2822 patient or the guardian advocate, if applicable, must be
 2823 approved or disapproved by the court.

2824 Section 32. Section 397.6971, Florida Statutes, is amended
 2825 to read:

2826 397.6971 Early release from involuntary outpatient services
 2827 substance abuse treatment.-

2828 (1) At any time before ~~prior to~~ the end of the 60-day
 2829 involuntary outpatient services ~~treatment~~ period, or prior to
 2830 the end of any extension granted pursuant to s. 397.6975, an
 2831 individual receiving ~~admitted for~~ involuntary outpatient
 2832 services ~~treatment~~ may be determined eligible for discharge to
 2833 the most appropriate referral or disposition for the individual
 2834 when any of the following apply:

2835 (a) The individual no longer meets the criteria for
 2836 involuntary admission and has given his or her informed consent
 2837 to be transferred to voluntary treatment status_#

2838 (b) If the individual was admitted on the grounds of
 2839 likelihood of infliction of physical harm upon himself or
 2840 herself or others, such likelihood no longer exists_#-#

2841 (c) If the individual was admitted on the grounds of need
 2842 for assessment and stabilization or treatment, accompanied by
 2843 inability to make a determination respecting such need, ~~either:~~

- 2844 1. Such inability no longer exists; or
- 2845 2. It is evident that further treatment will not bring

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2846 about further significant improvements in the individual's
 2847 condition.~~7~~

2848 (d) The individual is no longer in need of services.~~7~~ ~~or~~

2849 (e) The director of the service provider determines that
 2850 the individual is beyond the safe management capabilities of the
 2851 provider.

2852 (2) Whenever a qualified professional determines that an
 2853 individual admitted for involuntary outpatient services
 2854 qualifies treatment is ready for early release under ~~for any of~~
 2855 ~~the reasons listed in~~ subsection (1), the service provider shall
 2856 immediately discharge the individual~~7~~ and must notify all
 2857 persons specified by the court in the original treatment order.

2858 Section 33. Section 397.6975, Florida Statutes, is amended
 2859 to read:

2860 397.6975 Extension of involuntary outpatient services
 2861 ~~substance abuse treatment~~ period.-

2862 (1) Whenever a service provider believes that an individual
 2863 who is nearing the scheduled date of his or her release from
 2864 involuntary outpatient services treatment continues to meet the
 2865 criteria for involuntary outpatient services treatment in s.
 2866 397.693, a petition for renewal of the involuntary outpatient
 2867 services treatment order may be filed with the court at least 10
 2868 days before the expiration of the court-ordered outpatient
 2869 services treatment period. The court shall immediately schedule
 2870 a hearing to be held not more than 15 days after filing of the
 2871 petition. The court shall provide the copy of the petition for
 2872 renewal and the notice of the hearing to all parties to the
 2873 proceeding. The hearing is conducted pursuant to s. 397.6957.

2874 (2) If the court finds that the petition for renewal of the

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2875 involuntary outpatient services treatment order should be
 2876 granted, it may order the respondent to receive ~~undergo~~
 2877 involuntary outpatient services treatment for a period not to
 2878 exceed an additional 90 days. When the conditions justifying
 2879 involuntary outpatient services treatment no longer exist, the
 2880 individual must be released as provided in s. 397.6971. When the
 2881 conditions justifying involuntary outpatient services treatment
 2882 continue to exist after an additional 90 days of service
 2883 ~~additional treatment~~, a new petition requesting renewal of the
 2884 involuntary outpatient services treatment order may be filed
 2885 pursuant to this section.

2886 (3) Within 1 court working day after the filing of a
 2887 petition for continued involuntary outpatient services, the
 2888 court shall appoint the regional conflict counsel to represent
 2889 the respondent, unless the respondent is otherwise represented
 2890 by counsel. The clerk of the court shall immediately notify the
 2891 regional conflict counsel of such appointment. The regional
 2892 conflict counsel shall represent the respondent until the
 2893 petition is dismissed or the court order expires or the
 2894 respondent is discharged from involuntary outpatient services.
 2895 Any attorney representing the respondent shall have access to
 2896 the respondent, witnesses, and records relevant to the
 2897 presentation of the respondent's case and shall represent the
 2898 interests of the respondent, regardless of the source of payment
 2899 to the attorney.

2900 (4) Hearings on petitions for continued involuntary
 2901 outpatient services shall be before the circuit court. The court
 2902 may appoint a general or special master to preside at the
 2903 hearing. The procedures for obtaining an order pursuant to this

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2904 section shall be in accordance with s. 397.697.

2905 (5) Notice of hearing shall be provided to the respondent
 2906 or his or her counsel. The respondent and the respondent's
 2907 counsel may agree to a period of continued outpatient services
 2908 without a court hearing.

2909 (6) The same procedure shall be repeated before the
 2910 expiration of each additional period of outpatient services.

2911 (7) If the respondent has previously been found incompetent
 2912 to consent to treatment, the court shall consider testimony and
 2913 evidence regarding the respondent's competence.

2914 Section 34. Section 397.6977, Florida Statutes, is amended
 2915 to read:

2916 397.6977 Disposition of individual upon completion of
 2917 involuntary outpatient services ~~substance abuse treatment.~~—At
 2918 the conclusion of the 60-day period of court-ordered involuntary
 2919 outpatient services ~~treatment~~, the respondent individual is
 2920 automatically discharged unless a motion for renewal of the
 2921 involuntary outpatient services ~~treatment~~ order has been filed
 2922 with the court pursuant to s. 397.6975.

2923 Section 35. Section 397.6978, Florida Statutes, is created
 2924 to read:

2925 397.6978 Guardian advocate; patient incompetent to consent;
 2926 substance abuse disorder.—

2927 (1) The administrator of a receiving facility or addictions
 2928 receiving facility may petition the court for the appointment of
 2929 a guardian advocate based upon the opinion of a qualified
 2930 professional that the patient is incompetent to consent to
 2931 treatment. If the court finds that a patient is incompetent to
 2932 consent to treatment and has not been adjudicated incapacitated

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2933 and that a guardian with the authority to consent to mental
 2934 health treatment has not been appointed, it shall appoint a
 2935 guardian advocate. The patient has the right to have an attorney
 2936 represent him or her at the hearing. If the person is indigent,
 2937 the court shall appoint the office of the regional conflict
 2938 counsel to represent him or her at the hearing. The patient has
 2939 the right to testify, cross-examine witnesses, and present
 2940 witnesses. The proceeding shall be recorded electronically or
 2941 stenographically, and testimony must be provided under oath. One
 2942 of the qualified professionals authorized to give an opinion in
 2943 support of a petition for involuntary placement, as described in
 2944 s. 397.675 or s. 397.6981, must testify. A guardian advocate
 2945 must meet the qualifications of a guardian contained in part IV
 2946 of chapter 744. The person who is appointed as a guardian
 2947 advocate must agree to the appointment.

2948 (2) The following persons are prohibited from appointment
 2949 as a patient's guardian advocate:

2950 (a) A professional providing clinical services to the
 2951 individual under this part.

2952 (b) The qualified professional who initiated the
 2953 involuntary examination of the individual, if the examination
 2954 was initiated by a qualified professional's certificate.

2955 (c) An employee, an administrator, or a board member of the
 2956 facility providing the examination of the individual.

2957 (d) An employee, an administrator, or a board member of the
 2958 treatment facility providing treatment of the individual.

2959 (e) A person providing any substantial professional
 2960 services to the individual, including clinical and nonclinical
 2961 services.

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2962 (f) A creditor of the individual.

2963 (g) A person subject to an injunction for protection
 2964 against domestic violence under s. 741.30, whether the order of
 2965 injunction is temporary or final, and for which the individual
 2966 was the petitioner.

2967 (h) A person subject to an injunction for protection
 2968 against repeat violence, sexual violence, or dating violence
 2969 under s. 784.046, whether the order of injunction is temporary
 2970 or final, and for which the individual was the petitioner.

2971 (3) A facility requesting appointment of a guardian
 2972 advocate must, before the appointment, provide the prospective
 2973 guardian advocate with information about the duties and
 2974 responsibilities of guardian advocates, including information
 2975 about the ethics of medical decisionmaking. Before asking a
 2976 guardian advocate to give consent to treatment for a patient,
 2977 the facility must provide to the guardian advocate sufficient
 2978 information so that the guardian advocate can decide whether to
 2979 give express and informed consent to the treatment. Such
 2980 information must include information that demonstrates that the
 2981 treatment is essential to the care of the patient and does not
 2982 present an unreasonable risk of serious, hazardous, or
 2983 irreversible side effects. If possible, before giving consent to
 2984 treatment, the guardian advocate must personally meet and talk
 2985 with the patient and the patient's physician. If that is not
 2986 possible, the discussion may be conducted by telephone. The
 2987 decision of the guardian advocate may be reviewed by the court,
 2988 upon petition of the patient's attorney, the patient's family,
 2989 or the facility administrator.

2990 (4) In lieu of the training required for guardians

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2991 appointed pursuant to chapter 744, a guardian advocate shall
 2992 attend at least a 4-hour training course approved by the court
 2993 before exercising his or her authority. At a minimum, the
 2994 training course must include information about patient rights,
 2995 the diagnosis of substance abuse disorders, the ethics of
 2996 medical decisionmaking, and the duties of guardian advocates.

2997 (5) The required training course and the information to be
 2998 supplied to prospective guardian advocates before their
 2999 appointment must be developed by the department, approved by the
 3000 chief judge of the circuit court, and taught by a court-approved
 3001 organization, which may include, but need not be limited to, a
 3002 community college, a guardianship organization, a local bar
 3003 association, or The Florida Bar. The court may waive some or all
 3004 of the training requirements for guardian advocates or impose
 3005 additional requirements. The court shall make its decision on a
 3006 case-by-case basis and, in making its decision, shall consider
 3007 the experience and education of the guardian advocate, the
 3008 duties assigned to the guardian advocate, and the needs of the
 3009 patient.

3010 (6) In selecting a guardian advocate, the court shall give
 3011 preference to the patient's health care surrogate, if one has
 3012 already been designated by the patient. If the patient has not
 3013 previously designated a health care surrogate, the selection
 3014 shall be made, except for good cause documented in the court
 3015 record, from among the following persons, listed in order of
 3016 priority:

3017 (a) The patient's spouse.

3018 (b) An adult child of the patient.

3019 (c) A parent of the patient.

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3020 (d) The adult next of kin of the patient.
 3021 (e) An adult friend of the patient.
 3022 (f) An adult trained and willing to serve as the guardian
 3023 advocate for the patient.
 3024 (7) If a guardian with the authority to consent to medical
 3025 treatment has not already been appointed, or if the patient has
 3026 not already designated a health care surrogate, the court may
 3027 authorize the guardian advocate to consent to medical treatment
 3028 as well as substance abuse disorder treatment. Unless otherwise
 3029 limited by the court, a guardian advocate with authority to
 3030 consent to medical treatment has the same authority to make
 3031 health care decisions and is subject to the same restrictions as
 3032 a proxy appointed under part IV of chapter 765. Unless the
 3033 guardian advocate has sought and received express court approval
 3034 in a proceeding separate from the proceeding to determine the
 3035 competence of the patient to consent to medical treatment, the
 3036 guardian advocate may not consent to:
 3037 (a) Abortion.
 3038 (b) Sterilization.
 3039 (c) Electroshock therapy.
 3040 (d) Psychosurgery.
 3041 (e) Experimental treatments that have not been approved by
 3042 a federally approved institutional review board in accordance
 3043 with 45 C.F.R. part 46 or 21 C.F.R. part 56.
 3044 The court must base its authorization on evidence that the
 3045 treatment or procedure is essential to the care of the patient
 3046 and that the treatment does not present an unreasonable risk of
 3047 serious, hazardous, or irreversible side effects. In complying
 3048

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3049 with this subsection, the court shall follow the procedures set
 3050 forth in subsection (1).
 3051 (8) The guardian advocate shall be discharged when the
 3052 patient is discharged from an order for involuntary outpatient
 3053 services or involuntary inpatient placement or when the patient
 3054 is transferred from involuntary to voluntary status. The court
 3055 or a hearing officer shall consider the competence of the
 3056 patient as provided in subsection (1) and may consider an
 3057 involuntarily placed patient's competence to consent to
 3058 treatment at any hearing. Upon sufficient evidence, the court
 3059 may restore, or the hearing officer may recommend that the court
 3060 restore, the patient's competence. A copy of the order restoring
 3061 competence or the certificate of discharge containing the
 3062 restoration of competence shall be provided to the patient and
 3063 the guardian advocate.
 3064 Section 36. Paragraph (a) of subsection (3) of section
 3065 39.407, Florida Statutes, is amended to read:
 3066 39.407 Medical, psychiatric, and psychological examination
 3067 and treatment of child; physical, mental, or substance abuse
 3068 examination of person with or requesting child custody.-
 3069 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
 3070 or paragraph (e), before the department provides psychotropic
 3071 medications to a child in its custody, the prescribing physician
 3072 shall attempt to obtain express and informed consent, as defined
 3073 in s. 394.455(15) ~~s. 394.455(9)~~ and as described in s.
 3074 394.459(3) (a), from the child's parent or legal guardian. The
 3075 department must take steps necessary to facilitate the inclusion
 3076 of the parent in the child's consultation with the physician.
 3077 However, if the parental rights of the parent have been

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3078 terminated, the parent's location or identity is unknown or
 3079 cannot reasonably be ascertained, or the parent declines to give
 3080 express and informed consent, the department may, after
 3081 consultation with the prescribing physician, seek court
 3082 authorization to provide the psychotropic medications to the
 3083 child. Unless parental rights have been terminated and if it is
 3084 possible to do so, the department shall continue to involve the
 3085 parent in the decisionmaking process regarding the provision of
 3086 psychotropic medications. If, at any time, a parent whose
 3087 parental rights have not been terminated provides express and
 3088 informed consent to the provision of a psychotropic medication,
 3089 the requirements of this section that the department seek court
 3090 authorization do not apply to that medication until such time as
 3091 the parent no longer consents.

3092 2. Any time the department seeks a medical evaluation to
 3093 determine the need to initiate or continue a psychotropic
 3094 medication for a child, the department must provide to the
 3095 evaluating physician all pertinent medical information known to
 3096 the department concerning that child.

3097 Section 37. Paragraph (e) of subsection (5) of section
 3098 212.055, Florida Statutes, is amended to read:

3099 212.055 Discretionary sales surtaxes; legislative intent;
 3100 authorization and use of proceeds.—It is the legislative intent
 3101 that any authorization for imposition of a discretionary sales
 3102 surtax shall be published in the Florida Statutes as a
 3103 subsection of this section, irrespective of the duration of the
 3104 levy. Each enactment shall specify the types of counties
 3105 authorized to levy; the rate or rates which may be imposed; the
 3106 maximum length of time the surtax may be imposed, if any; the

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3107 procedure which must be followed to secure voter approval, if
 3108 required; the purpose for which the proceeds may be expended;
 3109 and such other requirements as the Legislature may provide.
 3110 Taxable transactions and administrative procedures shall be as
 3111 provided in s. 212.054.

3112 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
 3113 s. 125.011(1) may levy the surtax authorized in this subsection
 3114 pursuant to an ordinance either approved by extraordinary vote
 3115 of the county commission or conditioned to take effect only upon
 3116 approval by a majority vote of the electors of the county voting
 3117 in a referendum. In a county as defined in s. 125.011(1), for
 3118 the purposes of this subsection, "county public general
 3119 hospital" means a general hospital as defined in s. 395.002
 3120 which is owned, operated, maintained, or governed by the county
 3121 or its agency, authority, or public health trust.

3122 (e) A governing board, agency, or authority shall be
 3123 chartered by the county commission upon this act becoming law.
 3124 The governing board, agency, or authority shall adopt and
 3125 implement a health care plan for indigent health care services.
 3126 The governing board, agency, or authority shall consist of no
 3127 more than seven and no fewer than five members appointed by the
 3128 county commission. The members of the governing board, agency,
 3129 or authority shall be at least 18 years of age and residents of
 3130 the county. No member may be employed by or affiliated with a
 3131 health care provider or the public health trust, agency, or
 3132 authority responsible for the county public general hospital.
 3133 The following community organizations shall each appoint a
 3134 representative to a nominating committee: the South Florida
 3135 Hospital and Healthcare Association, the Miami-Dade County

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3136 Public Health Trust, the Dade County Medical Association, the
 3137 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
 3138 County. This committee shall nominate between 10 and 14 county
 3139 citizens for the governing board, agency, or authority. The
 3140 slate shall be presented to the county commission and the county
 3141 commission shall confirm the top five to seven nominees,
 3142 depending on the size of the governing board. Until such time as
 3143 the governing board, agency, or authority is created, the funds
 3144 provided for in subparagraph (d)2. shall be placed in a
 3145 restricted account set aside from other county funds and not
 3146 disbursed by the county for any other purpose.

3147 1. The plan shall divide the county into a minimum of four
 3148 and maximum of six service areas, with no more than one
 3149 participant hospital per service area. The county public general
 3150 hospital shall be designated as the provider for one of the
 3151 service areas. Services shall be provided through participants'
 3152 primary acute care facilities.

3153 2. The plan and subsequent amendments to it shall fund a
 3154 defined range of health care services for both indigent persons
 3155 and the medically poor, including primary care, preventive care,
 3156 hospital emergency room care, and hospital care necessary to
 3157 stabilize the patient. For the purposes of this section,
 3158 "stabilization" means stabilization as defined in s. 397.311(42)
 3159 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
 3160 may include services rendered by physicians, clinics, community
 3161 hospitals, and alternative delivery sites, as well as at least
 3162 one regional referral hospital per service area. The plan shall
 3163 provide that agreements negotiated between the governing board,
 3164 agency, or authority and providers shall recognize hospitals

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3165 that render a disproportionate share of indigent care, provide
 3166 other incentives to promote the delivery of charity care to draw
 3167 down federal funds where appropriate, and require cost
 3168 containment, including, but not limited to, case management.
 3169 From the funds specified in subparagraphs (d)1. and 2. for
 3170 indigent health care services, service providers shall receive
 3171 reimbursement at a Medicaid rate to be determined by the
 3172 governing board, agency, or authority created pursuant to this
 3173 paragraph for the initial emergency room visit, and a per-member
 3174 per-month fee or capitation for those members enrolled in their
 3175 service area, as compensation for the services rendered
 3176 following the initial emergency visit. Except for provisions of
 3177 emergency services, upon determination of eligibility,
 3178 enrollment shall be deemed to have occurred at the time services
 3179 were rendered. The provisions for specific reimbursement of
 3180 emergency services shall be repealed on July 1, 2001, unless
 3181 otherwise reenacted by the Legislature. The capitation amount or
 3182 rate shall be determined before ~~prior to~~ program implementation
 3183 by an independent actuarial consultant. In no event shall such
 3184 reimbursement rates exceed the Medicaid rate. The plan must also
 3185 provide that any hospitals owned and operated by government
 3186 entities on or after the effective date of this act must, as a
 3187 condition of receiving funds under this subsection, afford
 3188 public access equal to that provided under s. 286.011 as to any
 3189 meeting of the governing board, agency, or authority the subject
 3190 of which is budgeting resources for the retention of charity
 3191 care, as that term is defined in the rules of the Agency for
 3192 Health Care Administration. The plan shall also include
 3193 innovative health care programs that provide cost-effective

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3194 alternatives to traditional methods of service and delivery
3195 funding.

3196 3. The plan's benefits shall be made available to all
3197 county residents currently eligible to receive health care
3198 services as indigents or medically poor as defined in paragraph
3199 (4) (d).

3200 4. Eligible residents who participate in the health care
3201 plan shall receive coverage for a period of 12 months or the
3202 period extending from the time of enrollment to the end of the
3203 current fiscal year, per enrollment period, whichever is less.

3204 5. At the end of each fiscal year, the governing board,
3205 agency, or authority shall prepare an audit that reviews the
3206 budget of the plan, delivery of services, and quality of
3207 services, and makes recommendations to increase the plan's
3208 efficiency. The audit shall take into account participant
3209 hospital satisfaction with the plan and assess the amount of
3210 poststabilization patient transfers requested, and accepted or
3211 denied, by the county public general hospital.

3212 Section 38. Paragraph (c) of subsection (2) of section
3213 394.4599, Florida Statutes, is amended to read:

3214 394.4599 Notice.—

3215 (2) INVOLUNTARY ADMISSION.—

3216 (c)1. A receiving facility shall give notice of the
3217 whereabouts of a minor who is being involuntarily held for
3218 examination pursuant to s. 394.463 to the minor's parent,
3219 guardian, caregiver, or guardian advocate, in person or by
3220 telephone or other form of electronic communication, immediately
3221 after the minor's arrival at the facility. The facility may
3222 delay notification for no more than 24 hours after the minor's

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3223 arrival if the facility has submitted a report to the central
3224 abuse hotline, pursuant to s. 39.201, based upon knowledge or
3225 suspicion of abuse, abandonment, or neglect and if the facility
3226 deems a delay in notification to be in the minor's best
3227 interest.

3228 2. The receiving facility shall attempt to notify the
3229 minor's parent, guardian, caregiver, or guardian advocate until
3230 the receiving facility receives confirmation from the parent,
3231 guardian, caregiver, or guardian advocate, verbally, by
3232 telephone or other form of electronic communication, or by
3233 recorded message, that notification has been received. Attempts
3234 to notify the parent, guardian, caregiver, or guardian advocate
3235 must be repeated at least once every hour during the first 12
3236 hours after the minor's arrival and once every 24 hours
3237 thereafter and must continue until such confirmation is
3238 received, unless the minor is released at the end of the 72-hour
3239 examination period, or until a petition for involuntary services
3240 ~~placement~~ is filed with the court pursuant to s. 394.463(2) (g)
3241 ~~s. 394.463(2) (i)~~. The receiving facility may seek assistance
3242 from a law enforcement agency to notify the minor's parent,
3243 guardian, caregiver, or guardian advocate if the facility has
3244 not received within the first 24 hours after the minor's arrival
3245 a confirmation by the parent, guardian, caregiver, or guardian
3246 advocate that notification has been received. The receiving
3247 facility must document notification attempts in the minor's
3248 clinical record.

3249 Section 39. Subsection (3) of section 394.495, Florida
3250 Statutes, is amended to read:

3251 394.495 Child and adolescent mental health system of care;

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3252 programs and services.—

3253 (3) Assessments must be performed by:

3254 (a) A professional as defined in s. 394.455(7), (33), (36),
 3255 (37), or (38) s. 394.455(2), (4), (21), (23), or (24);

3256 (b) A professional licensed under chapter 491; or

3257 (c) A person who is under the direct supervision of a
 3258 professional as defined in s. 394.455(7), (33), (36), (37), or
 3259 (38) s. 394.455(2), (4), (21), (23), or (24) or a professional
 3260 licensed under chapter 491.

3261 Section 40. Subsection (5) of section 394.496, Florida
 3262 Statutes, is amended to read:

3263 394.496 Service planning.—

3264 (5) A professional as defined in s. 394.455(7), (33), (36),
 3265 (37), or (38) s. 394.455(2), (4), (21), (23), or (24) or a
 3266 professional licensed under chapter 491 must be included among
 3267 those persons developing the services plan.

3268 Section 41. Subsection (6) of section 394.9085, Florida
 3269 Statutes, is amended to read:

3270 394.9085 Behavioral provider liability.—

3271 (6) For purposes of this section, the terms "detoxification
 3272 services," "addictions receiving facility," and "receiving
 3273 facility" have the same meanings as those provided in ss.
 3274 397.311(23)(a)4., 397.311(23)(a)1., and 394.455(41) s-
 3275 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(26),
 3276 respectively.

3277 Section 42. Subsection (8) of section 397.405, Florida
 3278 Statutes, is amended to read:

3279 397.405 Exemptions from licensure.—The following are exempt
 3280 from the licensing provisions of this chapter:

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3281 (8) A legally cognizable church or nonprofit religious
 3282 organization or denomination providing substance abuse services,
 3283 including prevention services, which are solely religious,
 3284 spiritual, or ecclesiastical in nature. A church or nonprofit
 3285 religious organization or denomination providing any of the
 3286 licensed service components itemized under s. 397.311(23) s-
 3287 397.311(22) is not exempt from substance abuse licensure but
 3288 retains its exemption with respect to all services which are
 3289 solely religious, spiritual, or ecclesiastical in nature.

3290
 3291 The exemptions from licensure in this section do not apply to
 3292 any service provider that receives an appropriation, grant, or
 3293 contract from the state to operate as a service provider as
 3294 defined in this chapter or to any substance abuse program
 3295 regulated pursuant to s. 397.406. Furthermore, this chapter may
 3296 not be construed to limit the practice of a physician or
 3297 physician assistant licensed under chapter 458 or chapter 459, a
 3298 psychologist licensed under chapter 490, a psychotherapist
 3299 licensed under chapter 491, or an advanced registered nurse
 3300 practitioner licensed under part I of chapter 464, who provides
 3301 substance abuse treatment, so long as the physician, physician
 3302 assistant, psychologist, psychotherapist, or advanced registered
 3303 nurse practitioner does not represent to the public that he or
 3304 she is a licensed service provider and does not provide services
 3305 to individuals pursuant to part V of this chapter. Failure to
 3306 comply with any requirement necessary to maintain an exempt
 3307 status under this section is a misdemeanor of the first degree,
 3308 punishable as provided in s. 775.082 or s. 775.083.

3309 Section 43. Subsections (1) and (5) of section 397.407,

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3310 Florida Statutes, are amended to read:

3311 397.407 Licensure process; fees.—

3312 (1) The department shall establish the licensure process to
 3313 include fees and categories of licenses and must prescribe a fee
 3314 range that is based, at least in part, on the number and
 3315 complexity of programs listed in s. 397.311(23) ~~s. 397.311(22)~~
 3316 which are operated by a licensee. The fees from the licensure of
 3317 service components are sufficient to cover at least 50 percent
 3318 of the costs of regulating the service components. The
 3319 department shall specify a fee range for public and privately
 3320 funded licensed service providers. Fees for privately funded
 3321 licensed service providers must exceed the fees for publicly
 3322 funded licensed service providers.

3323 (5) The department may issue probationary, regular, and
 3324 interim licenses. The department shall issue one license for
 3325 each service component that is operated by a service provider
 3326 and defined pursuant to s. 397.311(23) ~~s. 397.311(22)~~. The
 3327 license is valid only for the specific service components listed
 3328 for each specific location identified on the license. The
 3329 licensed service provider shall apply for a new license at least
 3330 60 days before the addition of any service components or 30 days
 3331 before the relocation of any of its service sites. Provision of
 3332 service components or delivery of services at a location not
 3333 identified on the license may be considered an unlicensed
 3334 operation that authorizes the department to seek an injunction
 3335 against operation as provided in s. 397.401, in addition to
 3336 other sanctions authorized by s. 397.415. Probationary and
 3337 regular licenses may be issued only after all required
 3338 information has been submitted. A license may not be

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3339 transferred. As used in this subsection, the term "transfer"
 3340 includes, but is not limited to, the transfer of a majority of
 3341 the ownership interest in the licensed entity or transfer of
 3342 responsibilities under the license to another entity by
 3343 contractual arrangement.

3344 Section 44. Section 397.416, Florida Statutes, is amended
 3345 to read:

3346 397.416 Substance abuse treatment services; qualified
 3347 professional.—Notwithstanding any other provision of law, a
 3348 person who was certified through a certification process
 3349 recognized by the former Department of Health and Rehabilitative
 3350 Services before January 1, 1995, may perform the duties of a
 3351 qualified professional with respect to substance abuse treatment
 3352 services as defined in this chapter, and need not meet the
 3353 certification requirements contained in s. 397.311(31) ~~s.~~
 3354 ~~397.311(30)~~.

3355 Section 45. Paragraph (b) of subsection (1) of section
 3356 409.972, Florida Statutes, is amended to read:

3357 409.972 Mandatory and voluntary enrollment.—

3358 (1) The following Medicaid-eligible persons are exempt from
 3359 mandatory managed care enrollment required by s. 409.965, and
 3360 may voluntarily choose to participate in the managed medical
 3361 assistance program:

3362 (b) Medicaid recipients residing in residential commitment
 3363 facilities operated through the Department of Juvenile Justice
 3364 or a mental health treatment facility facilities as defined in
 3365 by s. 394.455(50) ~~s. 394.455(32)~~.

3366 Section 46. Paragraphs (d) and (g) of subsection (1) of
 3367 section 440.102, Florida Statutes, are amended to read:

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3368 440.102 Drug-free workplace program requirements.—The
 3369 following provisions apply to a drug-free workplace program
 3370 implemented pursuant to law or to rules adopted by the Agency
 3371 for Health Care Administration:

3372 (1) DEFINITIONS.—Except where the context otherwise
 3373 requires, as used in this act:

3374 (d) “Drug rehabilitation program” means a service provider,
 3375 established pursuant to s. 397.311(40) ~~s. 397.311(39)~~, that
 3376 provides confidential, timely, and expert identification,
 3377 assessment, and resolution of employee drug abuse.

3378 (g) “Employee assistance program” means an established
 3379 program capable of providing expert assessment of employee
 3380 personal concerns; confidential and timely identification
 3381 services with regard to employee drug abuse; referrals to
 3382 employees for appropriate diagnosis, treatment, and assistance;
 3383 and followup services for employees who participate in the
 3384 program or require monitoring after returning to work. If, in
 3385 addition to the above activities, an employee assistance program
 3386 provides diagnostic and treatment services, these services shall
 3387 in all cases be provided by service providers pursuant to s.
 3388 397.311(40) ~~s. 397.311(39)~~.

3389 Section 47. Subsection (7) of section 744.704, Florida
 3390 Statutes, is amended to read:

3391 744.704 Powers and duties.—

3392 (7) A public guardian ~~may shall~~ not commit a ward to a
 3393 ~~mental health~~ treatment facility, as defined in s. 394.455(50)
 3394 ~~s. 394.455(32)~~, without an involuntary placement proceeding as
 3395 provided by law.

3396 Section 48. Paragraph (a) of subsection (2) of section

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3397 790.065, Florida Statutes, is amended to read:

3398 790.065 Sale and delivery of firearms.—

3399 (2) Upon receipt of a request for a criminal history record
 3400 check, the Department of Law Enforcement shall, during the
 3401 licensee’s call or by return call, forthwith:

3402 (a) Review any records available to determine if the
 3403 potential buyer or transferee:

3404 1. Has been convicted of a felony and is prohibited from
 3405 receipt or possession of a firearm pursuant to s. 790.23;

3406 2. Has been convicted of a misdemeanor crime of domestic
 3407 violence, and therefore is prohibited from purchasing a firearm;

3408 3. Has had adjudication of guilt withheld or imposition of
 3409 sentence suspended on any felony or misdemeanor crime of
 3410 domestic violence unless 3 years have elapsed since probation or
 3411 any other conditions set by the court have been fulfilled or
 3412 expunction has occurred; or

3413 4. Has been adjudicated mentally defective or has been
 3414 committed to a mental institution by a court or as provided in
 3415 sub-sub-subparagraph b.(II), and as a result is prohibited by
 3416 state or federal law from purchasing a firearm.

3417 a. As used in this subparagraph, “adjudicated mentally
 3418 defective” means a determination by a court that a person, as a
 3419 result of marked subnormal intelligence, or mental illness,
 3420 incompetency, condition, or disease, is a danger to himself or
 3421 herself or to others or lacks the mental capacity to contract or
 3422 manage his or her own affairs. The phrase includes a judicial
 3423 finding of incapacity under s. 744.331(6) (a), an acquittal by
 3424 reason of insanity of a person charged with a criminal offense,
 3425 and a judicial finding that a criminal defendant is not

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3426 competent to stand trial.

3427 b. As used in this subparagraph, "committed to a mental
3428 institution" means:

3429 (I) Involuntary commitment, commitment for mental
3430 defectiveness or mental illness, and commitment for substance
3431 abuse. The phrase includes involuntary inpatient placement as
3432 defined in s. 394.467, involuntary outpatient services placement
3433 as defined in s. 394.4655, involuntary assessment and
3434 stabilization under s. 397.6818, and involuntary substance abuse
3435 treatment under s. 397.6957, but does not include a person in a
3436 mental institution for observation or discharged from a mental
3437 institution based upon the initial review by the physician or a
3438 voluntary admission to a mental institution; or

3439 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
3440 admission to a mental institution for outpatient or inpatient
3441 treatment of a person who had an involuntary examination under
3442 s. 394.463, where each of the following conditions have been
3443 met:

3444 (A) An examining physician found that the person is an
3445 imminent danger to himself or herself or others.

3446 (B) The examining physician certified that if the person
3447 did not agree to voluntary treatment, a petition for involuntary
3448 outpatient or inpatient services treatment would have been filed
3449 under s. 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining
3450 physician certified that a petition was filed and the person
3451 subsequently agreed to voluntary treatment before ~~prior to~~ a
3452 court hearing on the petition.

3453 (C) Before agreeing to voluntary treatment, the person
3454 received written notice of that finding and certification, and

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3455 written notice that as a result of such finding, he or she may
3456 be prohibited from purchasing a firearm, and may not be eligible
3457 to apply for or retain a concealed weapon or firearms license
3458 under s. 790.06 and the person acknowledged such notice in
3459 writing, in substantially the following form:

3460
3461 "I understand that the doctor who examined me believes
3462 I am a danger to myself or to others. I understand
3463 that if I do not agree to voluntary treatment, a
3464 petition will be filed in court to require me to
3465 receive involuntary treatment. I understand that if
3466 that petition is filed, I have the right to contest
3467 it. In the event a petition has been filed, I
3468 understand that I can subsequently agree to voluntary
3469 treatment prior to a court hearing. I understand that
3470 by agreeing to voluntary treatment in either of these
3471 situations, I may be prohibited from buying firearms
3472 and from applying for or retaining a concealed weapons
3473 or firearms license until I apply for and receive
3474 relief from that restriction under Florida law."

3475
3476 (D) A judge or a magistrate has, pursuant to sub-sub-
3477 subparagraph c.(II), reviewed the record of the finding,
3478 certification, notice, and written acknowledgment classifying
3479 the person as an imminent danger to himself or herself or
3480 others, and ordered that such record be submitted to the
3481 department.

3482 c. In order to check for these conditions, the department
3483 shall compile and maintain an automated database of persons who

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3484 are prohibited from purchasing a firearm based on court records
 3485 of adjudications of mental defectiveness or commitments to
 3486 mental institutions.

3487 (I) Except as provided in sub-sub-subparagraph (II), clerks
 3488 of court shall submit these records to the department within 1
 3489 month after the rendition of the adjudication or commitment.
 3490 Reports shall be submitted in an automated format. The reports
 3491 must, at a minimum, include the name, along with any known alias
 3492 or former name, the sex, and the date of birth of the subject.

3493 (II) For persons committed to a mental institution pursuant
 3494 to sub-sub-subparagraph b.(II), within 24 hours after the
 3495 person's agreement to voluntary admission, a record of the
 3496 finding, certification, notice, and written acknowledgment must
 3497 be filed by the administrator of the receiving or treatment
 3498 facility, as defined in s. 394.455, with the clerk of the court
 3499 for the county in which the involuntary examination under s.
 3500 394.463 occurred. No fee shall be charged for the filing under
 3501 this sub-sub-subparagraph. The clerk must present the records to
 3502 a judge or magistrate within 24 hours after receipt of the
 3503 records. A judge or magistrate is required and has the lawful
 3504 authority to review the records ex parte and, if the judge or
 3505 magistrate determines that the record supports the classifying
 3506 of the person as an imminent danger to himself or herself or
 3507 others, to order that the record be submitted to the department.
 3508 If a judge or magistrate orders the submittal of the record to
 3509 the department, the record must be submitted to the department
 3510 within 24 hours.

3511 d. A person who has been adjudicated mentally defective or
 3512 committed to a mental institution, as those terms are defined in

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3513 this paragraph, may petition the circuit court that made the
 3514 adjudication or commitment, or the court that ordered that the
 3515 record be submitted to the department pursuant to sub-sub-
 3516 subparagraph c.(II), for relief from the firearm disabilities
 3517 imposed by such adjudication or commitment. A copy of the
 3518 petition shall be served on the state attorney for the county in
 3519 which the person was adjudicated or committed. The state
 3520 attorney may object to and present evidence relevant to the
 3521 relief sought by the petition. The hearing on the petition may
 3522 be open or closed as the petitioner may choose. The petitioner
 3523 may present evidence and subpoena witnesses to appear at the
 3524 hearing on the petition. The petitioner may confront and cross-
 3525 examine witnesses called by the state attorney. A record of the
 3526 hearing shall be made by a certified court reporter or by court-
 3527 approved electronic means. The court shall make written findings
 3528 of fact and conclusions of law on the issues before it and issue
 3529 a final order. The court shall grant the relief requested in the
 3530 petition if the court finds, based on the evidence presented
 3531 with respect to the petitioner's reputation, the petitioner's
 3532 mental health record and, if applicable, criminal history
 3533 record, the circumstances surrounding the firearm disability,
 3534 and any other evidence in the record, that the petitioner will
 3535 not be likely to act in a manner that is dangerous to public
 3536 safety and that granting the relief would not be contrary to the
 3537 public interest. If the final order denies relief, the
 3538 petitioner may not petition again for relief from firearm
 3539 disabilities until 1 year after the date of the final order. The
 3540 petitioner may seek judicial review of a final order denying
 3541 relief in the district court of appeal having jurisdiction over

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3542 the court that issued the order. The review shall be conducted
 3543 de novo. Relief from a firearm disability granted under this
 3544 sub-subparagraph has no effect on the loss of civil rights,
 3545 including firearm rights, for any reason other than the
 3546 particular adjudication of mental defectiveness or commitment to
 3547 a mental institution from which relief is granted.

3548 e. Upon receipt of proper notice of relief from firearm
 3549 disabilities granted under sub-subparagraph d., the department
 3550 shall delete any mental health record of the person granted
 3551 relief from the automated database of persons who are prohibited
 3552 from purchasing a firearm based on court records of
 3553 adjudications of mental defectiveness or commitments to mental
 3554 institutions.

3555 f. The department is authorized to disclose data collected
 3556 pursuant to this subparagraph to agencies of the Federal
 3557 Government and other states for use exclusively in determining
 3558 the lawfulness of a firearm sale or transfer. The department is
 3559 also authorized to disclose this data to the Department of
 3560 Agriculture and Consumer Services for purposes of determining
 3561 eligibility for issuance of a concealed weapons or concealed
 3562 firearms license and for determining whether a basis exists for
 3563 revoking or suspending a previously issued license pursuant to
 3564 s. 790.06(10). When a potential buyer or transferee appeals a
 3565 nonapproval based on these records, the clerks of court and
 3566 mental institutions shall, upon request by the department,
 3567 provide information to help determine whether the potential
 3568 buyer or transferee is the same person as the subject of the
 3569 record. Photographs and any other data that could confirm or
 3570 negate identity must be made available to the department for

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3571 such purposes, notwithstanding any other provision of state law
 3572 to the contrary. Any such information that is made confidential
 3573 or exempt from disclosure by law shall retain such confidential
 3574 or exempt status when transferred to the department.

3575 Section 49. This act shall take effect July 1, 2016.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 18 16
Meeting Date

12
Bill Number (if applicable)
strike-all
Amendment Barcode (if applicable)

Topic Mental Health Reform

Name Dan Hendrickson

Job Title Chair Advocacy Committee

Address 319 E Park Ave PO Box 1201

Phone 850-570-1967

Street

Tallahassee

Fl

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

12
Bill Number (if applicable)

Topic Mental Health

654058
Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 E. Park Ave
Street

Phone 766-5725

Tallahassee FL 32301
City State Zip

Email corinnemixon@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Mental Health Counselors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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2-18-16 Meeting Date

SB 12 Bill Number (if applicable)

Topic Mental Health and Substance Abuse Amendment Barcode (if applicable)

Name Judge Steven Leifman

Job Title Chair, Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts; 11th Circuit County Court Judge

Address 1351 NW 12th St. #617 Miami FL 33125 Phone Email

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/18/16

Meeting Date

12

Bill Number (if applicable)

Topic Mental Health + Substance Abuse

Amendment Barcode (if applicable)

Name Ron Watson

Job Title lobbyist

Address 3738 Mundon Way

Phone 850 567-1202

Street

Tallahassee

State

FL

Zip

Email watson.strategies@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing FL Mental Health Counselors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

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18 Feb 2016
Meeting Date

12
Bill Number (if applicable)

Topic Substance Abuse / Mental Health Svcs

Amendment Barcode (if applicable)

Name Mark Fontaine

Job Title Executive Director

Address 2868 Mahan Dr
Street

Phone 878 2190

Tallahassee FL 32308
City State Zip

Email mfontaine@fdaea.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 12
Bill Number (if applicable)

Topic MENTAL HEALTH & SUBSTANCE ABUSE

Amendment Barcode (if applicable)

Name NATALIE KELLY

Job Title EXECUTIVE DIRECTOR

Address 411 E. COVER AVE

Phone (850) 570-5747

Tallahassee FL 32301
City State Zip

Email NATALIE.KELLY@ME.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF MANAGING ENTITIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 16
Meeting Date

12
Bill Number (if applicable)

Topic Mental Health / Substance Abuse

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

SB12

Bill Number (if applicable)

Topic Mental Health

Amendment Barcode (if applicable)

Name Melanie Brown Woofler

Job Title Senior Medicaid Policy Director

Address 316 E. Park Avenue
Street

Phone 224-6048

Tallahassee FL 32301
City State Zip

Email melanie@fccmh.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Council Community Mental Health

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

12

Bill Number (if applicable)

Topic MENTAL HEALTH

Amendment Barcode (if applicable)

Name LAURA YOUNG

Job Title

Address Street

Phone

City

State

Zip

Email

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

12

Bill Number (if applicable)

Topic MENTAL HEALTH / S.A.

Amendment Barcode (if applicable)

Name THAD LOWREY

Job Title VP Communital relations

Address 7720 Washington St.

Phone 727-997-8508

Street

Pest Richey FL 34668

City

State

Zip

Email thlorey@operation.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing OPERATION PAR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/SB 122

INTRODUCER: Criminal Justice Committee and Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
4.	<u>Harkness</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 122 amends chapter 961, Florida Statutes, which establishes an administrative process for compensation for a person who has been wrongfully incarcerated.

Under current law, a person is not eligible for compensation for wrongful incarceration if he or she has a criminal history that includes any felony.¹ This is commonly known as the “clean hands” provision of Florida’s wrongful incarceration compensation law. The bill narrows the list of felony offenses that disqualify a person from compensation from all felonies to violent felonies. What constitutes a violent felony is defined in the bill. By narrowing the types of disqualifying felonies, the bill expands the pool of potential applicants for compensation through the administrative process.

This bill has an indeterminate fiscal impact because it is unknown how many applicants would be eligible under the expanded criteria.

The bill has an effective date of October 1, 2016.

¹ Section 961.04, F.S.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act has been in effect since July 1, 2008.² The law establishes an administrative process for a person to petition the original sentencing court for an order finding the petitioner to have been wrongfully incarcerated and eligible for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.³ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁴

“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes

In cases in which sufficient evidence of actual innocence can be shown, the person is still ineligible for compensation if:

- Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or
- During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.⁵

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.⁶

² Chapter 961, F.S. (ch. 2008-39, L.O.F.).

³ Section 961.05(2), F.S.

⁴ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System Institution as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled. The wrongfully incarcerated person is also entitled to reimbursement of the amount of any fine, penalty, or court costs paid, and the amount of any reasonable attorney's fees and expenses incurred for all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon supporting documentation submitted as specified in s. 961.05, F.S.. Finally, the wrongfully incarcerated person is entitled to immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

⁵ Section 961.04, F.S.

⁶ *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org; (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by “personal bills,” a process much like Florida's claim bill process.

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person convicted of a felony may be sentenced to a split sentence, which is a sentence including both incarceration and release under supervision. Alternatively, a person could be granted parole if he or she meets the statutory criteria.⁷ Therefore, a person could potentially be wrongfully incarcerated for a crime and then placed on parole or community supervision as part of the sentence. If a person violates a condition of parole or community supervision, he or she may have parole or community supervision revoked. The basis for revocation of parole or community supervision may affect eligibility for compensation for wrongful incarceration.

Under s. 961.06(2), F.S., if a person commits a misdemeanor or a technical violation while under supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, a felony law violation results in revocation, the person is no longer eligible for compensation.⁸ Ineligibility based on a felony violation applies to any felony.

Wrongful Incarceration Claims

To date, four persons have been compensated under the administrative process for a total of \$4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.⁹

III. Effect of Proposed Changes:

The bill amends ch. 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., currently provides an administrative process for a person who has been wrongfully incarcerated for a felony conviction to seek a court order finding the person to be eligible for compensation. Current law disqualifies a person who is otherwise eligible for compensation if he or she has a record of any prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill limits disqualifying felonies to violent felonies. In other words, the bill provides that in order to be found ineligible for compensation based on other crimes, the person must have committed a violent felony, not a simple felony. Specifically:

- Before the person's wrongful incarceration, he or she committed a violent felony;¹⁰

⁷ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁸ Section 961.06(2), F.S.

⁹ Email correspondence with the Office of the Attorney General (Jan. 14, 2016) (on file with the Senate Committee on Judiciary). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

¹⁰ Section 961.04(1), F.S.

- During the person's wrongful incarceration, he or she committed a violent felony;¹¹ or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.¹²

A violent felony is defined in the bill by a cross-reference to ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

Violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

¹¹ Section 961.04(2), F.S.

¹² Section 961.06(2), F.S.

In limiting disqualifying felonies to violent felonies, the pool of potential persons eligible for compensation due to wrongful incarceration may increase.

The bill takes effect October 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:

None.

C. Government Sector Impact:

More persons are potentially eligible for compensation under the provisions of CS/SB 122. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.¹³ Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of CS/SB 122 is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

¹³ The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. Section 961.06(1)(a), F.S.

The Office of the Attorney General, the Department of Financial Services and the Florida Department of Law Enforcement do not expect a fiscal impact from the provisions of this bill.¹⁴ In addition, the Office of the State Courts Administrator does not expect a significant effect on judicial workload from this bill.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, and 961.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Criminal Justice on November 2, 2015:

Makes a clarifying change to the title of the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ Email correspondence with the Office of the Attorney General (Jan. 15, 2016) (on file with the Senate Judiciary Committee); The Department of Financial Services, Letter from Chief Financial Officer Jeff Atwater (Sept. 29, 2015) (on file with the Senate Judiciary Committee); The Florida Department of Law Enforcement, *2016 FDLE Legislative Bill Analysis* (on file with the Senate Judiciary Committee).

¹⁵ The Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Nov. 2, 2015)

By the Committee on Criminal Justice; and Senators Joyner and Bradley

591-01035-16

2016122c1

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; defining the term "violent felony"; amending s. 961.04, F.S.; providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of eligibility for compensation, to incorporate the amendments made to s. 961.04, F.S., in references thereto; reenacting s. 961.055(1), F.S., relating to application for compensation for a wrongfully incarcerated person and exemption from application by nolle prosequi, to incorporate the amendments made to s. 961.06, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 961.02, Florida Statutes, is reordered

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

~~(7)(4)~~ "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order finding that the person did not commit ~~neither committed~~ the act or ~~nor~~ the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

~~(4)(5)~~ "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

~~(5)(6)~~ "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

~~(6)~~ "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to

Page 2 of 7

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2016122c1

59 read:

60 961.04 Eligibility for compensation for wrongful
61 incarceration.—A wrongfully incarcerated person is not eligible
62 for compensation under the act if:

63 (1) Before the person's wrongful conviction and
64 incarceration, the person was convicted of, or pled guilty or
65 nolo contendere to, regardless of adjudication, any violent
66 felony ~~offense~~, or a crime committed in another jurisdiction the
67 elements of which would constitute a violent felony in this
68 state, or a crime committed against the United States which is
69 designated a violent felony, excluding any delinquency
70 disposition;

71 (2) During the person's wrongful incarceration, the person
72 was convicted of, or pled guilty or nolo contendere to,
73 regardless of adjudication, any violent felony ~~offense~~; or

74 (3) During the person's wrongful incarceration, the person
75 was also serving a concurrent sentence for another felony for
76 which the person was not wrongfully convicted.

77 Section 3. Subsection (2) of section 961.06, Florida
78 Statutes, is amended to read:

79 961.06 Compensation for wrongful incarceration.—

80 (2) In calculating monetary compensation under paragraph
81 (1) (a), a wrongfully incarcerated person who is placed on parole
82 or community supervision while serving the sentence resulting
83 from the wrongful conviction and who commits anything less than
84 a violent felony ~~law-violation~~ that results in revocation of the
85 parole or community supervision is eligible for compensation for
86 the total number of years incarcerated. A wrongfully
87 incarcerated person who commits a violent felony ~~law-violation~~

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2016122c1

88 that results in revocation of the parole or community
89 supervision is ineligible for any compensation under subsection
90 (1).

91 Section 4. For the purpose of incorporating the amendments
92 made by this act to section 961.04, Florida Statutes, in
93 references thereto, paragraph (a) of subsection (1) and
94 subsections (2), (3), and (4) of section 961.03, Florida
95 Statutes, are reenacted to read:

96 961.03 Determination of status as a wrongfully incarcerated
97 person; determination of eligibility for compensation.—

98 (1) (a) In order to meet the definition of a "wrongfully
99 incarcerated person" and "eligible for compensation," upon entry
100 of an order, based upon exonerating evidence, vacating a
101 conviction and sentence, a person must set forth the claim of
102 wrongful incarceration under oath and with particularity by
103 filing a petition with the original sentencing court, with a
104 copy of the petition and proper notice to the prosecuting
105 authority in the underlying felony for which the person was
106 incarcerated. At a minimum, the petition must:

107 1. State that verifiable and substantial evidence of actual
108 innocence exists and state with particularity the nature and
109 significance of the verifiable and substantial evidence of
110 actual innocence; and

111 2. State that the person is not disqualified, under the
112 provisions of s. 961.04, from seeking compensation under this
113 act.

114 (2) The prosecuting authority must respond to the petition
115 within 30 days. The prosecuting authority may respond:

116 (a) By certifying to the court that, based upon the

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117 petition and verifiable and substantial evidence of actual
 118 innocence, no further criminal proceedings in the case at bar
 119 can or will be initiated by the prosecuting authority, that no
 120 questions of fact remain as to the petitioner's wrongful
 121 incarceration, and that the petitioner is not ineligible from
 122 seeking compensation under the provisions of s. 961.04; or

123 (b) By contesting the nature, significance, or effect of
 124 the evidence of actual innocence, the facts related to the
 125 petitioner's alleged wrongful incarceration, or whether the
 126 petitioner is ineligible from seeking compensation under the
 127 provisions of s. 961.04.

128 (3) If the prosecuting authority responds as set forth in
 129 paragraph (2) (a), the original sentencing court, based upon the
 130 evidence of actual innocence, the prosecuting authority's
 131 certification, and upon the court's finding that the petitioner
 132 has presented clear and convincing evidence that the petitioner
 133 committed neither the act nor the offense that served as the
 134 basis for the conviction and incarceration, and that the
 135 petitioner did not aid, abet, or act as an accomplice to a
 136 person who committed the act or offense, shall certify to the
 137 department that the petitioner is a wrongfully incarcerated
 138 person as defined by this act. Based upon the prosecuting
 139 authority's certification, the court shall also certify to the
 140 department that the petitioner is eligible for compensation
 141 under the provisions of s. 961.04.

142 (4) (a) If the prosecuting authority responds as set forth
 143 in paragraph (2) (b), the original sentencing court shall make a
 144 determination from the pleadings and supporting documentation
 145 whether, by a preponderance of the evidence, the petitioner is

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2016122c1

146 ineligible for compensation under the provisions of s. 961.04,
 147 regardless of his or her claim of wrongful incarceration. If the
 148 court finds the petitioner ineligible under the provisions of s.
 149 961.04, it shall dismiss the petition.

150 (b) If the prosecuting authority responds as set forth in
 151 paragraph (2) (b), and the court determines that the petitioner
 152 is eligible under the provisions of s. 961.04, but the
 153 prosecuting authority contests the nature, significance or
 154 effect of the evidence of actual innocence, or the facts related
 155 to the petitioner's alleged wrongful incarceration, the court
 156 shall set forth its findings and transfer the petition by
 157 electronic means through the division's website to the division
 158 for findings of fact and a recommended determination of whether
 159 the petitioner has established that he or she is a wrongfully
 160 incarcerated person who is eligible for compensation under this
 161 act.

162 Section 5. For the purpose of incorporating the amendments
 163 made by this act to section 961.06, Florida Statutes, in
 164 references thereto, subsection (1) of section 961.055, Florida
 165 Statutes, is reenacted to read:

166 961.055 Application for compensation for a wrongfully
 167 incarcerated person; exemption from application by nolle
 168 prosequi.—

169 (1) A person alleged to be a wrongfully incarcerated person
 170 who was convicted and sentenced to death on or before December
 171 31, 1979, is exempt from the application provisions of ss.
 172 961.03, 961.04, and 961.05 in the determination of wrongful
 173 incarceration and eligibility to receive compensation pursuant
 174 to s. 961.06 if:

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175 (a) The Governor issues an executive order appointing a
176 special prosecutor to review the defendant's conviction; and

177 (b) The special prosecutor thereafter enters a nolle
178 prosequi for the charges for which the defendant was convicted
179 and sentenced to death.

180 Section 6. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

February 12, 2016

Senator Tom Lee, Chair
Senate Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This is to request that CS/Senate Bill 122, Compensation of Victims of Wrongful Incarceration, be placed on the agenda for the Committee on Appropriations. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, reading "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 16

Meeting Date

122

Bill Number (if applicable)

Topic Compensation Wrongful Incarceration

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 204 S. Monroe Innocence Project of Florida

Address Rd 204 S. Monroe

Phone 577-3032

Street

Tall

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Innocence Project of Fla.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: SB 394

INTRODUCER: Senator Hays

SUBJECT: Unlicensed Activity Fees

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

I. Summary:

SB 394 requires the Department of Business and Professional Regulation (department) to waive the \$5 unlicensed activity fee, which is charged to all licensees renewing a license issued by the department, if certain benchmarks for the profession's operating account and unlicensed activity account are met. The waiver applies to all licensees in a renewal cycle for the duration of that cycle. The waiver does not apply if a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years.

For the 2016-2017 fiscal year, the bill is estimated to have a negative fiscal impact of \$1,588,300 within the department's Professional Regulation Trust Fund and a \$127,064 negative fiscal impact to the General Revenue Fund.

II. Present Situation:

The department licenses and regulates businesses and professionals in Florida. The department includes separate divisions and various professional boards that are responsible for carrying out the department's mission to license efficiently and regulate fairly.

Section 20.165, F.S., establishes the organizational structure of the department. There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;

- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,¹ two boards within the Division of Real Estate,² and one board within the Division of Certified Public Accounting.³ The Florida State Boxing Commission (boxing commission) is also assigned to the department for administrative and fiscal accountability purposes only.⁴ The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”⁵

Regulation of professions is limited under Florida law, to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁸

¹ Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468.

² See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

³ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁴ See s. 548.003(1), F.S.

⁵ See s. 455.01(6), F.S.

⁶ See s. 455.201(2), F.S.

⁷ *Id.*

⁸ See s. 455.201(4)(b), F.S.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ When a person is authorized to engage in a profession or occupation in Florida by the department, the department issues a “permit, registration, certificate, or license” to the licensee.¹⁰

In Fiscal Year 2013-2014, the Division of Accountancy had 37,513 licensees, the Division of Real Estate had 312,715 licensees, and the Board of Professional Engineers had 57,653 licensees.¹¹ In Fiscal Year 2013-2014, there were 413,401 licensees in the Division of Professions,¹² including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹³

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the department, including the authority to charge license fees and license renewal fees. Each board within the department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.¹⁴

The department may adopt rules to implement a waiver of renewal fees, when it determines that a profession’s trust fund moneys exceed the amount required to cover the necessary functions of

⁹ See s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. See s. 455.221(1), F.S.

¹⁰ See s. 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2013-2014*, <http://www.myfloridalicense.com/dbpr/os/documents/FY2013-2014AnnualReportProRegCPARE.pdf> (last accessed 2015) at 22.

¹² Of the total 413,401 licensees in the Division of Professions, 22,859 are inactive, but all licensees, whether or not active, must pay the \$5 unlicensed activity fee. *Id.* at 21-22.

¹³ *Id.* at 13.

¹⁴ See s. 455.219(1), F.S.

the board (or of the department, when there is no board). However, the waiver period may not exceed two years.¹⁵

Section 455.2281, F.S., requires that persons who are issued licenses by the department pay a special fee of \$5 to support efforts to combat unlicensed activity. The fee is imposed on all initial licenses and renewed licenses, including inactive licenses. The funds of a profession regulated by the department are held in an unlicensed activity account and an operating fund account.

A transfer from the profession's operating fund account to its unlicensed activity account may be authorized if the operating fund account for the profession is not in a deficit and has a reasonable cash balance,¹⁶ in order to inform the public about the consequences of obtaining services from professionals who are not properly licensed.

The department's Unlicensed Activity Program consists of public outreach and education, thorough investigation of complaints, and enforcement and prosecution.¹⁷ The department maintains an educational campaign to inform consumers and licensees about the danger of hiring unlicensed individuals, with an emphasis on compliance rather than discipline of unlicensed offenders. In Fiscal Year 2014-2015, the department received over 5,000 complaints of unlicensed activity. More than 3,300 complaints that met requirements to be pursued resulted in the issuance of more than more than 200 citations¹⁸ and more than 2,300 Notices to Cease and Desist.

Administrative action is taken on those cases not resolved by issuance of a citation or a notice to discontinue the unlicensed activity. The number of fines and administrative actions against unlicensed offenders increased in Fiscal Year 2014-2015 over the prior fiscal year, from 317 to 543 fines and from 168 to 433 actions.¹⁹

The department's administrative rules include disciplinary guidelines for the imposition of penalties against unlicensed persons.²⁰ Practicing a profession without holding the required license may result in a fine of \$3,000 for a first violation.²¹ Various circumstances may be considered in order to reduce or increase fine amounts.²²

¹⁵ *Id.* Each board (or the department when there is no board) must ensure that license fees will cover all anticipated costs and a reasonable cash balance will be maintained. If sufficient action is not taken by a board within one year of notification by the department that license fees are projected to be inadequate, the department must set license fees for the board, in order to cover anticipated costs and to maintain the required cash balance.

¹⁶ *See* s. 455.2281, F.S.

¹⁷ *See* Department of Business and Professional Regulation, *Unlicensed Activity Program, Fiscal Year 2014-2015* <http://www.myfloridalicense.com/dbpr/reg/documents/ULA14-15FINALAnnualReport.pdf> (last accessed Nov. 18, 2015).

¹⁸ *See* s. 455.228(3)(a), F.S., which states the penalty for the unlicensed practice of a profession is a fine of not less than \$500 or more than \$5,000, or other conditions as established by rule.

¹⁹ *See supra* note 17, at 1-2.

²⁰ *See* Rule 61-5.007, F.A.C.

²¹ *Id.* A second violation may result in a \$2,500 fine; third and subsequent violations may result in fines of \$5,000.

²² *Id.* These include the severity of the offense, the number of repetitions of the unlicensed activity, and complaints filed, among others.

Recently, the department engaged in a media campaign to increase awareness of unlicensed activity and the threat to consumers and to professionals who are properly licensed.²³ In addition to promoting the “Report Unlicensed Activity” mobile telephone application, the campaign’s objectives were to increase the number of Florida consumers and licensed professionals exposed to information about:

- The professional services that require a license;
- How to verify a license; and
- How to report unlicensed activity.

III. Effect of Proposed Changes:

This bill prohibits the department from imposing the \$5 unlicensed activity fee on a licensee during a license renewal for a profession for the duration of that renewal cycle if:

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal is more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession does not have a deficit in its operating account or is not projected to have a deficit in the next five fiscal years.

The bill revises language to meet bill drafting conventions.

The bill provides an effective date of 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:

SB 394 provides fees payable by licensees renewing a license issued by the department may be reduced by \$5, if the special unlicensed activity fee of \$5 authorized in s. 455.2281, F.S., is required to be waived during a profession’s qualified license renewal cycle. In order for a profession to qualify for the waiver of the unlicensed activity fee for all licensees in that renewal cycle:

²³ See *supra* note 17, at 20-27.

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal must be more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession may not have a deficit in its operating account or be projected to have a deficit in the next five fiscal years.

B. Private Sector Impact:

If a profession qualifies for waiver of a special unlicensed activity fee of \$5 during a renewal cycle, the renewal fees payable by affected licensees in that profession will be reduced by \$5. The waiver applies to all licensees in a renewal cycle for that profession for the duration of that cycle. If a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years, the waiver is not applicable, and renewal fees will not be reduced.

C. Government Sector Impact:

The bill requires the department to determine whether a profession qualifies for the waiver of the unlicensed activity fee for all licensees in a license renewal cycle. The department must calculate, for each profession:

- The expenditures made for enforcement against unlicensed activity in the previous two fiscal years; and
- Whether the profession has a deficit in its operating account, or is projected to have a deficit in the next five fiscal years.

The department will be required to modify license renewal information provided to licensees, based on whether a renewal cycle qualifies for a reduction in the special unlicensed activity fee, reducing the renewal fees by \$5 for each professional renewing during that cycle.

According to the department, as of July 1, 2015, eight of the 22 professions for which it issues licenses meet the proposed criteria for waiver of the unlicensed activity fee of \$5 upon license renewal.²⁴ The total reduction in renewal fees payable by licensees in a single two-year renewal cycle for all eight professions eligible for the waiver is estimated by the department as \$3,193,450. See chart below.²⁵

²⁴ See Email from C. Madill, Legislative Coordinator, Department of Business and Professional Regulation, to A. Nicotra, Office of Senator D. Alan Hays and *Professional Board Unlicensed Activity Fee Holiday Projections* chart attached thereto (Oct. 21, 2015)(on file with the Senate Committee on Regulated Industries).

²⁵ *Id.*

Professional Board Unlicensed Activity Fee Holiday Projections

BOARD	EXPENDITURES: 6/30/2014	EXPENDITURES: 6/30/2015	TOTAL EXPENITURES	ACCOUNT BALANCE: 7/1/2015	Current License Count*	Estimated Savings: 7/1/2015 - 6/30/ 2017
Asbestos Unit	582	1,292	1,874	9,160	495	2,475
Athlete Agents	99	34	133	4,782	364	1,820
Building Code Admin & Inspectors	4,729	2,332	7,061	362,794	9,156	45,780
Board of Cosmetology	335,846	202,684	538,530	2,749,983	268,088	1,340,440
Board of Pilot Commissioners	2	1,079	1,081	1,277	93	465
Board of Landscape Architects	2,465	1,921	4,386	35,245	1,691	8,455
Real Estate Appraisal Board	9,086	4,979	14,065	138,473	7,739	38,695
Real Estate Commission	443,941	525,664	969,605	2,984,588	351,064	1,755,320
Total:						\$3,193,450

*License counts as of August 12, 2015

The department estimates there will be a reduction in unlicensed activity fee revenue of approximately \$1,588,300 in Fiscal Year 2016-2017, \$1,603,935 in Fiscal Year 2017-2018, and \$1,588,300 in Fiscal Year 2018-2019. There will be a corresponding reduction in the 8 percent service charge sent to the General Revenue Fund of approximately \$127,064 in Fiscal Year 2016-2017, \$128,315 in Fiscal Year 2017-2018, and \$127,064 in Fiscal Year 2018-2019.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 455.2281 of the Florida Statutes.

²⁶ See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 394, October 23, 2015 (on file with Senate Committee on Regulated Industries) at 3.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Hays

11-00555-16

2016394__

A bill to be entitled

An act relating to unlicensed activity fees; amending s. 455.2281, F.S.; prohibiting the Department of Business and Professional Regulation from imposing a specified fee in certain circumstances; providing for applicability of the waiver; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 455.2281, Florida Statutes, is amended to read:

455.2281 Unlicensed activities; fees; disposition.—In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each subsequent renewal ~~thereof~~, a special fee of \$5 per licensee, ~~Such fee shall be~~ in addition to all other fees imposed, ~~collected from each licensee to and shall~~ fund efforts to combat unlicensed activity. However, the department may not impose this special fee on a license renewal for any profession whose unlicensed activity account balance, at the beginning of the fiscal year before the renewal, totals more than twice the total of the expenditures for unlicensed activity enforcement efforts in the preceding 2 fiscal years. This waiver applies to all licensees within the profession, and assessment of the special

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

11-00555-16

2016394__

fee may not begin or resume until the renewal cycle subject to the waiver has ended for all of the licensees in that profession. This waiver does not apply to a profession that has a deficit in its operating account or that is projected to have such a deficit in the next 5 fiscal years. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and may ~~shall~~ not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement and from continuing education compliance monitoring as separate categories in the quarterly management report

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

11-00555-16

2016394__

59 provided for in s. 455.219. The department ~~may shall~~ not charge
60 the account of any profession for the costs incurred on behalf
61 of any other profession. With the concurrence of the applicable
62 board and the department, any balance that remains in ~~For~~ an
63 unlicensed activity account, ~~a balance which remains~~ at the end
64 of a renewal cycle may, ~~with concurrence of the applicable board~~
65 ~~and the department,~~ be transferred to the operating fund account
66 of that profession.

67 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

Senator Tom Lee, Chair
Committee on Appropriations
CC: Cindy Kynoch, Staff Director

Sharon Bradford, Deputy Staff Director

To: Ross McSwain, General Counsel and Deputy Staff Director
Alicia Weiss, Committee Administrative Assistant
Lisa Roberts, Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 394 Unlicensed Activity Fees

Date: January 13, 2016

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 394
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID MICA, Jr.

Job Title Legislative Affairs, Director

Address _____
Street

Phone 850-487-4827

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Dept. of Business & Professional Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016

Meeting Date

394

Bill Number (if applicable)

Topic Unlicensed Activity Fees

Amendment Barcode (if applicable)

Name Jennifer Green

Job Title President

Address P.O. Box 390

Phone (850)528-8809

Tallahassee FL 32327

City

State

Zip

Email jennifer@flsenate.gov

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Institute of CPAs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL: SB 422

INTRODUCER: Senator Benacquisto

SUBJECT: Health Insurance Coverage For Opioids

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Favorable
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

I. Summary:

SB 422 allows a health insurance policy providing coverage for opioid analgesic drug products to impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products without an abuse-deterrence labeling claim. The bill also prohibits a policy from requiring the use of an opioid analgesic without an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product.

The fiscal impact of the bill is indeterminate.

The bill provides an effective date of January 1, 2017.

II. Present Situation:

The abuse of prescription drugs in the United States has been described as an epidemic. Every day in the United States, 44 people die because of prescription opioid overdose.¹ In 2013, there were 16,235 deaths involving prescription opioid overdose.² In Florida, 2,922 deaths were attributable to prescription opioids in 2014.³

¹ Centers for Disease Control and Prevention, *Prescription Drug Overdose Data* (updated August 16, 2015) <http://www.cdc.gov/drugoverdose/data/overdose.html> (last visited Nov. 19, 2015).

² *Id.*

³ Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2014 Annual Report (September 2015), <https://www.fdle.state.fl.us/Content/Medical-Examiners-Commission/MEC-Publications-and-Forms/Documents/2014-Annual-Drug-Report-FINAL.aspx> (last visited Nov. 20, 2015).

Prescription opioid⁴ analgesics are a critical component of pain management particularly for treating acute and chronic medical pain, providing humane hospice care for cancer patients, and treating patients in drug treatment programs. When used properly, opioid analgesic drugs provide significant benefits for patients. However, abuse and misuse of these products has created a serious and growing public health problem. In the United States, an estimated 4.5 million⁵ individuals use prescription pain medications for nonmedical purposes. Recent studies indicate that pharmaceuticals, especially opioid analgesics, have driven the increase in drug overdose deaths.⁶ In 2007, the total United States societal costs of prescription opioid abuse was estimated at \$55.7 billion.⁷

Food and Drug Administration Guidance on Abuse-Deterrent Opioids

To reduce the misuse and abuse of prescription drugs, the Food and Drug Administration (FDA) released guidance⁸ to assist the pharmaceutical industry in developing new formulations and labeling of opioid drugs with abuse-deterrent properties.⁹ The goal of abuse-deterrence products is to limit access or attractiveness of the highly desired active ingredient for abusers while assuring the safe and effective release of the medication for patients. The document provides guidance about the studies that should be conducted to demonstrate that a given formulation has abuse-deterrent properties, how the studies will be evaluated, and what labeling claims may be approved based on the results of the studies.

According to the guidance, opioid analgesics can be abused in a number of ways. For example, they can be swallowed whole, crushed and swallowed, crushed and snorted, crushed and smoked, or crushed, dissolved and injected. Abuse-deterrent formulations should target known or expected routes of abuse for the opioid drug substance for that formulation. As a general framework, the FDA guidance provides that abuse-deterrent formulations are categorized in one of the following groups:

⁴ Medications that fall within this class include hydrocodone (e.g., Vicodin), oxycodone (e.g., OxyContin, Percocet), morphine (e.g., Kadian, Avinza), codeine, and related drugs. Hydrocodone products are the most commonly prescribed for a variety of painful conditions, including dental and injury-related pain. Morphine is often used before and after surgical procedures to alleviate severe pain. Codeine is often prescribed for mild pain. See National Institute on Drug Abuse at <http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/what-are-opioids> (last accessed Nov. 19, 2015).

⁵ Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, The NSDUH Report, *Substance and Use and Mental Health Estimates from the 2013 National Survey on Drug Use and Health: Overview of Findings* (September 4, 2014), <https://store.samhsa.gov/shin/content/NSDUH14-0904/NSDUH14-0904.pdf> (last visited Nov. 20, 2015). “Nonmedical use” is defined as the use of prescription-type drugs that were not prescribed for the respondent or use only for the experience or feeling they caused. Nonmedical use of any prescription type drug does not include over-the-counter drugs.

⁶ Christopher Jones, et al., *Pharmaceutical Overdose*, United States, 2010, JOURNAL OF AMERICAN MEDICAL ASSOCIATION. 2013;309:657, <http://jama.jamanetwork.com/article.aspx?articleid=1653518> (last visited: Nov. 20, 2015).

⁷ Birnbaum, H.G., et al., *Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States*, PAIN MEDICINE. 12:657-667, <http://onlinelibrary.wiley.com/doi/10.1111/j.1526-4637.2011.01075.x/epdf> (last visited Nov. 20, 2015). The breakout of this estimate includes the following costs: workplace \$25.6 billion (46 percent), health care \$25 billion (45 percent), and criminal justice \$5.1 billion (9 percent). (USD in 2009).

⁸ U.S. Department of Health and Human Services, *Abuse-Deterrent Opioids-Evaluation and Labeling*, Guidance for Industry (April 2015), <http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm334743.pdf> (last visited Nov. 20, 2015).

⁹ The FDA has approved four extended release opioids with abuse deterrent labels (Reformulated OxyContin, Embeda ER, Hysingla ER, and Targiniq ER).

- *Physical/Chemical barriers* – Physical barriers can prevent chewing, crushing, cutting, grating, or grinding. Chemical barriers can resist extraction of the opioid using common solvents like water, alcohol, or other organic solvents.
- *Agonist/Antagonist combinations* – An opioid antagonist can be added to interfere with, reduce, or defeat the euphoria associated with abuse. The antagonist can be sequestered and released only upon manipulation of the product. For example, a drug product may be formulated such that the substance that acts as an antagonist is not clinically active when the product is swallowed but becomes active if the product is crushed and injected or snorted.
- *Aversion* – Substances can be added to a product to produce an unpleasant effect if the dosage form is manipulated prior to ingestion or is used at a higher dosage than directed.
- *Delivery System* (including depot injectable formulations and implants) – Certain drug release designs or the method of drug delivery can offer resistance to abuse.
- *New Molecular entities (NME) and prodrugs* – The properties of a NME or a prodrug could include the need for enzymatic activation or other novel effects.
- *Combination* – Two or more of the above methods can be combined to deter abuse.
- *Novel approaches* – Novel approaches or technologies that are not captured in the previous categories.

The increasing use of abuse-deterrent opioids is expected to reduce overall medical costs. One study¹⁰ estimated the potential cost savings from introducing abuse-deterrent opioids may be in the range of \$0.6 billion to \$1.6 billion per year in the United States. The study notes that cost data was extrapolated from claims data of privately insured national employers. The study also states that privately insured population accounts for approximately 60 percent of the United States population, and the costs and abuse patterns for Medicaid, uninsured individuals, and small employers could be different.

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.¹¹ The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA pursuant to part III of ch. 641, F.S.¹²

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment strategies to manage medical and drug spending and utilization. For example, plans may place utilization management requirements on the use of certain drugs on their formulary, such as requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to try first a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period.

¹⁰ Birnbaum HG, White, AG, et al. *Development of a Budget-Impact Model to Quantify Potential Cost Savings from Prescription Opioids Designed to Deter Abuse or Ease of Extraction*, APPL HEALTH ECON HEALTH POLICY. 2009; 7(1); 61-70.

¹¹ Section 20.121(3)(a)1., F.S.

¹² Section 641.21(1), F.S.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drug under the plan. A preferred drug list (PDL) is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective. In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required. Prior authorization for emergency services is not required. Preauthorization for hospital inpatient services is generally required.

III. Effect of Proposed Changes:

Section 1 creates s. 627.64194, F.S., which provides requirements for opioid analgesic drug coverage. The terms “abuse-deterrent opioid analgesic drug product” and “opioid analgesic drug product” are defined. An “abuse-deterrent opioid analgesic drug product” means a brand or generic opioid analgesic drug product approved by the U.S. Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse. The term, “opioid analgesic drug product” means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

The bill allows a health insurance policy that provides coverage for opioid analgesic drug products to impose a prior authorization for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products *without* an abuse-deterrence labeling claim. The bill also prohibits a health insurance policy from requiring the use of an opioid analgesic *without* an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product. Abuse deterrent formulations have characteristics that help prevent widespread abuse by impeding the delivery of their active ingredients thereby reducing the potential for abuse and misuse of the drug.

Section 2 provides an effective date of January 1, 2017.

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:

The fiscal impact on the private sector is indeterminate. SB 422 will provide patients with greater access to abuse-deterrent opioid analgesic drug products, which is expected to reduce opioid drug misuse, abuse, and diversion. The increased use of abuse deterrent drugs is expected to reduce emergency room and drug treatment costs associated with the misuse or abuse of opioids without such abuse deterrent formulations.

The OIR notes that the bill does not require health insurance plans to have equivalent cost sharing to the policyholder. As a result, the policyholders may incur additional cost sharing if they switch to the abuse-deterrent opioids.¹³

C. Government Sector Impact:

The fiscal impact on the government sector is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.64194 of the Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ Office of Insurance Regulation, *Senate Bill 422 Analysis* (Oct. 19, 2015) (on file with the Senate Committee on Health Policy).

By Senator Benacquisto

30-00436A-16

2016422__

1 A bill to be entitled
 2 An act relating to health insurance coverage for
 3 opioids; creating s. 627.64194, F.S.; defining terms;
 4 providing that a health insurance policy that covers
 5 opioid analgesic drug products may impose a prior
 6 authorization requirement for an abuse-deterrent
 7 opioid analgesic drug product only if the insurer
 8 imposes the same requirement for each opioid analgesic
 9 drug product without an abuse-deterrence labeling
 10 claim; prohibiting such health insurance policy from
 11 requiring use of an opioid analgesic drug product
 12 without an abuse-deterrence labeling claim before
 13 providing coverage for an abuse-deterrent opioid
 14 analgesic drug product; providing an effective date.
 15
 16 WHEREAS, the Legislature finds that the abuse of opioids is
 17 a serious problem that affects the health, social, and economic
 18 welfare of this state, and
 19 WHEREAS, the Legislature finds that an estimated 2.1
 20 million people in the United States suffered from substance use
 21 disorders related to prescription opioid pain relievers in 2012,
 22 and
 23 WHEREAS, the Legislature finds that the number of
 24 unintentional overdose deaths from prescription pain relievers
 25 has more than quadrupled since 1999, and
 26 WHEREAS, the Legislature is convinced that it is imperative
 27 for people suffering from pain to obtain the relief they need
 28 while minimizing the potential for negative consequences, NOW,
 29 THEREFORE,

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-00436A-16

2016422__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 627.64194, Florida Statutes, is created
 34 to read:
 35 627.64194 Requirements for opioid coverage.-
 36 (1) DEFINITIONS.-As used in this section, the term:
 37 (a) "Abuse-deterrent opioid analgesic drug product" means a
 38 brand or generic opioid analgesic drug product approved by the
 39 United States Food and Drug Administration with an abuse-
 40 deterrence labeling claim that indicates the drug product is
 41 expected to deter abuse.
 42 (b) "Opioid analgesic drug product" means a drug product in
 43 the opioid analgesic drug class prescribed to treat moderate to
 44 severe pain or other conditions in immediate-release, extended-
 45 release, or long-acting form regardless of whether or not
 46 combined with other drug substances to form a single drug
 47 product or dosage form.
 48 (2) COVERAGE REQUIREMENTS.-A health insurance policy that
 49 provides coverage for opioid analgesic drug products:
 50 (a) May impose a prior authorization requirement for an
 51 abuse-deterrent opioid analgesic drug product only if the policy
 52 imposes the same prior authorization requirement for each opioid
 53 analgesic drug product without an abuse-deterrence labeling
 54 claim which is covered by the policy.
 55 (b) May not require use of an opioid analgesic drug product
 56 without an abuse-deterrence labeling claim before providing
 57 coverage for an abuse-deterrent opioid analgesic drug product.
 58 Section 2. This act shall take effect January 1, 2017.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 8, 2015

The Honorable President Tom Lee
Senate Appropriations, Chair
430 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 422- Health Coverage for Opioids

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 422, Relating to Health Coverage for Opioids, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Cindy Kynoch

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2016

Meeting Date

58422

Bill Number (if applicable)

Topic HEALTH INSURANCE COVERAGE FOR OPIOIDS

Amendment Barcode (if applicable)

Name CHRIS NULAND

Job Title CONSULTANT

Address 1000 RIVERSIDE AVE - SUITE 115

Phone 904-355-1555

JACKSONVILLE FL 32204
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA CHAPTER OF THE AMERICAN COLLEGE OF PHYSICIANS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-18-2016
SEN. APP. 412-K
1:00 PM

2-18-2016

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 422

Meeting Date

Bill Number (if applicable)

Topic HEALTH INSURANCE COVERAGE FOR OPIOIDS

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE

Phone 878-7364

Street

TALLAHASSEE

FL

32301

Email

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

17 Feb 2016
Meeting Date

422
Bill Number (if applicable)

Topic Insurance Coverage for Opioids

Amendment Barcode (if applicable)

Name Mark Fontaine

Job Title Executive Director

Address 2868 Mahan Dr

Phone 878-2190

Street

Tallahassee FL 32308

City

State

Zip

Email mfontaine@fadaa.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 16

Meeting Date

422

Bill Number (if applicable)

Topic opioids

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 422
Bill Number (if applicable)

Topic Opioid Insurance

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 1216 Terrace St.

Phone 850-570-6307

Tallahassee FL 32301
City State Zip

Email lawgonz@earthlink.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: SB 444

INTRODUCER: Senator Montford

SUBJECT: Small Community Sewer Construction Assistance Act

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

I. Summary:

SB 444 expands grant eligibility to small disadvantaged communities in need of adequate sewer facilities. The bill amends the Small Community Sewer Construction Assistance Act (Act) to broaden the term “financially disadvantaged small community” to include counties and special districts that fall under the same population and per capita annual income parameters as currently required under the Act. Specifically, the bill includes only special districts whose public purpose includes water and sewer services, utility systems and services, or wastewater systems and services.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

The Department of Environmental Protection (DEP) administers grant funds under s. 403.1838, F.S., to assist financially disadvantaged small communities with their needs for adequate sewer facilities. A “financially disadvantaged small community” is defined in statute as a municipality that has a population of 10,000 or fewer, according to the last decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.¹ Per rules adopted by the Environmental Regulation Commission,² the DEP may provide grants from funds specifically appropriated for this purpose to financially disadvantaged small communities for up to 100 percent of the costs of planning, designing, constructing, upgrading or replacing wastewater collection, transmission, treatment, disposal,

¹ Section 403.1838(2), F.S.

² Section 403.1838(3)(b), F.S. Under the statute, the Environmental Regulation Commission must implement rules that follow specific guidelines, such as requiring that projects are cost-effective, environmentally sound, and implementable.

and reuse facilities, including necessary legal and administrative expenses.³ The DEP must perform the overview of each grant, and may use up to 2 percent of the grant funds for administration costs.⁴

Small Community Wastewater Construction Grants Program

Projects eligible to receive funds must be associated with wastewater collection, transmission, treatment, or disposal facilities.⁵ This includes facilities to reuse reclaimed water from wastewater treatment plants.⁶ Stormwater projects are not eligible.⁷ Projects must compete with all other projects for funding, and a hearing is held each October to determine which projects are to be funded.⁸ The highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance, or assist systems most in need based on an affordability index.⁹ Projects that eliminate failing septic tanks in areas where at least 10 percent of the septic tanks have failed in the last three years also receive higher priority.¹⁰ A partial match of local funds will be required.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 403.1838, F.S., to broaden the term “financially disadvantaged small community” to include counties and special districts with populations of 10,000 or fewer and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. For the purposes of the bill, the term “special districts” includes only those special districts whose public purpose is water and sewer services, utility system and services, or wastewater systems and services.

The DEP indicates that by expanding the eligibility requirements, two counties (Liberty and Lafayette), and six special districts (Big Ben Water Authority, Cedar Key Special Water and Sewer District, Immokalee Water and Sewer District, Eastpoint Water and Sewer District, Suwanee Water and Sewer District, and Taylor Coastal Water and Sewer District) will be eligible for future grants.

³ Section 403.1838(3)(a), F.S.

⁴ Sections 403.1838(c) and (d), F.S.

⁵ Florida Department of Environmental Protection, *Water Pollution Control State Revolving Fund Loan Program Small Community Wastewater Facilities Grants*, <http://www.dep.state.fl.us/water/wff/cwsrf/smalcwgp.htm> (last visited January 7, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ Florida Department of Environmental Protection, *Small Community Wastewater Construction Grants Program Brochure*, available at <http://www.dep.state.fl.us/water/wff/cwsrf/docs/SCG-Brochure.pdf> (last visited January 7, 2016).

⁹ Florida Department of Environmental Protection, *Water Pollution Control State Revolving Fund Loan Program Small Community Wastewater Facilities Grants*, <http://www.dep.state.fl.us/water/wff/cwsrf/smalcwgp.htm> (last visited January 7, 2016).

¹⁰ Florida Department of Environmental Protection, *Small Community Wastewater Construction Grants Program Brochure*, available at <http://www.dep.state.fl.us/water/wff/cwsrf/docs/SCG-Brochure.pdf> (last visited January 7, 2016).

¹¹ Florida Department of Environmental Protection, *Water Pollution Control State Revolving Fund Loan Program Small Community Wastewater Facilities Grants*, <http://www.dep.state.fl.us/water/wff/cwsrf/smalcwgp.htm> (last visited January 7, 2016).

Section 2 provides an effective date of 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:

None.

C. Government Sector Impact:

SB 444 may provide a positive fiscal impact for those counties and special districts that are eligible for grant funding assistance under the Act. The Department of Environmental Protection (DEP) will limit the projects selected to match the amount of funding expected for the fiscal year, which it estimates to be between \$9 and \$10 million.

The DEP has requested \$21 million for small county wastewater treatment grants in their Fiscal Year 2016-2017 Legislative Budget Request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.1838 of the Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Montford

3-00575-16

2016444__

1 A bill to be entitled
2 An act relating to the Small Community Sewer
3 Construction Assistance Act; amending s. 403.1838,
4 F.S.; redefining the term "financially disadvantaged
5 small community" to include counties and special
6 districts; defining the term "special district";
7 providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsection (2) of section 403.1838, Florida
12 Statutes, is amended to read:
13 403.1838 Small Community Sewer Construction Assistance
14 Act.—
15 (2) The department shall use funds specifically
16 appropriated to award grants under this section to assist
17 financially disadvantaged small communities with their needs for
18 adequate sewer facilities. For purposes of this section, the
19 term "financially disadvantaged small community" means a county,
20 municipality, or special district that has a population of
21 10,000 or fewer, according to the latest decennial census, and a
22 per capita annual income less than the state per capita annual
23 income as determined by the United States Department of
24 Commerce. For purposes of this subsection, the term "special
25 district" has the same meaning as provided in s. 189.012 and
26 includes only those special districts whose public purpose
27 includes water and sewer services, utility systems and services,
28 or wastewater systems and services.
29 Section 2. This act shall take effect July 1, 2016.

Page 1 of 1

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD

3rd District

January 26, 2016

Senator Tom Lee, Chair
Senate Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

I respectfully request that SB 444 be scheduled for a hearing before the Senate Appropriations Committee. Senate Bill 444 would allow some small unincorporated communities/special districts to participate in the Small Community Wastewater Facilities Grant Program.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford, III
State Senator, District 3

cc: Cindy Kynoch, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

SB 444

Bill Number (if applicable)

Topic Small Community Sewer Construction Assistance

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Director of Legislative Affairs - FL DEP

Address 3900 Commonwealth Blvd.

Phone _____

Street

Tallahassee

FL

32303

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: PCS/CS/SB 548 (517060)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter

SUBJECT: Title Insurance

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently, the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

There is no fiscal impact to state funds.

This bill takes effect July 1, 2016.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance

¹ See s. 624.608, F.S.

serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.² Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders³ unless the excess is reinsured by one or more approved insurers.⁴ Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.⁵ A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.⁶ Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.⁷ Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected to be lower.⁸ Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.⁹ The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.¹⁰

Authorized Insurers

Section 627.778, F.S., references “approved” insurers. However, “approved” is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.¹¹ Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when

² See *Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4th DCA 2003).

³ The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. See s. 627.778(2), F.S.

⁴ See s. 627.778(1), F.S.

⁵ According to one commenter, twenty states have no single risk limit for title insurance. See James L. Gosdin, Title Insurance: A Comprehensive Overview, pp. 458-60 (2007)

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gb_s_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).

⁶ See James L. Gosdin, Title Insurance: A Comprehensive Overview, p. 101 (2007)(

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gb_s_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).

¹⁰ See http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).

¹¹ See s. 624.310(2), F.S.

the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an “accredited” reinsurer¹² or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.¹³

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.¹⁴ Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer¹⁵ for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.¹⁶ Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;¹⁷ or
- A reinsurer that maintains a trust fund¹⁸ in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.¹⁹ The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of \$250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.²⁰

III. Effect of Proposed Changes:

This bill increases the limit of risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit of risk is one-half of the company’s surplus as to policyholders.

If the limit of risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company’s surplus as to policyholders must be reinsured by “approved” insurers but does not define the term “approved.”

¹² See s. 624.310(3)(b), F.S.

¹³ See s. 624.310(3)(c), F.S.

¹⁴ “Reinsurance,” *Merriam-Webster.com*, <http://www.merriam-webster.com/dictionary/reinsurance> (last accessed Nov. 17, 2015).

¹⁵ The insurer purchasing reinsurance and thus ceding risk to the other insurer.

¹⁶ See s. 624.610(2), F.S.

¹⁷ See s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state’s authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than \$20 million.

¹⁸ See s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.

¹⁹ See s. 624.610(2)(d), F.S.

²⁰ See s. 624.610(2)(e)-(g), F.S.

The bill provides that reinsurance must be provided by “authorized” insurers, which are defined in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.²¹

This bill takes effect on 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:

Proponents of PCS/CS/SB 548 state that increasing the limit of risk will allow title insurers to insure larger commercial risks without purchasing as much reinsurance which would lower costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

²¹ See s. 624.09, F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on January 13, 2016:

The CS makes adds technical, clarifying language to include authorized reinsurers that provide reinsurance in addition to authorized insurers.

CS by Banking and Insurance on November 17, 2015:

The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of “A” or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

- B. **Amendments:**

None.



517060

576-02103-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to title insurance; amending s.
627.778, F.S.; increasing a title insurer's limit of
risk from one-half of its surplus as to policyholders
to the entirety of its surplus; revising an exception
to the limit; providing that the risk limitation does
not prohibit ceding portions of the total risk to
specified reinsurers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (1) of
section 627.778, Florida Statutes, are amended to read:

627.778 Limit of risk.—

(1)(a) A title insurer may not issue any contract of title
insurance, either as a primary insurer or as a coinsurer or
reinsurer, upon an estate, lien, or interest in property located
in this state unless:

1. The contract shows on its face the dollar amount of the
risk assumed; and

2. The dollar amount of the risk assumed does not exceed
~~one-half of~~ its surplus as to policyholders, unless the excess
is simultaneously reinsured in one or more authorized ~~approved~~
insurers or one or more reinsurers that may provide reinsurance
under s. 624.610.

(c) This subsection does not prohibit:

1. The simultaneous issuance of policies insuring different



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estates, liens, or interests in the same property, if each of
the simultaneous policies excepts the paramount estates, liens,
or interests to which the insured estate, lien, or interest is
subject and if each of the simultaneous policies conforms to
this subsection.

2. Ceding portions of the total risk to authorized insurers
or reinsurers that may provide reinsurance under s. 624.610.
Insurance ceded, including coinsurance effected, is a retention
of risk by the insurer assuming the ceded risk, and not by the
insurer ceding the risk.

Section 2. This act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/CS/SB 548

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter

SUBJECT: Title Insurance

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently, the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

There is no fiscal impact to state funds.

This bill takes effect July 1, 2016.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance

¹ See s. 624.608, F.S.

serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.² Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders³ unless the excess is reinsured by one or more approved insurers.⁴ Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.⁵ A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.⁶ Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.⁷ Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected to be lower.⁸ Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.⁹ The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.¹⁰

Authorized Insurers

Section 627.778, F.S., references “approved” insurers. However, “approved” is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.¹¹ Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when

² See *Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4th DCA 2003).

³ The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. See s. 627.778(2), F.S.

⁴ See s. 627.778(1), F.S.

⁵ According to one commenter, twenty states have no single risk limit for title insurance. See James L. Gosdin, *Title Insurance: A Comprehensive Overview*, pp. 458-60 (2007)

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gb_s_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).

⁶ See James L. Gosdin, *Title Insurance: A Comprehensive Overview*, p. 101 (2007)(

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gb_s_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).

¹⁰ See http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).

¹¹ See s. 624.310(2), F.S.

the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an “accredited” reinsurer¹² or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.¹³

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.¹⁴ Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer¹⁵ for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.¹⁶ Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;¹⁷ or
- A reinsurer that maintains a trust fund¹⁸ in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.¹⁹ The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of \$250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.²⁰

III. Effect of Proposed Changes:

This bill increases the limit of risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit of risk is one-half of the company’s surplus as to policyholders.

If the limit of risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company’s surplus as to policyholders must be reinsured by “approved” insurers but does not define the term “approved.”

¹² See s. 624.310(3)(b), F.S.

¹³ See s. 624.310(3)(c), F.S.

¹⁴ “Reinsurance,” *Merriam-Webster.com*, <http://www.merriam-webster.com/dictionary/reinsurance> (last accessed Nov. 17, 2015).

¹⁵ The insurer purchasing reinsurance and thus ceding risk to the other insurer.

¹⁶ See s. 624.610(2), F.S.

¹⁷ See s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state’s authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than \$20 million.

¹⁸ See s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.

¹⁹ See s. 624.610(2)(d), F.S.

²⁰ See s. 624.610(2)(e)-(g), F.S.

The bill provides that reinsurance must be provided by “authorized” insurers, which are defined in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.²¹

This bill takes effect on 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:

Proponents of CS/CS/SB 548 state that increasing the limit of risk will allow title insurers to insure larger commercial risks without purchasing as much reinsurance which would lower costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

²¹ See s. 624.09, F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:

The CS makes adds technical, clarifying language to include authorized reinsurers that provide reinsurance in addition to authorized insurers.

CS by Banking and Insurance on November 17, 2015:

The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of “A” or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Richter

597-01291-16

2016548c1

1 A bill to be entitled
2 An act relating to title insurance; amending s.
3 627.778, F.S.; increasing a title insurer's limit of
4 risk from one-half of its surplus as to policyholders
5 to the entirety of its surplus; revising an exception
6 to the limit; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (a) of subsection (1) of section
11 627.778, Florida Statutes, is amended to read:
12 627.778 Limit of risk.—
13 (1) (a) A title insurer may not issue any contract of title
14 insurance, either as a primary insurer or as a coinsurer or
15 reinsurer, upon an estate, lien, or interest in property located
16 in this state unless:
17 1. The contract shows on its face the dollar amount of the
18 risk assumed; and
19 2. The dollar amount of the risk assumed does not exceed
20 ~~one-half of~~ its surplus as to policyholders, unless the excess
21 is simultaneously reinsured in one or more authorized ~~approved~~
22 insurers or one or more reinsurers that may provide reinsurance
23 under s. 624.610.
24 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

January 13, 2016

The Honorable Tom Lee, Chair
Senate Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Lee:

CS/CS/Senate Bill 548, relating to Title Insurance, has been referred to the Committee on Appropriations. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Cindy Kynoch, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

548

Bill Number (if applicable)

Topic Title Insurance

Amendment Barcode (if applicable)

Name Beth A. Vecchioli (Vetch-ee-o-lee)

Job Title Sr. Policy Advisor

Address 3155. Calhoun St, Ste 600

Phone 850-425-5623

Street Tallahassee, FL

Email beth.vecchioli@hkw.com

City Tallahassee, FL State FL Zip 32301

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Stewart Title Guaranty Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

548
Bill Number (if applicable)

Topic TITLE INSURANCE

Amendment Barcode (if applicable)

Name DOUGLAS A. MANG

Job Title 1424 PIEMONT DR

Address _____

Phone 222-7710

Street TALEY State FL Zip 32306

Email DMANG@MANGCORP.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FIRST AMERICAN TITLE INS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/18/2016
Meeting Date

548
Bill Number (if applicable)

Topic Title Insurance Single Risk Limit

Amendment Barcode (if applicable)

Name John La Jorie -

Job Title Senior Operations Counsel

Address 2082 Summit Lake Drive

Phone 850-402-4101

Street

Tallahassee FL

32312

Email jla.jorie@firstam.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing First American Title Insurance Company

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/18/16

Meeting Date

548

Bill Number (if applicable)

Topic Single Limit Rsh

Amendment Barcode (if applicable)

Name Alex Overhoff

Job Title Exec. Dir

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Land Title Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/SB 580

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Reimbursement to Health Access Settings for Dental Hygiene Services for Children

DATE: February 17, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Fav/CS
2.	Brown	Pigott	AHS	Recommend: Favorable
3.	Brown	Kynoch	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 580 authorizes the Agency for Health Care Administration (AHCA) to reimburse a health access setting under the Medicaid program for remedial dental services (remedial tasks) delivered by a dental hygienist when provided to a Medicaid recipient younger than 21 years of age. Remedial tasks are defined as intra-oral tasks that do not create unalterable changes in the mouth or contiguous structures, are reversible, and do not expose the patient to increased risks.

This bill has no fiscal impact.

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

II. Present Situation:

Florida Medicaid Program

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Florida has an estimated monthly caseload of over 4 million Floridians enrolled in Medicaid for

Fiscal Year 2015-2016.¹ Of those enrollees, more than 2.1 million are children.² The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Federal law establishes the minimum benefit levels to be covered in order to receive federal matching funds. Benefit requirements can vary by eligibility category. For example, more benefits are required for children than for the adult population. Florida's mandatory and optional benefits are prescribed in state law under ss. 409.905 and 409.906, F.S., respectively. Children's dental benefits and authorization for reimbursement and treatment levels are specifically covered under s. 409.906(6), F.S., and provided in more detail in the Medicaid Dental Services Coverage and Limitations Handbook.³

Comprehensive dental benefits are required for children under Florida Medicaid's Managed Medical Assistance (MMA) component of the Statewide Medicaid Managed Care (SMMC) program and may be offered by MMA health plans as an expanded benefit for adults. Dental may also be offered as an expanded benefit under the Long Term Care Managed Care (LTCMC) component of SMMC.⁴ Dental services delivered through the MMA and LTCMC health plans must comply with the Medicaid Dental Services Coverage and Limitations Handbook as must services delivered through the Medicaid fee-for-service system.

Florida Medicaid currently reimburses dental services provided to Medicaid recipients by a registered dental hygienist who is employed by or in a contractual agreement with a health access setting, as defined under s. 466.003(14), F.S., and is under the general supervision of a dentist as defined under s. 466.003(10), F.S.^{5,6} The supervising dentist at the facility where the registered dental hygienist is employed or is under contract, is listed as the treating provider for these services.

¹ Agency for Health Care Administration, *Florida Medicaid - Presentation to Senate Health and Human Services Appropriations Subcommittee* (October 20, 2015), available at:

[http://ahca.myflorida.com/medicaid/recent_presentations/Florida Medicaid to Senate HHS Appropriations 2015-10-20.pdf](http://ahca.myflorida.com/medicaid/recent_presentations/Florida_Medicaid_to_Senate_HHS_Appropriations_2015-10-20.pdf) (last visited Oct. 28, 2015).

² Agency for Health Care Administration, *Florida KidCare Enrollment Report, October 2015* (on file with the Senate Committee on Health Policy).

³ Agency for Health Care Administration, *Florida Medicaid Dental Services Coverage and Limitations Handbook* (November 2011) available at:

http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/Dental_Services_November_2011_Final_Handbook.pdf (last viewed Oct. 28, 2015).

⁴ See Agency for Health Care Administration, *Statewide Medicaid Managed Care Plans - Model Contract, Attachment I: Scope of Services* (November 1, 2015) available at: http://ahca.myflorida.com/Medicaid/statewide_mc/plans.shtml (last visited Nov. 23, 2015).

⁵ A health access setting is defined under the statute as a program or an institution of the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, a nonprofit community health center, a Head Start center, a federally qualified health center or look-alike as defined by federal law, a school-based prevention program, a clinic operated by an accredited college of dentistry, or an accredited dental hygiene program in this state if such community service program or institution immediately reports to the Board of Dentistry all violations of ss. [466.027](#), and [466.028](#), or other practice act or standard of care violations related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such setting.

⁶ "General Supervision" means a dentist authorizes the procedures that are being carried out but is not required to be present when those authorized procedures are being performed under the statutory definition.

Practice of Dentistry

Chapter 466, F.S., addresses the practice of dentistry and dental hygiene. Section 466.024(2), F.S., identifies the specific services that dental hygienists are permitted to perform under specified parameters, including dental cleanings and applications of topical fluoride and sealants.

Legislation to expand the scope of practice of dental hygienists was enacted in 2011, which permitted licensed dental hygienists to perform certain functions without the physical presence, prior examination, or authorization of a dentist, in health access settings.⁷ The MMA plans provide health care services through certain health access setting providers as part of their contract obligations with the AHCA, including contracting with county health departments and federally qualified health centers.⁸

However, while the scope of services that could be performed without supervision was expanded for dental hygienists, the 2011 legislation did not specifically permit the health access setting provider to bill Medicaid for these expanded services unless the services are performed under the general supervision of a dentist. Statutory authorization for Medicaid dental reimbursement delivered at a health care access setting by a dental hygienist is addressed separately under s. 409.906(6), F.S.

The administrative rules under Chapter 64B5-16, F.A.C., provide additional guidance as to the level of supervision required for dental hygienists and the tasks that may be delegated or performed at those levels. Under Rule 64B5-16.001, F.A.C., remedial tasks are defined as those intra-oral tasks that do not create unalterable changes in the mouth or contiguous structures, are reversible, and do not expose the patient to increased risks. The rule permits a dentist to delegate any task to a dental hygienist that meets this criteria and where the training and supervision requirements of the rule have also been achieved.

III. Effect of Proposed Changes:

Section 1 amends s. 409.906(6), F.S., to authorize the AHCA to reimburse a health access setting⁹ for remedial tasks that a licensed dental hygienist is authorized to perform on a Medicaid recipient under the age of 21. These reimbursable services are provided by a licensed dental hygienist on a Medicaid recipient under an appropriate statutory delegation of duties by a licensed dentist.

Section 2 provides an effective date of July 1, 2016.

⁷ See Chapter Law 2011-95, ss. 4-8, L.O.F., and s. 466.024(2), F.S.

⁸ Agency for Health Care Administration, Statewide Medicaid Managed Care Contract - Attachment II-A: Core Contract Provisions/Managed Medical Assistance Provisions (11/1/2015), available at: http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2015-11-01/Exhibit_II-A-Managed_Medical_Assistance_MMA_Program_2015-11-01.pdf (last visited Nov. 23, 2015).

⁹ See *supra* note 5.

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:

Under CS/SB 580, additional health access settings may benefit from increased revenue resources from the newly reimbursable services. These health access settings may also be able to provide services in a more cost efficient manner through the expanded use of dental hygienists, thereby improving access to certain dental services.

C. Government Sector Impact:

The AHCA indicates that the bill has no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.906 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on December 1, 2015

The CS clarifies that the AHCA may reimburse the health access setting rather than the

dental hygienist for remedial tasks that the licensed dental hygienist is authorized to perform.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Health Policy; and Senator Grimsley

588-01767-16

2016580c1

A bill to be entitled

An act relating to reimbursement to health access settings for dental hygiene services for children; amending s. 409.906, F.S.; authorizing reimbursement for children's dental services provided by licensed dental hygienists in certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-01767-16

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to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(6) CHILDREN'S DENTAL SERVICES.—The agency may pay for diagnostic, preventive, or corrective procedures, including orthodontia in severe cases, provided to a recipient under age 21, by or under the supervision of a licensed dentist. The agency may also reimburse a health access setting as defined in s. 466.003 for the remedial tasks that a licensed dental hygienist is authorized to perform under s. 466.024(2). Services provided under this program include treatment of the teeth and associated structures of the oral cavity, as well as treatment of disease, injury, or impairment that may affect the oral or general health of the individual. However, Medicaid will not provide reimbursement for dental services provided in a mobile dental unit, except for a mobile dental unit:

(a) Owned by, operated by, or having a contractual agreement with the Department of Health and complying with Medicaid's county health department clinic services program specifications as a county health department clinic services provider.

(b) Owned by, operated by, or having a contractual arrangement with a federally qualified health center and complying with Medicaid's federally qualified health center specifications as a federally qualified health center provider.

(c) Rendering dental services to Medicaid recipients, 21 years of age and older, at nursing facilities.

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 (d) Owned by, operated by, or having a contractual
60 agreement with a state-approved dental educational institution.
61 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 14, 2016

I respectfully request that **Senate Bill #580**, relating to Reimbursement To Health Access Settings For Dental Hygiene Services For Children, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

580

Bill Number (if applicable)

Topic Reimbursements to Health Access Settings

Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Dir. of Governmental Affairs

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Tall, FL 323 81

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Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Dental Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/CS/SB 636

INTRODUCER: Appropriations Committee; Criminal Justice Committee; and Senators Benacquisto and others

SUBJECT: Evidence Collected in Sexual Offense Investigations

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
3.	<u>Harkness</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 636 creates section 943.326, Florida Statutes, which addresses the collection and processing of evidence in sexual offense investigations that may contain DNA evidence.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

By January 1, 2017, the Florida Department of Law Enforcement (FDLE) and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The bill does not have significant state fiscal impact.

The bill becomes effective July 1, 2016.

II. Present Situation:

Forensic Evidence Collection in Sexual Assault Cases, Submission for DNA Testing

A sexual assault kit (SAK), is a medical kit used to collect evidence from the body and clothing of a victim of rape or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve fibers from clothing, hair, and bodily fluids, which can help identify DNA and other forensic evidence left by a perpetrator.¹

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free regardless of whether the victim reports the offense to law enforcement authorities.

Pursuant to s. 960.28(2), F.S., up to \$500 for expenses for a forensic physical examination must be paid for by the Crime Victims' Services Office within the Department of Legal Affairs (DLA) for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S. Such payment is made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.² Information received or maintained by the DLA which identifies an alleged victim who seeks payment of such medical expenses is confidential and exempt from the provisions of s. 119.07(1), F.S.³

¹ The White House, Office of Communications, *FACT SHEET: INVESTMENTS TO REDUCE THE NATIONAL RAPE KIT BACKLOG AND COMBAT VIOLENCE AGAINST WOMEN*, March 16, 2015, at 1.

² Section 960.28(2), F.S.

³ Section 960.28(4), F.S.

According to protocols developed by the DLA, healthcare providers conducting the forensic physical examination should complete the document entitled “Sexual Assault Kit Form for Healthcare Providers.”⁴ This document includes a consent form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.⁵ Additionally, the victim or legal guardian must select one of the following two options:

- For Reporting Victims [i.e., victims who choose to report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment, and to supply copies of all pertinent medical laboratory reports, immediately upon completion to the law enforcement agency and the State Attorney’s Office having jurisdiction.
- For Non-Reporting Victims [i.e., victims who choose to not report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment at this time.⁶

The DLA protocols provide instructions for sealing the SAK upon completion of the exam and indicate that the SAK must stay with the medical examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to law enforcement. For a SAK of a non-reporting victim, the protocol states that the medical examiner should check the local area for storage procedures and that a law enforcement agency is recommended for long-term storage.^{7, 8}

Generally, law enforcement agencies in Florida submit SAKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.⁹

In some cases, a law enforcement agency may not submit a SAK for DNA analysis and may instead retain the SAK in evidence storage. Reasons for not analyzing a SAK include: (a) the victim did not want to file a police report regarding the assault (non-reporting victim); (b) the

⁴ Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, at 13.

⁵ Florida Department of Law Enforcement, *Sexual Assault Kit Form for Healthcare Providers*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

⁶ *Id.*

⁷ Florida Department of Legal Affairs, *supra* note 4, at 21; *see also* Florida Department of Law Enforcement, *Instruction List for Forensic Exam Kit*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

⁸ Chief Frank Fabrizio, who represents the Florida Police Chiefs Association, testified at a Florida Senate hearing that in Orange and Volusia Counties, SAKs for non-reporting victims are stored by a law enforcement agency, but are not submitted to a crime laboratory for analysis. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111024.

⁹ Section 943.32, F.S.; *see also* Florida Department of Law Enforcement, *Biology Screening of Sexual Assault Evidence Kits*.

victim no longer wants the investigation to proceed; (c) the case is not being pursued by the state attorney; and (d) the suspect has pled guilty or nolo contendere.¹⁰

According to information provided by the FDLE, DNA analysis of a SAK requires on average approximately 26.25 hours of crime analyst and supervisor time.¹¹

DNA profiles resulting from such analyses are uploaded by the laboratory to its local DNA Index System (DIS), which then uploads the profiles to the state DNA database. From there, DNA profiles are uploaded to the Federal Bureau of Investigation's Combined DIS, referred to as CODIS, which consists of DNA profiles contributed by federal, state, and local participating forensic laboratories. DNA profiles within these local, state, and federal databases are continuously searched against one another to determine whether a match exists.¹²

National Backlog of SAKs Not Submitted for DNA Testing

To better understand the issue of SAKs that have not been submitted for analysis, the National Institute of Justice (NIJ) awarded grants in 2011 to the Houston, Texas Police Department and Wayne County, Michigan Prosecutor's Office.¹³ Both entities conducted a census of untested SAKs:¹⁴

- 6,663 untested SAKs were found in storage at the Houston Police Department.¹⁵ Each of these SAKs were submitted for analysis. As of February 2015, such analyses had resulted in 850 matches identifying the perpetrator and in the prosecutions of 29 offenders.¹⁶
- 8,707 untested SAKs were found in Detroit.¹⁷ Of these SAKs, approximately 2,000 were analyzed. The analyses resulted in 760 matches identifying the perpetrator, the identification of 188 serial offenders, and 15 convictions.¹⁸

In July 2015 the USA TODAY newspaper released the results of its own nationwide inventory of untested SAKs. The records of 1,000-plus law enforcement agencies, including some agencies in

¹⁰ These reasons were provided during testimony by Jennifer Pritt, Assistant Commissioner of the Florida Department of Law Enforcement, and Chief Frank Fabrizio, representing the Florida Police Chiefs Association. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111024.

¹¹ Florida Department of Law Enforcement, *supra* note 9, at 7.

¹² *Id.* at 7-8; see also Federal Bureau of Investigation, *Frequently Asked Questions (FAQs) on the CODIS Program and the National DNA Index System*, <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet> (last visited Nov. 28, 2015). Note that a profile developed from a non-reporting victim's SAK is not currently eligible to be loaded into the national database according to FBI standards. *Florida Department of Law Enforcement Sexual Assault Kit Assessment*.

¹³ The White House, *supra* note 1, at 2.

¹⁴ National Institute of Justice, Office of Justice Programs, *Untested Evidence in Sexual Assault Cases*, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#determining> (last visited Nov. 28, 2015).

¹⁵ *Id.*

¹⁶ Katherine Driessen, *City done with lab testing of rape kit backlog*, Houston Chronicle (February 23, 2015), <http://www.chron.com/news/politics/houston/article/City-done-with-lab-testing-of-rape-kit-backlog-6096424.php>.

¹⁷ National Institute of Justice, *supra* note 16.

¹⁸ The White House, *supra* note 1, at 2.

Florida, showed at least 70,000 untested SAKs.¹⁹ Many police agencies have no idea how many untested SAKs they have in their property rooms.²⁰

Some states have adopted legislation requiring audits to be conducted of the untested SAKs in the possession of law enforcement agencies and reports of such audits to be filed with the state.²¹

In other states, legislation has been adopted which specifies requirements, such as procedures and timeframes, for SAK use, submission, and analysis. For example:

- Colorado enacted legislation effective June 5, 2013, which requires the state's Department of Public Safety to adopt rules that require forensic evidence to be collected when requested by a sexual offense victim, specify standards for what evidence must be submitted to an accredited crime laboratory, and specify time frames for when such evidence must be submitted, analyzed, and compared in DNA databases. The law also directed the department to adopt a plan for prioritizing the analysis of its backlog of SAKs and to include a requirement in its rules after the backlog is resolved that evidence be submitted for analysis within 21 days after receipt by a law enforcement agency.²²
- Illinois enacted legislation effective September 1, 2010, which requires law enforcement agencies to submit sexual offense evidence collected in connection with an investigation within 10 business days after receipt to an approved crime laboratory and requires crime laboratories to analyze such evidence within six months.²³
- Ohio adopted legislation effective March 23, 2015, which requires law enforcement agencies to forward the contents of a SAK related to an investigation initiated after the act's effective date to a crime laboratory within 30 days for analysis and directs the crime laboratory to perform the analysis as soon as possible after receipt.²⁴

SAKs Not Submitted for DNA Testing in Florida

At the direction of the Legislature, the FDLE has conducted a statewide assessment of SAKs that have not been submitted for DNA analysis by law enforcement.²⁵ Agencies had access to the online survey from August 15 – December 15, 2015.²⁶

¹⁹ The USA TODAY report covers a fraction of the 18,000 police agencies in the country suggesting a potential for untested SAKs in the hundreds of thousands may exist. <http://www.floridatoday/longform/news2015/07/16/untested-rape-kits-evidence-across-usa/299021>.

²⁰ Samara Martin-Ewing, *#TesttheKits: Thousands of rape kits go untested*, WUSA9 TV, <http://www.wusa9.com/story/news/local/2015/07/16/testthekits-untested-rape-kits/30230447/>.

²¹ See Arkansas House Bill 1208 (2015) (requiring annual audits of untested SOEKs stored by law enforcement agencies and healthcare providers and submission of reports to the State Crime Laboratory and Legislature); Kentucky Senate Joint Resolution 20 (2015) (directing the state's Auditor of Public Accounts to study the number of untested SOEKs in the possession of law enforcement and prosecutorial agencies and to report such information to the Legislative Research Commission); Virginia Senate Bill 658 (2014) (requiring law enforcement agencies to inventory and report all untested physical evidence recovery kits to the Department of Forensic Science and requiring the Department to report to the General Assembly).

²² COLO. REV. STAT. §24-33.5-113 (2015).

²³ 725 IL. COMP. STAT. 202/10 and 202/15 (2015).

²⁴ OHIO REV. CODE ANN. §2933.82 (2015).

²⁵ *Florida Department of Law Enforcement Sexual Assault Kit Assessment*, <http://www.fdle.state.fl.us/docs/SAKResults.pdf>.

²⁶ *Id.*

Sixty-nine percent of Florida's police departments responded to the survey and 100 percent of the sheriff's offices responded.²⁷ These 279 law enforcement agencies represent 89 percent of the state's population.²⁸

Survey responses indicate that there are 13,435 unsubmitted SAKs in law enforcement evidence storage statewide.²⁹ Of the 13,435 unsubmitted SAKs, the agencies indicated that 9,484 of them should be submitted for DNA testing.³⁰ Individual agency guidelines, not state law, dictate which SAKs should be submitted for testing.³¹

The FDLE statewide survey did not specifically request the responding agencies to do a case-by-case analysis of the reasons why all reported SAKs being held in evidence were not submitted for testing.³² Agencies were asked to identify from a list of five possible reasons (and an "other" category) provided in the survey why a SAK may not have been submitted.³³ Among the reasons a SAK may not have been submitted was that the victim was a non-reporting victim.³⁴

The survey asked (and the agencies responded):

Please indicate the reasons for not submitting sexual assault kits (mark all that apply):

- 41% - victim decided not to proceed
- 31% - case not being prosecuted by State Attorney's Office
- 20% - suspect pled guilty/no contest
- 18% - non-reporting victim

A summary of "other reasons" written in by agencies included: allegation unfounded, recanted; no issue of identification; suspect convicted on other charges; did not recognize the evolution of DNA testing; victim deceased.³⁵

The FDLE Plan for Analyzing Backlog of Unsubmitted SAKs

Part of the report by the FDLE on the SAK Assessment includes alternatives for analyzing and uploading the results of the unsubmitted SAK backlog. It should be remembered that the FDLE's crime labs are only part of the statewide criminal analysis laboratory system. The entire system consists of six laboratories operated by the FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*; (Note: There was an attempt by the survey to gather specific numbers from the agencies as to how many SAKs were being held in evidence only because the victim was a non-reporting victim, but the accuracy of this quantification by some of the agencies is somewhat unclear based upon other responses given by the agencies and the wording of the survey.)

³⁵ *Id.*

The Indian River lab is a regional lab which provides forensic services to Indian River, Martin, Okeechobee, and St. Lucie counties.³⁶ The FDLE alternative plans regarding the SAK backlog relate only to those cases that should come to an FDLE lab, not those that will be analyzed by local labs.

The FDLE suggests that a comprehensive business plan which incorporates DNA analysis of the backlog of untested SAKs should consider:

- The recent bulk submission of 2,000 older SAKs;
- The remaining 6,600 untested backlog of SAKs within the FDLE lab jurisdiction accounted for in the survey of law enforcement agencies;
- Current incoming casework;
- Increasing biology/DNA evidence submissions anticipated by the FDLE over time;
- Issues regarding getting and keeping qualified lab personnel;
- The acquisition of equipment that can make the lab process more efficient;
- Increased lab capacity; and
- The FDLE's ability to outsource selected cases.

Additionally, the FDLE suggests that agencies should be encouraged to develop formal policies and standardized procedures for collecting, submitting, and tracking SAKs in order to limit the impact to the statewide lab system.³⁷

III. Effect of Proposed Changes:

The bill creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations which may contain DNA evidence. The bill states that the timely submission and testing of sexual assault evidence kits is a core public safety issue.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system. The testing requirement is met when a member of the statewide criminal analysis laboratory system tests the contents of the kit in an attempt to identify the foreign DNA attributable to a suspect.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual

³⁶ Section 943.35, F.S.

³⁷ Florida Department of Law Enforcement Sexual Assault Kit Assessment, <http://www.fdle.state.fl.us/docs/SAKResults.pdf>.

offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

If probative information is obtained from testing the sexual offense evidence kit then the examination of other evidence directly related to the crime scene should be based upon the potential evidentiary value to the case as cooperatively determined by the investigating agency, laboratory, and the prosecutor.

By January 1, 2017, the FDLE and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The newly-created s. 943.326, F.S. does not create a cause of action or create rights for a person to challenge the admission of evidence or create an action for damages or relief for a violation of the new section of law.

The bill becomes effective on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution, states that county and municipality governments are not bound by any general law requiring one or more county or municipality governments to spend funds, unless it satisfies certain exemptions or exceptions. One such exemption is that the law will have an “insignificant fiscal impact.”

The term “insignificant” has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. The 2010 United States census, which contains the most recent federal census data, indicates that the Florida population is 18,801,310.³⁸ A bill having a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.88 million would be characterized as a mandate.

³⁸ U.S. Census Bureau, 2010 Census Interactive Population Search, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=12> (last visited Nov. 30, 2015).

The bill's requirements for SAK submission to laboratories may require the expenditure of funds by the counties where the five local laboratories are located if state funding for these laboratories is not available. Currently, such expenditures are indeterminate.

One of the exceptions to the application of Art. VII, s. 18(a) of the Florida Constitution, is a law that applies to all persons similarly situated, including state and local governments. It is anticipated that the FDLE will also see increased evidence testing costs so it appears as if the bill meets the exception, and the only other Constitutional requirement is that the Legislature determine whether the bill fulfills an important state interest. The bill contains a finding of important state interest on lines 59-61.

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:

None.

C. Government Sector Impact:

CS/CS/SB 636 does not impose any requirements that would result in a fiscal impact to the FDLE. The bill establishes a 120-day time limit for the testing of sexual offense evidence kits; however, the FDLE currently processes serology evidence well within this new standard. As a result, the bill's requirements do not require additional staffing or resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.326 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:

The committee substitute restructures lines 84-87 of the bill for clarification and simplification, but does not alter the content.

CS by Criminal Justice on January 25, 2016:

- Creates or modifies timeframes within which sexual offense evidence kits must be submitted for testing (30 days) and have the testing completed (120 days), which are triggered by the alleged victim making a report with law enforcement or requesting testing;
- Requires safe storage of collected sexual offense evidence kits;
- Collected kits are required to be retained until the prosecuting agency approves their destruction;
- Eliminates rule-making by the FDLE for handling sexual offense evidence kits and substitutes a collaboration between the FDLE, local labs in the statewide system, and the Florida Council Against Sexual Violence to adopt and disseminate guidelines and procedures;
- Specifies minimum requirements for the guidelines and procedures;
- Eliminates the reporting requirement of the FDLE by the original bill;
- Provides for the handling of other evidence related to the alleged crime scene; and
- Specifies that the bill does not create a cause of action or any individual rights or other relief for a violation of the new section of law.

- B. **Amendments:**

None.



763638

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment

Delete lines 84 - 87

and insert:

(5) A violation of this section does not create:

(a) A cause of action or a right to challenge the admission of evidence.

(b) A cause of action for damages or any other relief.

By the Committee on Criminal Justice; and Senator Benacquisto

591-02537-16

2016636c1

1 A bill to be entitled
 2 An act relating to evidence collected in sexual
 3 offense investigations; creating s. 943.326, F.S.;
 4 requiring that a sexual offense evidence kit or other
 5 DNA evidence be submitted to a member of the statewide
 6 criminal analysis laboratory system within a specified
 7 timeframe after specified occurrences; requiring a
 8 medical provider or law enforcement agency to inform
 9 an alleged victim of a sexual offense of certain
 10 information relating to sexual offense evidence kits;
 11 requiring the retention of specified evidence;
 12 requiring adoption and dissemination of guidelines and
 13 procedures by certain entities by a specified date;
 14 requiring the testing of sexual offense evidence kits
 15 within a specified timeframe after submission to a
 16 member of the statewide criminal analysis laboratory;
 17 providing requirements for such guidelines and
 18 procedures; providing construction; providing an
 19 effective date.

21 Be It Enacted by the Legislature of the State of Florida:

23 Section 1. Section 943.326, Florida Statutes, is created to
 24 read:

25 943.326 DNA evidence collected in sexual offense
 26 investigations.—

27 (1) A sexual offense evidence kit, or other DNA evidence if
 28 a kit is not collected, must be submitted to a member of the
 29 statewide criminal analysis laboratory system under s. 943.32
 30 for forensic testing within 30 days after:

31 (a) Receipt of the evidence by a law enforcement agency if
 32 a report of the sexual offense is made to the law enforcement

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02537-16

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33 agency; or
 34 (b) A request to have the evidence tested is made to the
 35 medical provider or the law enforcement agency by:
 36 1. The alleged victim;
 37 2. The alleged victim's parent, guardian, or legal
 38 representative, if the alleged victim is a minor; or
 39 3. The alleged victim's personal representative, if the
 40 alleged victim is deceased.
 41 (2) An alleged victim or, if applicable, the person
 42 representing the alleged victim under subparagraph (1)(b)2. or
 43 subparagraph (1)(b)3. must be informed of the purpose of
 44 submitting evidence for testing and the right to request testing
 45 under subsection (1) by:
 46 (a) A medical provider conducting a forensic physical
 47 examination for purposes of a sexual offense evidence kit; or
 48 (b) A law enforcement agency that collects other DNA
 49 evidence associated with the sexual offense if a kit is not
 50 collected under paragraph (a).
 51 (3) A collected sexual offense evidence kit must be
 52 retained in a secure, environmentally safe manner until the
 53 prosecuting agency has approved its destruction.
 54 (4) By January 1, 2017, the department and each laboratory
 55 within the statewide criminal analysis laboratory system, in
 56 coordination with the Florida Council Against Sexual Violence,
 57 shall adopt and disseminate guidelines and procedures for the
 58 collection, submission, and testing of DNA evidence that is
 59 obtained in connection with an alleged sexual offense. The
 60 timely submission and testing of sexual offense evidence kits is
 61 a core public safety issue. Testing of sexual offense evidence

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02537-16

2016636c1

62 kits must be completed no later than 120 days after submission
63 to a member of the statewide criminal analysis laboratory
64 system.

65 (a) The guidelines and procedures must include the
66 requirements of this section, standards for how evidence is to
67 be packaged for submission, what evidence must be submitted to a
68 member of the statewide criminal analysis laboratory system, and
69 timeframes for when the evidence must be submitted, analyzed,
70 and compared to DNA databases.

71 (b) The testing requirements of this section are satisfied
72 when a member of the statewide criminal analysis laboratory
73 system tests the contents of the sexual offense evidence kit in
74 an attempt to identify the foreign DNA attributable to a
75 suspect. If a sexual offense evidence kit is not collected, the
76 laboratory may receive and examine other items directly related
77 to the crime scene, such as clothing or bedding or personal
78 items left behind by the suspect. If probative information is
79 obtained from the testing of the sexual offense evidence kit,
80 the examination of other evidence should be based on the
81 potential evidentiary value to the case and determined through
82 cooperation among the investigating agency, the laboratory, and
83 the prosecutor.

84 (5) This section does not create a cause of action or
85 create any rights for an individual to challenge the admission
86 of evidence or create a cause of action for damages or any other
87 relief for a violation of this section.

88 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

**SENATOR LIZBETH
BENACQUISTO**
30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective
Bargaining

February 10, 2016

The Honorable Tom Lee
Senate Appropriations, Chair
430 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 636- Rape Kit Testing

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 636, Relating to Rape Kit Testing, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Cindy Kynoch

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

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ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.18.16

Meeting Date

636

Bill Number (if applicable)

Topic EVIDENCE COLLECTED IN SEX ASSAULT INVESTIGATIONS

Amendment Barcode (if applicable)

Name RON DRAA

Job Title DIRECTOR OF EXTERNAL AFFAIRS

Address 2331 PHILLIPS RD

Phone 410.7020

Street

TALL

FL

32306

Email RONALDDRAA@FDLE.STATE.FL.US

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FDLE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

036

Bill Number (if applicable)

Topic Evidence Collected in Sexual Assault Investigations Amendment Barcode (if applicable)

Name Theresa Prichard

Job Title Director of Advocacy

Address 1820 E. Park Ave Ste 100

Phone 850-297-2000

Street

Tallahassee

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32301

Email tprichard@fasv.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Council Against Sexual Violence

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

636

Bill Number (if applicable)

Topic Sexual Assault Investigations

Amendment Barcode (if applicable)

Name Tim Stanfield

Job Title

Address 101 N. Monroe St

Phone 681 4220

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

SB636

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson St
Street
JLH 32301
City State Zip

Phone 850-224-3427
Email Ron@RLBookPA.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Lauren's Kids

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/CS/CS/SB 676

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; Health Policy Committee; and Senator Grimsley

SUBJECT: Access to Health Care Services

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rossitto-Van Winkle</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 676 authorizes physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs beginning January 1, 2017, and creates additional statutory parameters for their controlled substance prescribing. Under the bill, an ARNP's and PA's prescribing privileges for controlled substances listed on Schedule II are limited to a seven-day supply and do not include the prescribing of psychotropic medications for children under 18 years of age, unless prescribed by an ARNP who is a psychiatric nurse, and may be limited by the controlled substance formularies that impose additional limitations on PA or ARNP prescribing privileges for specific medications. An ARNP or PA may not prescribe controlled substances in a pain management clinic. The bill requires PAs and ARNPs to complete three hours of continuing education biennially on the safe and effective prescribing of controlled substances.

Beginning January 1, 2017, health insurers, health maintenance organizations, Medicaid managed plans, and pharmacy benefits managers, which do not use an online prior authorization form, must use a standardized prior authorize form that the Financial Services Commission adopts by rule. If a health insurer or health maintenance organization verifies the eligibility of an insured at the time of treatment, it may not retroactively deny a claim because of the insured's ineligibility.

The bill requires a hospital to notify each obstetrical physician with privileges at the facility at least 90 days before it closes its obstetrical department or ceases to provide obstetrical services. The bill also repeals a provision designating certain hospitals as “provider hospitals,” which have special requirements for cesarean section operations that are paid for with state or federal funds.

The bill provides that s. 464.012, F.S., shall be known as “The Barbara Lumpkin Prescribing Act.”

The bill is estimated to have no fiscal impact.

Most of the bill becomes effective upon becoming a law. However, the authority for a PA or an ARNP to prescribe controlled substances in accordance with the bill becomes effective January 1, 2017.

II. Present Situation:

Unlike all other states, Florida does not allow advanced registered nurse practitioners (ARNPs) to prescribe controlled substances and is one of two states that does not allow physician assistants (PAs) to prescribe controlled substances.¹ States have varying authority with respect to the schedules² from which an ARNP or PA may prescribe, as well as the performance of additional functions by ARNPs and PAs, such as dispensing, administering, or handling samples.

Physician Shortages

According to a recent study commissioned by the Safety Net Hospital Alliance of Florida,³ Florida’s total current supply of primary care physicians falls short of the national average of physicians per patient by approximately six percent. Under a traditional definition of primary care specialties (i.e., general and family practice, general internal medicine, general pediatrics and geriatric medicine), supply falls short of demand by approximately three percent.

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards

¹ DEA Diversion Control, U.S. Department of Justice, *Mid-Level Practitioners Authorization by State* (last updated November 10, 2015) available at http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf (last visited Feb. 1, 2016). Kentucky does not allow PAs to prescribe controlled substances.

² Controlled substances are assigned to Schedules I - V based on their accepted medical use and potential for abuse.

³ IHS Global Inc., *Florida Statewide and Regional Physician Workforce Analysis: Estimating Current and Forecasting Future Supply and Demand*, (January 28, 2016) available at https://ahca.myflorida.com/medicaid/Finance/finance/LIP-DSH/GME/docs/FINAL_Florida_Statewide_and_Regional_Physician_Workforce_Analysis.pdf, (last visited Feb. 1, 2016).

through the Council on Physician Assistants.⁴ During the 2014-2015 state fiscal year, there were 6,744 in-state, actively licensed PAs in Florida.⁵

Physician Assistants are trained and required by statute to work under the supervision and control of allopathic or osteopathic physicians.⁶ The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct⁷ and indirect⁸ supervision. A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.⁹ Each physician, or group of physicians supervising a licensed PA, must be qualified in the medical areas in which the PA is to work and is individually or collectively responsible and liable for the performance and the acts and omissions of the PA.¹⁰

Current law allows a supervisory physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.¹¹ However, the law allows a supervisory physician to delegate authority to a PA to order any medication, including controlled substances, general anesthetics, and radiographic contrast materials, for a patient during the patient's stay in a facility licensed under ch. 395, F.S.¹²

⁴ The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (s. 458.348(9), F.S. and s. 459.022(9), F.S.)

⁵ Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 11, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1415.pdf>, (last visited Feb. 1, 2016).

⁶ Sections 458.347(4), and 459.022(4), F.S.

⁷ "Direct supervision" requires the physician to be on the premises and immediately available. (See Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).

⁸ "Indirect supervision" requires the physician to be within reasonable physical proximity. (Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.

⁹ Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

¹⁰ Sections 458.347(3) and (15) and 459.022(3) and (15), F.S.

¹¹ Sections 458.347(4)(e) and (f)1., and 459.022(4)(e), F.S.

¹² See s. 395.002(16), F.S. The facilities licensed under chapter 395 are hospitals, ambulatory surgical centers, and mobile surgical facilities.

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).¹³ During the 2014-2015 fiscal year, there were 18,276 in-state, actively licensed ARNPs in Florida.¹⁴

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.¹⁵ Florida recognizes three types of ARNPs: nurse practitioners (NP), certified registered nurse anesthetists (CRNA), and certified nurse midwives (CNM).¹⁶ To be certified as an ARNP, a nurse must hold a current license as a registered nurse¹⁷ and submit proof to the BON that the ARNP applicant meets one of the following requirements:¹⁸

- Satisfactory completion of a formal, post-basic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;¹⁹ or
- Completion of a master's degree program in the appropriate clinical specialty with preparation in specialty-specific skills.

Advanced or specialized nursing acts may only be performed under the protocol of a supervising physician or dentist. Within the established framework of the protocol, an ARNP may:²⁰

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions; and
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).²¹

¹³ The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. *See* s. 464.004(2), F.S.

¹⁴ *Supra*, note 5. Certified Nurse Specialists account for 26 of the in-state actively licensed ARNPs.

¹⁵ "Advanced specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the BON which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an ARNP. (*See* s. 464.003(2), F.S.)

¹⁶ Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from ARNPs. (*See* ss. 464.003(7) and 464.0115, F.S.).

¹⁷ Practice of professional nursing. (*See* s. 464.003(20), F.S.)

¹⁸ Section 464.012(1), F.S.

¹⁹ Specialty boards expressly recognized by the BON: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (Rule 64B9-4.002(2), F.A.C.)

²⁰ Section 464.012(3), F.S.

²¹ Section 464.012(4), F.S.

An ARNP must meet financial responsibility requirements, as determined by rule of the BON, and the practitioner profiling requirements.²² The BON requires professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.²³

Florida does not allow ARNPs to prescribe controlled substances.²⁴ However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances “to the extent authorized by the established protocol approved by the medical staff of the facility in which the anesthetic service is performed.”

Educational Preparation

Physician Assistants²⁵

Physician assistant education is modeled on physician education. PA programs are accredited by the Accreditation Review Commission on Education for the Physician Assistant. All PA programs must meet the same set of national standards for accreditation. PA program applicants must complete at least two years of college courses in basic science and behavioral science as a prerequisite to PA training. The average length of PA education programs is about 26 months. A student begins his or her course of study with a year of basic medical science classes (anatomy, pathophysiology, pharmacology, physical diagnosis, etc.) Then the student enters the clinical phase of training, which includes classroom instruction and clinical rotations in medical and surgical specialties. PA students, on average, complete 48.5 weeks of supervised clinical practice by the time they graduate.

All PA educational programs include pharmacology courses, and, nationally, the average amount of required formal classroom instruction in pharmacology is 75 hours. This does not include instruction in pharmacology that students receive during clinical medicine coursework and clinical clerkships. Based on national data, the mean amount of total instruction in clinical medicine is 358.9 hours, and the average length of required clinical clerkships is 48.5 weeks. A significant percentage of time is focused on patient management. Coursework in pharmacology addresses, but is not limited to, pharmacokinetics, drug interactions, adverse effects, contraindications, indications, and dosage.

Advanced Registered Nurse Practitioners²⁶

Applicants for Florida licensure as ARNPs who graduated on or after October 1, 1998, must have completed requirements for a master’s degree or post-master’s degree.²⁷ Applicants who graduated before that date may be or may have been eligible through a certificate program.²⁸

²² Sections 456.0391 and 456.041, F.S.

²³ Rule 64B9-4.002(5), F.A.C.

²⁴ Sections 893.02(21) and 893.05(1), F.S.

²⁵ See American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications – Issue Brief* (June 2014) available at <https://www.aapa.org/WorkArea/DownloadAsset.aspx?id=2549> (last viewed Feb. 1, 2016).

²⁶ Rule 64B9-4.003, F.A.C.

²⁷ Florida Board of Nursing, *ARNP Licensure Requirements* <http://floridasnursing.gov/licensing/advanced-registered-nurse-practitioner/>, (last visited Feb.1, 2016).

²⁸ *Id.*, and s. 464.012(1), F.S.

The curriculum of a program leading to an advanced degree must include, among other things:

- Theory and directed clinical experience in physical and biopsychosocial assessment;
- Interviewing and communication skills relevant to obtaining and maintaining a health history;
- Pharmacotherapeutics, including selecting, prescribing, initiating, and modifying medications in the management of health and illness;
- Selecting, initiating, and modifying diets and therapies in the management of health and illness;
- Performance of specialized diagnostic tests that are essential to the area of advanced practice;
- Differential diagnosis pertinent to the specialty area;
- Interpretation of laboratory findings;
- Management of selected diseases and illnesses;
- Professional socialization and role realignment;
- Legal implications of the advanced nursing practice and nurse practitioner role;
- Health delivery systems, including assessment of community resources and referrals to appropriate professionals or agencies; and
- Providing emergency treatments.

The program must provide a minimum of 500 hours (12.5 weeks) of preceptorship/supervised clinical experience²⁹ in the performance of the specialized diagnostic procedures that are essential to practice in that specialty area.

Drug Enforcement Agency Registration

The Drug Enforcement Administration (DEA) within the U.S. Department of Justice grants practitioners federal authority to handle controlled substances. However, a DEA-registered practitioner may only engage in those activities that are authorized under state law for the jurisdiction in which the practice is located.³⁰

According to requirements of the DEA, a prescription for a controlled substance may be issued only by a physician, dentist, podiatrist, veterinarian, mid-level practitioner,³¹ or other registered practitioner who is:

- Authorized to prescribe controlled substances by the jurisdiction in which the practitioner is licensed to practice;
- Registered with the DEA or exempted from registration; or
- An agent or employee of a hospital or other institution acting in the normal course of business or employment under the registration of the hospital or other institution which is registered in lieu of the individual practitioner being registered provided that additional requirements are met, including:³²

²⁹ Preceptorship/supervised clinical experience must be under the supervision of a qualified preceptor, who is defined as a practicing certified ARNP, a licensed medical doctor, osteopathic physician, or a dentist. See Rule 64B9-4.001(13), F.A.C.

³⁰ U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, (August 2006), p. 7, available at http://www.dea diversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf, (last visited Feb. 1, 2016).

³¹ Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.

³² *Supra*, note 30, at 18.

- The dispensing, administering, or prescribing must be in the usual course of professional practice;
- The practitioner must be authorized to do so by the state in which he or she practices;
- The hospital or other institution must verify that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner must act only within the scope of employment in the hospital or other institution;
- The hospital or other institution must authorize the practitioner to administer, dispense, or prescribe under its registration and must assign a specific internal code number for each practitioner; and
- The hospital or other institution must maintain a current list of internal codes for the corresponding practitioner.³³

Peer Review of Publically Funded C-Sections

Section 383.336, F.S., relates to public health and maternal and infant health care where all or part of the costs are paid for by state or federal funds administered by the state. It defines a “provider hospital” as one in which there are 30 or more births per year paid for in part, or in full, by state or federal funds. It directs the State Surgeon General, in consultation with the BOM and the Florida Obstetric and Gynecologic Society, to establish practice parameters for physicians in provider hospitals who perform caesarean sections and requires each provider hospital to establish a peer review board to conduct monthly reviews of every publically-funded caesarean section performed since the previous review.

Beginning in 2014, hospitals that are accredited by the Joint Commission and which performed more than 1,100 births per year were required to report on certain cesarean sections performed in the hospital as a part of their perinatal core measure set. Effective with January 1, 2016 discharges, the threshold for mandatory reporting is reduced to hospitals with 300 or more births per year. Each hospital receives a quarterly risk-adjusted performance report with their hospital’s caesarean section rate compared to a desired target range.³⁴

The Patient Protection and Affordable Care Act

In March 2010, the Congress passed and President Barack Obama signed the Patient Protection and Affordable Care Act (PPACA).³⁵ Among its changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers. Coverage available through an employer, the federal or state exchanges created under the PPACA, or off the exchange, must meet the federal essential health benefits requirements. Premium credits and other cost sharing subsidies are available to U.S. citizens and legal

³³ *Supra*, note 30, at 12.

³⁴ See Expanded threshold for reporting Perinatal Care measure set, a Joint Commission Article published on June 24, 2015, available at: <http://www.jointcommission.org/issues/article.aspx?Article=A9Im9xfNbBo97ZcgWQAj/SEKRiZJsPtdFLyHUR1bZU=> (last visited Jan. 6, 2016). See also U.S. Hospitals Held Accountable for C-Section Rates by Rebecca Dekker, PhD, RN, APRN of www.evidencebasedbirth.com, available at: <http://improvingbirth.org/2013/01/u-s-hospitals-held-accountable-for-c-section-rates/> (last visited Jan. 6, 2016).

³⁵ P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.

immigrants within certain income limits for qualified coverage purchased through a PPACA exchange.³⁶

Nonpayment of Premium

Federal regulations for the PPACA also govern an enrollee's coverage bought through the exchanges and for non-grandfathered plans.³⁷ If an exchange enrollee received an advance premium tax credit for a qualified health plan (QHP)³⁸ and paid at least one full month's premium during the benefit year, and is terminated for non-payment of premium, the insurer must provide the enrollee a three-month grace period before cancellation of coverage.³⁹ During the grace period, the insurer must pay claims for services rendered in the first month but may pend claims for the second and third months.⁴⁰ The insurer is also required to notify providers of the possibility for denied claims when an enrollee is in the second or third months of the grace period. The insurer is also required to provide the enrollee with notice of such payment delinquency. If an insurer terminates an enrollee's coverage after the grace period, the insurer must provide written notice of termination 14 days before the effective date. If coverage is terminated, the termination date is the last day of the first month of the grace period and the insurer may not recoup any claims paid during the first month of the grace period.

The federal regulations for the grace period do not affect individuals who are not enrolled in an exchange plan or do not receive a subsidy. The grace period for these individuals remains at the length required under s. 627.608, F.S., which varies by the length of the premium payment interval. Cancellation of coverage is effective the first day of the grace period if payment is not received.

Retroactive Denial of Claims by Health Insurers

Section 627.6131, F.S., and s. 641.3155, F.S., prohibit a health insurer and a health maintenance organization (HMO), respectively, from retroactively denying a claim because of insured ineligibility more than one year after the date the claim is paid. There is, however, no redress for erroneous authorization and an insured's reliance on that authorization.

III. Effect of Proposed Changes:

ARNPs and PAs Authorized to Prescribe Controlled Substances

Sections 12 through 15 of the bill authorize physician assistants (PAs) licensed under the Medical Practice Act or the Osteopathic Medical Practice Act, and advanced registered nurse

³⁶ Centers for Medicare and Medicaid Services, *Health Insurance Marketplace - Will I Qualify for Lower Costs on Monthly Premiums?* <https://www.healthcare.gov/will-i-qualify-to-save-on-monthly-premiums/> (last visited Jan. 23, 2016).

³⁷ Certain plans received "grandfather status" under PPACA. A grandfathered health plan is a plan that existed on March 23, 2010, and had at least one person continuously covered for 1 year. Some consumer protections elements do not apply to grandfathered plans.

³⁸ A "qualified health plan" is an insurance plan certified by the applicable Health Insurance Marketplace, provides the essential health benefits, established limits on cost sharing and meets other requirements. *See* <https://www.healthcare.gov/glossary/qualified-health-plan/> for more information on qualified health plans (last visited Jan. 23, 2016).

³⁹ 45 CFR 156.270 and 45 CFR 430.

⁴⁰ 45 CFR 156.270.

practitioners (ARNPs) certified under part I of the Nurse Practice Act, to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs, beginning January 1, 2017, and it creates additional statutory parameters on their controlled substance prescribing. Specifically, an ARNP's and PA's prescribing privileges, for controlled substances listed on Schedule II, are limited to a seven-day supply, do not include prescribing psychotropic medications for children under 18 years of age except by an ARNP who is also a psychiatric nurse as defined by s. 394.455, F.S.,⁴¹ and may be limited by the controlled substance formularies that impose additional limitations on PA or ARNP prescribing privileges for specific medications.

Section 12 creates, for PAs, the ability to prescribe controlled substances by removing controlled substances from the formulary of medicinal drugs that a PA currently may not prescribe in the Medical Practice Act. The Osteopathic Medical Practice Act refers to the formulary in the Medical Practice Act, so no changes are made to that act.

Section 15 authorizes ARNPs to prescribe controlled substances by revising the authority pertaining to drug therapies. The bill authorizes an ARNP to prescribe, dispense, administer, or order any drug, which would include controlled substances. However, a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills is required to prescribe or dispense controlled substances.

Section 21 adds ARNPs and PAs to the definition of practitioner in ch. 893, F.S. This definition requires the practitioner to hold a valid federal controlled substance registry number.

Under Section 14, the bill amends s. 464.012, F.S., to require the appointment of a committee⁴² to recommend an evidence-based formulary of controlled substances (controlled substances formulary) that an ARNP may not prescribe, or may prescribe under limited circumstances, as needed to protect the public interest. The committee may recommend a controlled substances formulary applicable to all ARNPs that may be limited by specialty certification, approved uses of controlled substances, or other similar restrictions deemed necessary to protect the public interest. At a minimum, the formulary must restrict the prescribing of psychiatric mental health controlled substances for children under 18 years of age to psychiatric nurses as defined in the Baker Act.⁴³ The formulary must also limit the prescribing of controlled substances in Schedule II to a seven-day supply, similar to the limitation imposed for PAs, except this limitation does not apply to a psychiatric medication prescribed by a psychiatric nurse under the Baker Act.

⁴¹ Section 394.55(23), F.S., defines a "psychiatric nurse" as an advanced registered nurse practitioner certified under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

⁴² The committee membership is: three ARNPs, including a certified registered nurse anesthetist, a certified nurse midwife, and a nurse practitioner; at least one physician recommended by the Board of Medicine and one physician recommended by the Board of Osteopathic Medicine, who have experience working with APRNs; and a pharmacist licensed under ch. 465, F.S., who is not also licensed as a physician under ch. 458, F.S., an osteopathic physician under ch. 459, F.S., or an ARNP under ch. 464, F.S. The committee members are selected by the State Surgeon General.

⁴³ The Baker Act is also known as the Florida Mental Health Act and the definition of a psychiatric nurse is found in s. 394.455, F.S.

The bill also provides that s. 464.012, F.S., shall be known as “The Barbara Lumpkin Prescribing Act.”

The committee formed to recommend the controlled substances formulary is a replacement to a joint committee that was established in law for other purposes but which has been dormant for many years. Language establishing the joint committee and references to it are removed from law in sections 13, 23, and 24 of the bill.

The formulary committee consists of three Florida-certified ARNPs who are recommended by the Board of Nursing (BON), three physicians licensed under ch. 458 or ch. 459 who have had work experience with ARNPs and who are recommended by the Board of Medicine (BOM), and a Florida-licensed pharmacist who holds a doctor of pharmacy degree and is recommended by the Board of Pharmacy.

The BON is directed to establish the controlled substances formulary for ARNPs by January 1, 2017. The bill requires the BON to adopt recommendations for the formulary that are made by the committee and which are supported by evidence-based clinical findings presented by the BOM, the BOOM, or the Board of Dentistry. The BON is required to adopt the formulary committee’s initial recommendation by October 31, 2016.

The controlled substances formulary adopted by board rule does not apply to the following acts performed within the ARNP’s specialty under the established protocol approved by the medical staff of the facilities in which the service is performed, which are currently authorized under s. 464.012(4)(a)3., 4., and 9., F.S:

- Orders for pre-anesthetic medications;
- Ordering and administering regional, spinal, and general anesthesia, inhalation agents and techniques, intravenous agents and techniques, hypnosis, and other protocol procedures commonly used to render the patient insensible to pain during surgical, obstetrical, therapeutic, or diagnostic clinical procedures; or
- Managing a patient while in the post-anesthesia recovery area.

Sections 11 and 16 of the bill require a PA and ARNP to have three hours of continuing education on the safe and effective prescription of controlled substances and specifies several statutorily pre-approved providers of those continuing education hours.

Section 8 requires a PA or ARNP who prescribes controlled substances that are listed in Schedule II, Schedule III, or Schedule IV, for the treatment of chronic nonmalignant pain, to designate himself or herself as a controlled substance prescribing practitioner on his or her respective practitioner profile maintained by the Department of Health (DOH). Currently, PAs do not have practitioner profiles so the DOH will need to develop a profile for PAs to comply with this requirement.

The bill imposes the same disciplinary standards on PAs and ARNPs as those applicable to physicians for failing to meet minimal standards of acceptable and prevailing practice in prescribing and dispensing of controlled substances.

Section 7 adds ARNP disciplinary sanctions under s. 456.072, F.S., to mirror a physician's sanctions for prescribing or dispensing a controlled substance other than in the course of professional practice or failing to meet practice standards.

Section 17 adds additional acts to the Nurse Practice Act for which discipline may be taken against an ARNP relating to practicing with controlled substances, including:

- Pre-signing blank prescription forms;
- Prescribing for office use any medicinal drug appearing on Schedule II in chapter 893;
- Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance;⁴⁴
- Promoting or advertising on any prescription form a community pharmacy unless the form also states: "This prescription may be filled at any pharmacy of your choice";
- Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the ARNP by another practitioner authorized to prescribe, dispense, or administer medicinal drugs;
- Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person;⁴⁵
- Dispensing a substance controlled in Schedule II or Schedule III, in violation of s. 465.0276, F.S.;
- Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03, F.S., as a controlled substance; and
- Prescribing, ordering, dispensing, administering, supplying, selling, amphetamines, sympathomimetic amines, or a compound designated in s. 893.03(2), F.S., as a Schedule II controlled substance, to anyone except for:
 - Treating narcolepsy,⁴⁶ hyperkinesia,⁴⁷ behavioral syndrome in children characterized by the developmentally inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability,⁴⁸ and impulsivity; or drug-induced brain dysfunction;
 - The diagnostic and treatment of depressions; and

⁴⁴ Bill section 17 amends s. 464.018, F.S., to add subpart (1)(p)4., which prohibits the prescribing of certain hormones for the purpose of "muscle building"; but excludes the treatment of an injured muscle from the definition of "muscle building" as used in this section; and pharmacists receiving prescriptions for the listed hormones may dispense them with the presumption that the prescription is for legitimate medical use.

⁴⁵ Laetrile is an allegedly antineoplastic drug consisting chiefly of amygdalin derived from apricot pits. It has not been proven to have any beneficial use. Farlex Partner Medical Dictionary Farlex 2012, available at: <http://medical-dictionary.thefreedictionary.com/laetrile>, (Last visited Dec. 7, 2015).

⁴⁶ Narcolepsy is a medical condition in which someone suddenly falls into a deep sleep while talking, working, etc. Miriam-Webster Dictionary, Encyclopedia Britannica Company, available at: <http://www.merriam-webster.com/dictionary/narcolepsy>, (Last visited Dec. 7, 2015).

⁴⁷ Hyperkinesia is defined as an abnormally increased and sometimes uncontrollable activity or muscular movements; 2. a condition especially of childhood characterized by hyperactivity. Miriam-Webster Dictionary, Encyclopedia Britannica Company, available at: <http://www.merriam-webster.com/dictionary/hyperkinesia>, (Last visited Dec. 7, 2015).

⁴⁸ Emotional lability is a condition of excessive emotional reactions and frequent mood changes. Mosby's Medical Dictionary, 9th edition. 2009, Elsevier, available at: <http://medical-dictionary.thefreedictionary.com/emotional+lability>, (Last visited Dec. 7, 2015).

- Clinical investigations which have been approved by the department before such investigation is begun.

Disciplinary standards that are applicable to physicians are already applicable to PAs under ss. 458.347(7)(g) and 459.022(7)(g), F.S., so no additional amendments are needed for disciplinary and enforcement action for violations of the applicable practice act relating to controlled substances.

Statutes regulating pain-management clinics under the Medical Practice Act and the Osteopathic Medical Practice Act are amended to limit the prescribing of controlled substances in a pain-management clinic to physicians licensed under ch. 458, F.S., or ch. 459, F.S. Accordingly, sections 9 and 10 of the bill prohibit PAs and ARNPs from prescribing controlled substances in pain-management clinics.

Under current law, a medical specialist who is board certified or board eligible in pain medicine by certain boards is exempted from the statutory standards of practice in s. 456.44, F.S., relating to prescribing controlled substances for the treatment of chronic nonmalignant pain. Section 8 of the bill adds two additional boards to that list: the American Board of Interventional Pain Physicians and the American Association of Physician Specialists.

Sections 1 through 4 and 22 of the bill amend various statutes to authorize or recognize that a PA or an ARNP may be a prescriber of controlled substances, as follows:

- Section 110.12315, F.S., relating to the state employees' prescription drug program, is amended to authorize ARNPs and PAs to prescribe brand name drugs which are medically necessary or are included on the formulary of drugs which may not be interchanged.
- Section 310.071, F.S., relating to deputy pilot certification; s. 310.073, F.S., relating to state pilot licensing; and s. 310.081, F.S., relating to licensed state pilots and certified deputy pilots, are amended to allow the presence of a controlled substance in a pilot's drug test results if the substance was prescribed by an ARNP or PA whose care the pilot is under, as a part of the annual physical examination required for initial certification, initial licensure, and certification and licensure retention.
- Section 948.03, F.S., relating to terms and conditions of criminal probation, is amended to include ARNPs and PAs as authorized prescribers of drugs or narcotics that a person on probation may lawfully possess.

Hospital Regulation

Section 5 of the bill deletes a provision designating certain hospitals as "provider hospitals," which have special requirements for cesarean section operations that are paid for with state or federal funds, including a peer review board that reviews the procedures performed and establishes practice parameters for such operations.

Section 6 requires a hospital to notify each obstetrical physician with privileges at the facility at least 90 days before it closes its obstetrical department or ceases to provide obstetrical services.

Prior Authorization Forms

Section 18 of the bill creates s. 627.42392, F.S., to require insurers, Medicaid managed care plans, HMOs, or their pharmacy benefits managers, that do not use electronic prior authorization forms for their contract providers, to only use prior authorization forms approved by the Financial Services Commission, in consultation with the Agency for Health Care Administration (AHCA), to obtain prior authorization for medical procedures, courses of treatment, and prescription drugs, beginning January 1, 2017. The Commission, in consultation with the AHCA, must adopt by rule guidelines for these forms to ensure general uniformity of the forms, and the forms may not exceed two pages, excluding instructions.

Retroactive Denial of Claims

Sections 19 and 20 of the bill amend ss. 627.6131 and 641.3155, F.S., respectively, to preclude a health insurer or an HMO from retroactively denying a claim because of an insured's ineligibility if the health insurer or HMO has previously verified eligibility at the time of treatment and provided an authorization number.

Technical Revisions and Effective Date

Sections 25 through 33 reenact multiple statutes for the purpose of incorporating the amendments made by the bill to ss. 456.072, 456.44, 458.347, 464.003, 464.012, 464.013, 464.018, 893.02, and 948.03, F.S., in references thereto.

Additional conforming and grammatical changes are made in the bill.

Most of the bill becomes effective upon becoming law. However, the authority for a PA or an ARNP to prescribe controlled substances in accordance with the bill becomes effective January 1, 2017.

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:

Under CS/CS/CS/SB 676, physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) who are authorized by the supervising physician or under a protocol to prescribe controlled substances may be able to care for more patients due to reduced coordination with the supervising physician each time a controlled substance is recommended for a patient. Patients may see reduced health care costs and efficiencies in health care delivery as a result of having their health care needs more fully addressed by the PA or ARNP without specific involvement of a physician prescribing a needed controlled substance for treatment.

Eliminating the ability of a health insurer or HMO to subsequently deny a claim once authorized will prevent unanticipated additional financial obligations being placed on persons who are authorized for coverage while not actually having coverage for the services rendered. This will simultaneously impose additional financial liability on a health insurer or HMO that provides authorization for an individual who is later confirmed to not be covered for the services rendered.

C. Government Sector Impact:

The Department of Health (DOH) may incur costs for rulemaking, modifications to develop a profile for PAs, and workload impacts related to additional complaints and investigations. The DOH advises that its current resources are adequate to absorb these additional costs.⁴⁹

VI. Technical Deficiencies:

Section 18 of the bill, which amends s. 627.42392, F.S., a provision in the Insurance Code, requires a health insurer, or a pharmacy benefit manager (PBM) acting on behalf of the health insurer, which does not use an electronic prior authorization form for its network providers, to use the prior authorization form that the Financial Services Commission, in consultation with the Agency for Health Care Administration (AHCA), adopts by rule. Further, the Commission, in consultation with the AHCA, is required to adopt by rule guidelines for all prior authorization forms. However, the Office of Insurance Regulation (OIR) does not regulate PBMs. Insurers, HMOs, and other risk-bearing entities that are regulated by the OIR, who contract with a PBM or other third party, are subject to this statutory provision and would be subject to enforcement by the OIR for noncompliance, but not so for a PBM itself.

VII. Related Issues:

None.

⁴⁹ The Department of Health, *2016 Agency Legislative Bill Analysis, SB 676*, on file with the Appropriations Subcommittee on Health and Human Services.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.12315, 310.071, 310.073, 310.081, 395.1051, 456.072, 456.44, 458.3265, 459.0137, 458.347, 464.003, 464.012, 464.013, 464.018, 627.6131, 641.3155, 893.02, 948.03, 458.348, 459.025, 458.331, 459.015, 459.022, 465.0158, 466.02751, 458.303, 458.3475, 459.023, 456.041, 464.012, 464.0205, 320.0848, 464.008, 464.009, 775.051, 893.02, 944.17, 948.001, 948.03, and 948.101.

This bill creates section 627.42392 of the Florida Statutes.

This bill repeals section 383.336 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on February 18, 2016:

The CS/CS/CS provides that s. 464.012, F.S., shall be known as “The Barbara Lumpkin Prescribing Act.”

CS/CS by Banking and Insurance on January 26, 2016:

The CS/CS provides that the Financial Services Commission in consultation with the Agency for Health Care Administration (AHCA) will adopt by rule a prior authorization form and guidelines. The CS also corrects a cross reference.

CS by Health Policy on January 11, 2016:

The CS amends SB 676 to add the American Association of Nurse Anesthetists to the list of statutorily pre-approved providers for continuing education for ARNPs.

- B. **Amendments:**

None.



243646

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 800 and 801

insert:

(7) This section shall be known as "The Barbara Lumpkin Prescribing Act."

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 52



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11 and insert:
12 date; providing a short title; authorizing an advanced
13 registered nurse

By the Committees on Banking and Insurance; and Health Policy;
and Senator Grimsley

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1 A bill to be entitled
2 An act relating to access to health care services;
3 amending s. 110.12315, F.S.; expanding the categories
4 of persons who may prescribe brand name drugs under
5 the prescription drug program when medically
6 necessary; amending ss. 310.071, 310.073, and 310.081,
7 F.S.; exempting controlled substances prescribed by an
8 advanced registered nurse practitioner or a physician
9 assistant from the disqualifications for certification
10 or licensure, and for continued certification or
11 licensure, as a deputy pilot or state pilot; repealing
12 s. 383.336, F.S., relating to provider hospitals,
13 practice parameters, and peer review boards; amending
14 s. 395.1051, F.S.; requiring a hospital to provide
15 specified advance notice to certain obstetrical
16 physicians before it closes its obstetrical department
17 or ceases to provide obstetrical services; amending s.
18 456.072, F.S.; applying existing penalties for
19 violations relating to the prescribing or dispensing
20 of controlled substances by an advanced registered
21 nurse practitioner; amending s. 456.44, F.S.; defining
22 the term "registrant"; deleting an obsolete date;
23 requiring advanced registered nurse practitioners and
24 physician assistants who prescribe controlled
25 substances for the treatment of certain pain to make a
26 certain designation, comply with registration
27 requirements, and follow specified standards of
28 practice; providing applicability; amending ss.
29 458.3265 and 459.0137, F.S.; limiting the authority to
30 prescribe a controlled substance in a pain-management
31 clinic only to a physician licensed under ch. 458 or

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32 ch. 459, F.S.; amending s. 458.347, F.S.; revising the
33 required continuing education requirements for a
34 physician assistant; requiring that a specified
35 formulary limit the prescription of certain controlled
36 substances by physician assistants as of a specified
37 date; amending s. 464.003, F.S.; revising the term
38 "advanced or specialized nursing practice"; deleting
39 the joint committee established in the definition;
40 amending s. 464.012, F.S.; requiring the Board of
41 Nursing to establish a committee to recommend a
42 formulary of controlled substances that may not be
43 prescribed, or may be prescribed only on a limited
44 basis, by an advanced registered nurse practitioner;
45 specifying the membership of the committee; providing
46 parameters for the formulary; requiring that the
47 formulary be adopted by board rule; specifying the
48 process for amending the formulary and imposing a
49 burden of proof; limiting the formulary's application
50 in certain instances; requiring the board to adopt the
51 committee's initial recommendations by a specified
52 date; authorizing an advanced registered nurse
53 practitioner to prescribe, dispense, administer, or
54 order drugs, including certain controlled substances
55 under certain circumstances, as of a specified date;
56 amending s. 464.013, F.S.; revising continuing
57 education requirements for renewal of a license or
58 certificate; amending s. 464.018, F.S.; specifying
59 acts that constitute grounds for denial of a license
60 or for disciplinary action against an advanced

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61 registered nurse practitioner; creating s. 627.42392,
 62 F.S.; defining the term "health insurer"; requiring
 63 that certain health insurers that do not already use a
 64 certain form use only a prior authorization form
 65 approved by the Financial Services Commission in
 66 consultation with the Agency for Health Care
 67 Administration; requiring the commission in
 68 consultation with the agency to adopt by rule
 69 guidelines for such forms; amending s. 627.6131, F.S.;
 70 prohibiting a health insurer from retroactively
 71 denying a claim under specified circumstances;
 72 amending s. 641.3155, F.S.; prohibiting a health
 73 maintenance organization from retroactively denying a
 74 claim under specified circumstances; amending s.
 75 893.02, F.S.; revising the term "practitioner" to
 76 include advanced registered nurse practitioners and
 77 physician assistants under the Florida Comprehensive
 78 Drug Abuse Prevention and Control Act if a certain
 79 requirement is met; amending s. 948.03, F.S.;
 80 providing that possession of drugs or narcotics
 81 prescribed by an advanced registered nurse
 82 practitioner or a physician assistant does not violate
 83 a prohibition relating to the possession of drugs or
 84 narcotics during probation; amending ss. 458.348 and
 85 459.025, F.S.; conforming provisions to changes made
 86 by the act; reenacting ss. 458.331(10), 458.347(7)(g),
 87 459.015(10), 459.022(7)(f), and 465.0158(5)(b), F.S.,
 88 to incorporate the amendment made to s. 456.072, F.S.,
 89 in references thereto; reenacting ss. 456.072(1)(mm)

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90 and 466.02751, F.S., to incorporate the amendment made
 91 to s. 456.44, F.S., in references thereto; reenacting
 92 ss. 458.303, 458.3475(7)(b), 459.022(4)(e) and (9)(c),
 93 and 459.023(7)(b), F.S., to incorporate the amendment
 94 made to s. 458.347, F.S., in references thereto;
 95 reenacting s. 464.012(3)(c), F.S., to incorporate the
 96 amendment made to s. 464.003, F.S., in a reference
 97 thereto; reenacting ss. 456.041(1)(a), 458.348(1) and
 98 (2), and 459.025(1), F.S., to incorporate the
 99 amendment made to s. 464.012, F.S., in references
 100 thereto; reenacting s. 464.0205(7), F.S., to
 101 incorporate the amendment made to s. 464.013, F.S., in
 102 a reference thereto; reenacting ss. 320.0848(11),
 103 464.008(2), 464.009(5), and 464.0205(1)(b), (3), and
 104 (4)(b), F.S., to incorporate the amendment made to s.
 105 464.018, F.S., in references thereto; reenacting s.
 106 775.051, F.S., to incorporate the amendment made to s.
 107 893.02, F.S., in a reference thereto; reenacting ss.
 108 944.17(3)(a), 948.001(8), and 948.101(1)(e), F.S., to
 109 incorporate the amendment made to s. 948.03, F.S., in
 110 references thereto; providing effective dates.
 111
 112 Be It Enacted by the Legislature of the State of Florida:
 113
 114 Section 1. Subsection (7) of section 110.12315, Florida
 115 Statutes, is amended to read:
 116 110.12315 Prescription drug program.—The state employees'
 117 prescription drug program is established. This program shall be
 118 administered by the Department of Management Services, according

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119 to the terms and conditions of the plan as established by the
 120 relevant provisions of the annual General Appropriations Act and
 121 implementing legislation, subject to the following conditions:

122 (7) The department shall establish the reimbursement
 123 schedule for prescription pharmaceuticals dispensed under the
 124 program. Reimbursement rates for a prescription pharmaceutical
 125 must be based on the cost of the generic equivalent drug if a
 126 generic equivalent exists, unless the physician, advanced
 127 registered nurse practitioner, or physician assistant
 128 prescribing the pharmaceutical clearly states on the
 129 prescription that the brand name drug is medically necessary or
 130 that the drug product is included on the formulary of drug
 131 products that may not be interchanged as provided in chapter
 132 465, in which case reimbursement must be based on the cost of
 133 the brand name drug as specified in the reimbursement schedule
 134 adopted by the department.

135 Section 2. Paragraph (c) of subsection (1) of section
 136 310.071, Florida Statutes, is amended, and subsection (3) of
 137 that section is republished, to read:

138 310.071 Deputy pilot certification.—

139 (1) In addition to meeting other requirements specified in
 140 this chapter, each applicant for certification as a deputy pilot
 141 must:

142 (c) Be in good physical and mental health, as evidenced by
 143 documentary proof of having satisfactorily passed a complete
 144 physical examination administered by a licensed physician within
 145 the preceding 6 months. The board shall adopt rules to establish
 146 requirements for passing the physical examination, which rules
 147 shall establish minimum standards for the physical or mental

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148 capabilities necessary to carry out the professional duties of a
 149 certificated deputy pilot. Such standards shall include zero
 150 tolerance for any controlled substance regulated under chapter
 151 893 unless that individual is under the care of a physician, an
 152 advanced registered nurse practitioner, or a physician assistant
 153 and that controlled substance was prescribed by that physician,
 154 advanced registered nurse practitioner, or physician assistant.

155 To maintain eligibility as a certificated deputy pilot, each
 156 certificated deputy pilot must annually provide documentary
 157 proof of having satisfactorily passed a complete physical
 158 examination administered by a licensed physician. The physician
 159 must know the minimum standards and certify that the
 160 certificateholder satisfactorily meets the standards. The
 161 standards for certificateholders shall include a drug test.

162 (3) The initial certificate issued to a deputy pilot shall
 163 be valid for a period of 12 months, and at the end of this
 164 period, the certificate shall automatically expire and shall not
 165 be renewed. During this period, the board shall thoroughly
 166 evaluate the deputy pilot's performance for suitability to
 167 continue training and shall make appropriate recommendations to
 168 the department. Upon receipt of a favorable recommendation by
 169 the board, the department shall issue a certificate to the
 170 deputy pilot, which shall be valid for a period of 2 years. The
 171 certificate may be renewed only two times, except in the case of
 172 a fully licensed pilot who is cross-licensed as a deputy pilot
 173 in another port, and provided the deputy pilot meets the
 174 requirements specified for pilots in paragraph (1)(c).

175 Section 3. Subsection (3) of section 310.073, Florida
 176 Statutes, is amended to read:

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177 310.073 State pilot licensing.—In addition to meeting other
178 requirements specified in this chapter, each applicant for
179 license as a state pilot must:

180 (3) Be in good physical and mental health, as evidenced by
181 documentary proof of having satisfactorily passed a complete
182 physical examination administered by a licensed physician within
183 the preceding 6 months. The board shall adopt rules to establish
184 requirements for passing the physical examination, which rules
185 shall establish minimum standards for the physical or mental
186 capabilities necessary to carry out the professional duties of a
187 licensed state pilot. Such standards shall include zero
188 tolerance for any controlled substance regulated under chapter
189 893 unless that individual is under the care of a physician, an
190 advanced registered nurse practitioner, or a physician assistant
191 and that controlled substance was prescribed by that physician,
192 advanced registered nurse practitioner, or physician assistant.
193 To maintain eligibility as a licensed state pilot, each licensed
194 state pilot must annually provide documentary proof of having
195 satisfactorily passed a complete physical examination
196 administered by a licensed physician. The physician must know
197 the minimum standards and certify that the licensee
198 satisfactorily meets the standards. The standards for licensees
199 shall include a drug test.

200 Section 4. Paragraph (b) of subsection (3) of section
201 310.081, Florida Statutes, is amended to read:

202 310.081 Department to examine and license state pilots and
203 certificate deputy pilots; vacancies.—

204 (3) Pilots shall hold their licenses or certificates
205 pursuant to the requirements of this chapter so long as they:

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206 (b) Are in good physical and mental health as evidenced by
207 documentary proof of having satisfactorily passed a physical
208 examination administered by a licensed physician or physician
209 assistant within each calendar year. The board shall adopt rules
210 to establish requirements for passing the physical examination,
211 which rules shall establish minimum standards for the physical
212 or mental capabilities necessary to carry out the professional
213 duties of a licensed state pilot or a certificated deputy pilot.
214 Such standards shall include zero tolerance for any controlled
215 substance regulated under chapter 893 unless that individual is
216 under the care of a physician, an advanced registered nurse
217 practitioner, or a physician assistant and that controlled
218 substance was prescribed by that physician, advanced registered
219 nurse practitioner, or physician assistant. To maintain
220 eligibility as a certificated deputy pilot or licensed state
221 pilot, each certificated deputy pilot or licensed state pilot
222 must annually provide documentary proof of having satisfactorily
223 passed a complete physical examination administered by a
224 licensed physician. The physician must know the minimum
225 standards and certify that the certificateholder or licensee
226 satisfactorily meets the standards. The standards for
227 certificateholders and for licensees shall include a drug test.

228
229 Upon resignation or in the case of disability permanently
230 affecting a pilot's ability to serve, the state license or
231 certificate issued under this chapter shall be revoked by the
232 department.

233 Section 5. Section 383.336, Florida Statutes, is repealed.

234 Section 6. Section 395.1051, Florida Statutes, is amended

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235 to read:

236 395.1051 Duty to notify patients and physicians.-

237 (1) An appropriately trained person designated by each
 238 licensed facility shall inform each patient, or an individual
 239 identified pursuant to s. 765.401(1), in person about adverse
 240 incidents that result in serious harm to the patient.
 241 Notification of outcomes of care ~~which that~~ result in harm to
 242 the patient under this section ~~does shall~~ not constitute an
 243 acknowledgment or admission of liability ~~and may not, nor can it~~
 244 be introduced as evidence.

245 (2) A hospital shall notify each obstetrical physician who
 246 has privileges at the hospital at least 90 days before the
 247 hospital closes its obstetrical department or ceases to provide
 248 obstetrical services.

249 Section 7. Subsection (7) of section 456.072, Florida
 250 Statutes, is amended to read:

251 456.072 Grounds for discipline; penalties; enforcement.-

252 (7) Notwithstanding subsection (2), upon a finding that a
 253 physician has prescribed or dispensed a controlled substance, or
 254 caused a controlled substance to be prescribed or dispensed, in
 255 a manner that violates the standard of practice set forth in s.
 256 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o)
 257 or (s), or s. 466.028(1)(p) or (x), or that an advanced
 258 registered nurse practitioner has prescribed or dispensed a
 259 controlled substance, or caused a controlled substance to be
 260 prescribed or dispensed, in a manner that violates the standard
 261 of practice set forth in s. 464.018(1)(n) or (p)6., the
 262 physician or advanced registered nurse practitioner shall be
 263 suspended for a period of not less than 6 months and pay a fine

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264 of not less than \$10,000 per count. Repeated violations shall
 265 result in increased penalties.

266 Section 8. Section 456.44, Florida Statutes, is amended to
 267 read:

268 456.44 Controlled substance prescribing.-

269 (1) DEFINITIONS.-~~As used in this section, the term:~~

270 (a) "Addiction medicine specialist" means a board-certified
 271 psychiatrist with a subspecialty certification in addiction
 272 medicine or who is eligible for such subspecialty certification
 273 in addiction medicine, an addiction medicine physician certified
 274 or eligible for certification by the American Society of
 275 Addiction Medicine, or an osteopathic physician who holds a
 276 certificate of added qualification in Addiction Medicine through
 277 the American Osteopathic Association.

278 (b) "Adverse incident" means any incident set forth in s.
 279 458.351(4)(a)-(e) or s. 459.026(4)(a)-(e).

280 (c) "Board-certified pain management physician" means a
 281 physician who possesses board certification in pain medicine by
 282 the American Board of Pain Medicine, board certification by the
 283 American Board of Interventional Pain Physicians, or board
 284 certification or subcertification in pain management or pain
 285 medicine by a specialty board recognized by the American
 286 Association of Physician Specialists or the American Board of
 287 Medical Specialties or an osteopathic physician who holds a
 288 certificate in Pain Management by the American Osteopathic
 289 Association.

290 (d) "Board eligible" means successful completion of an
 291 anesthesia, physical medicine and rehabilitation, rheumatology,
 292 or neurology residency program approved by the Accreditation

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293 Council for Graduate Medical Education or the American
 294 Osteopathic Association for a period of 6 years from successful
 295 completion of such residency program.

296 (e) "Chronic nonmalignant pain" means pain unrelated to
 297 cancer which persists beyond the usual course of disease or the
 298 injury that is the cause of the pain or more than 90 days after
 299 surgery.

300 (f) "Mental health addiction facility" means a facility
 301 licensed under chapter 394 or chapter 397.

302 (g) "Registrant" means a physician, a physician assistant,
 303 or an advanced registered nurse practitioner who meets the
 304 requirements of subsection (2).

305 (2) REGISTRATION.—~~Effective January 1, 2012,~~ A physician
 306 licensed under chapter 458, chapter 459, chapter 461, or chapter
 307 466, a physician assistant licensed under chapter 458 or chapter
 308 459, or an advanced registered nurse practitioner certified
 309 under part I of chapter 464 who prescribes any controlled
 310 substance, listed in Schedule II, Schedule III, or Schedule IV
 311 as defined in s. 893.03, for the treatment of chronic
 312 nonmalignant pain, must:

313 (a) Designate himself or herself as a controlled substance
 314 prescribing practitioner on his or her ~~the physician's~~
 315 practitioner profile.

316 (b) Comply with the requirements of this section and
 317 applicable board rules.

318 (3) STANDARDS OF PRACTICE.—The standards of practice in
 319 this section do not supersede the level of care, skill, and
 320 treatment recognized in general law related to health care
 321 licensure.

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322 (a) A complete medical history and a physical examination
 323 must be conducted before beginning any treatment and must be
 324 documented in the medical record. The exact components of the
 325 physical examination shall be left to the judgment of the
 326 registrant ~~clinician~~ who is expected to perform a physical
 327 examination proportionate to the diagnosis that justifies a
 328 treatment. The medical record must, at a minimum, document the
 329 nature and intensity of the pain, current and past treatments
 330 for pain, underlying or coexisting diseases or conditions, the
 331 effect of the pain on physical and psychological function, a
 332 review of previous medical records, previous diagnostic studies,
 333 and history of alcohol and substance abuse. The medical record
 334 shall also document the presence of one or more recognized
 335 medical indications for the use of a controlled substance. Each
 336 registrant must develop a written plan for assessing each
 337 patient's risk of aberrant drug-related behavior, which may
 338 include patient drug testing. Registrants must assess each
 339 patient's risk for aberrant drug-related behavior and monitor
 340 that risk on an ongoing basis in accordance with the plan.

341 (b) Each registrant must develop a written individualized
 342 treatment plan for each patient. The treatment plan shall state
 343 objectives that will be used to determine treatment success,
 344 such as pain relief and improved physical and psychosocial
 345 function, and shall indicate if any further diagnostic
 346 evaluations or other treatments are planned. After treatment
 347 begins, the registrant ~~physician~~ shall adjust drug therapy to
 348 the individual medical needs of each patient. Other treatment
 349 modalities, including a rehabilitation program, shall be
 350 considered depending on the etiology of the pain and the extent

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351 to which the pain is associated with physical and psychosocial
352 impairment. The interdisciplinary nature of the treatment plan
353 shall be documented.

354 (c) The registrant physician shall discuss the risks and
355 benefits of the use of controlled substances, including the
356 risks of abuse and addiction, as well as physical dependence and
357 its consequences, with the patient, persons designated by the
358 patient, or the patient's surrogate or guardian if the patient
359 is incompetent. The registrant physician shall use a written
360 controlled substance agreement between the registrant physician
361 and the patient outlining the patient's responsibilities,
362 including, but not limited to:

363 1. Number and frequency of controlled substance
364 prescriptions and refills.

365 2. Patient compliance and reasons for which drug therapy
366 may be discontinued, such as a violation of the agreement.

367 3. An agreement that controlled substances for the
368 treatment of chronic nonmalignant pain shall be prescribed by a
369 single treating registrant physician unless otherwise authorized
370 by the treating registrant physician and documented in the
371 medical record.

372 (d) The patient shall be seen by the registrant physician
373 at regular intervals, not to exceed 3 months, to assess the
374 efficacy of treatment, ensure that controlled substance therapy
375 remains indicated, evaluate the patient's progress toward
376 treatment objectives, consider adverse drug effects, and review
377 the etiology of the pain. Continuation or modification of
378 therapy shall depend on the registrant's physician's evaluation
379 of the patient's progress. If treatment goals are not being

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380 achieved, despite medication adjustments, the registrant
381 ~~physician~~ shall reevaluate the appropriateness of continued
382 treatment. The registrant physician shall monitor patient
383 compliance in medication usage, related treatment plans,
384 controlled substance agreements, and indications of substance
385 abuse or diversion at a minimum of 3-month intervals.

386 (e) The registrant physician shall refer the patient as
387 necessary for additional evaluation and treatment in order to
388 achieve treatment objectives. Special attention shall be given
389 to those patients who are at risk for misusing their medications
390 and those whose living arrangements pose a risk for medication
391 misuse or diversion. The management of pain in patients with a
392 history of substance abuse or with a comorbid psychiatric
393 disorder requires extra care, monitoring, and documentation and
394 requires consultation with or referral to an addiction medicine
395 specialist or a psychiatrist.

396 (f) A registrant physician ~~registered under this section~~
397 must maintain accurate, current, and complete records that are
398 accessible and readily available for review and comply with the
399 requirements of this section, the applicable practice act, and
400 applicable board rules. The medical records must include, but
401 are not limited to:

402 1. The complete medical history and a physical examination,
403 including history of drug abuse or dependence.

404 2. Diagnostic, therapeutic, and laboratory results.

405 3. Evaluations and consultations.

406 4. Treatment objectives.

407 5. Discussion of risks and benefits.

408 6. Treatments.

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409 7. Medications, including date, type, dosage, and quantity
410 prescribed.

411 8. Instructions and agreements.

412 9. Periodic reviews.

413 10. Results of any drug testing.

414 11. A photocopy of the patient's government-issued photo
415 identification.

416 12. If a written prescription for a controlled substance is
417 given to the patient, a duplicate of the prescription.

418 13. The registrant's ~~physician's~~ full name presented in a
419 legible manner.

420 (g) A registrant shall immediately refer patients with
421 signs or symptoms of substance abuse ~~shall be immediately~~
422 ~~referred~~ to a board-certified pain management physician, an
423 addiction medicine specialist, or a mental health addiction
424 facility as it pertains to drug abuse or addiction unless the
425 registrant is a physician who is board-certified or board-
426 eligible in pain management. Throughout the period of time
427 before receiving the consultant's report, a prescribing
428 registrant ~~physician~~ shall clearly and completely document
429 medical justification for continued treatment with controlled
430 substances and those steps taken to ensure medically appropriate
431 use of controlled substances by the patient. Upon receipt of the
432 consultant's written report, the prescribing registrant
433 ~~physician~~ shall incorporate the consultant's recommendations for
434 continuing, modifying, or discontinuing controlled substance
435 therapy. The resulting changes in treatment shall be
436 specifically documented in the patient's medical record.
437 Evidence or behavioral indications of diversion shall be

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438 followed by discontinuation of controlled substance therapy, and
439 the patient shall be discharged, and all results of testing and
440 actions taken by the registrant ~~physician~~ shall be documented in
441 the patient's medical record.

442

443 This subsection does not apply to a board-eligible or board-
444 certified anesthesiologist, physiatrist, rheumatologist, or
445 neurologist, or to a board-certified physician who has surgical
446 privileges at a hospital or ambulatory surgery center and
447 primarily provides surgical services. This subsection does not
448 apply to a board-eligible or board-certified medical specialist
449 who has also completed a fellowship in pain medicine approved by
450 the Accreditation Council for Graduate Medical Education or the
451 American Osteopathic Association, or who is board eligible or
452 board certified in pain medicine by the American Board of Pain
453 Medicine, the American Board of Interventional Pain Physicians,
454 the American Association of Physician Specialists, or a board
455 approved by the American Board of Medical Specialties or the
456 American Osteopathic Association and performs interventional
457 pain procedures of the type routinely billed using surgical
458 codes. This subsection does not apply to a registrant ~~physician~~
459 who prescribes medically necessary controlled substances for a
460 patient during an inpatient stay in a hospital licensed under
461 chapter 395.

462 Section 9. Paragraph (b) of subsection (2) of section
463 458.3265, Florida Statutes, is amended to read:
464 458.3265 Pain-management clinics.—
465 (2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
466 apply to any physician who provides professional services in a

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467 pain-management clinic that is required to be registered in
468 subsection (1).

469 (b) ~~Only a person may not dispense any medication on the~~
470 ~~premises of a registered pain-management clinic unless he or she~~
471 ~~is~~ a physician licensed under this chapter or chapter 459 may
472 dispense medication or prescribe a controlled substance
473 regulated under chapter 893 on the premises of a registered
474 pain-management clinic.

475 Section 10. Paragraph (b) of subsection (2) of section
476 459.0137, Florida Statutes, is amended to read:
477 459.0137 Pain-management clinics.—

478 (2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
479 apply to any osteopathic physician who provides professional
480 services in a pain-management clinic that is required to be
481 registered in subsection (1).

482 (b) ~~Only a person may not dispense any medication on the~~
483 ~~premises of a registered pain-management clinic unless he or she~~
484 ~~is~~ a physician licensed under this chapter or chapter 458 may
485 dispense medication or prescribe a controlled substance
486 regulated under chapter 893 on the premises of a registered
487 pain-management clinic.

488 Section 11. Paragraph (e) of subsection (4) of section
489 458.347, Florida Statutes, is amended, and paragraph (c) of
490 subsection (9) of that section is republished, to read:

491 458.347 Physician assistants.—

492 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

493 (e) A supervisory physician may delegate to a fully
494 licensed physician assistant the authority to prescribe or
495 dispense any medication used in the supervisory physician's

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496 practice unless such medication is listed on the formulary
497 created pursuant to paragraph (f). A fully licensed physician
498 assistant may only prescribe or dispense such medication under
499 the following circumstances:

500 1. A physician assistant must clearly identify to the
501 patient that he or she is a physician assistant. Furthermore,
502 the physician assistant must inform the patient that the patient
503 has the right to see the physician prior to any prescription
504 being prescribed or dispensed by the physician assistant.

505 2. The supervisory physician must notify the department of
506 his or her intent to delegate, on a department-approved form,
507 before delegating such authority and notify the department of
508 any change in prescriptive privileges of the physician
509 assistant. Authority to dispense may be delegated only by a
510 supervising physician who is registered as a dispensing
511 practitioner in compliance with s. 465.0276.

512 3. The physician assistant must file with the department a
513 signed affidavit that he or she has completed a minimum of 10
514 continuing medical education hours in the specialty practice in
515 which the physician assistant has prescriptive privileges with
516 each licensure renewal application. Three of the 10 hours must
517 consist of a continuing education course on the safe and
518 effective prescribing of controlled substance medications which
519 is offered by a statewide professional association of physicians
520 in this state accredited to provide educational activities
521 designated for the American Medical Association Physician's
522 Recognition Award Category 1 credit or designated by the
523 American Academy of Physician Assistants as a Category 1 credit.

524 4. The department may issue a prescriber number to the

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525 physician assistant granting authority for the prescribing of
 526 medicinal drugs authorized within this paragraph upon completion
 527 of the foregoing requirements. The physician assistant shall not
 528 be required to independently register pursuant to s. 465.0276.

529 5. The prescription must be written in a form that complies
 530 with chapter 499 and must contain, in addition to the
 531 supervisory physician's name, address, and telephone number, the
 532 physician assistant's prescriber number. Unless it is a drug or
 533 drug sample dispensed by the physician assistant, the
 534 prescription must be filled in a pharmacy permitted under
 535 chapter 465 and must be dispensed in that pharmacy by a
 536 pharmacist licensed under chapter 465. The appearance of the
 537 prescriber number creates a presumption that the physician
 538 assistant is authorized to prescribe the medicinal drug and the
 539 prescription is valid.

540 6. The physician assistant must note the prescription or
 541 dispensing of medication in the appropriate medical record.

542 (9) COUNCIL ON PHYSICIAN ASSISTANTS.—The Council on
 543 Physician Assistants is created within the department.

544 (c) The council shall:

545 1. Recommend to the department the licensure of physician
 546 assistants.

547 2. Develop all rules regulating the use of physician
 548 assistants by physicians under this chapter and chapter 459,
 549 except for rules relating to the formulary developed under
 550 paragraph (4) (f). The council shall also develop rules to ensure
 551 that the continuity of supervision is maintained in each
 552 practice setting. The boards shall consider adopting a proposed
 553 rule developed by the council at the regularly scheduled meeting

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554 immediately following the submission of the proposed rule by the
 555 council. A proposed rule submitted by the council may not be
 556 adopted by either board unless both boards have accepted and
 557 approved the identical language contained in the proposed rule.
 558 The language of all proposed rules submitted by the council must
 559 be approved by both boards pursuant to each respective board's
 560 guidelines and standards regarding the adoption of proposed
 561 rules. If either board rejects the council's proposed rule, that
 562 board must specify its objection to the council with
 563 particularity and include any recommendations it may have for
 564 the modification of the proposed rule.

565 3. Make recommendations to the boards regarding all matters
 566 relating to physician assistants.

567 4. Address concerns and problems of practicing physician
 568 assistants in order to improve safety in the clinical practices
 569 of licensed physician assistants.

570 Section 12. Effective January 1, 2017, paragraph (f) of
 571 subsection (4) of section 458.347, Florida Statutes, is amended
 572 to read:

573 458.347 Physician assistants.—

574 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

575 (f)1. The council shall establish a formulary of medicinal
 576 drugs that a fully licensed physician assistant having
 577 prescribing authority under this section or s. 459.022 may not
 578 prescribe. The formulary must include ~~controlled substances as~~
 579 ~~defined in chapter 893,~~ general anesthetics, and radiographic
 580 contrast materials, and must limit the prescription of Schedule
 581 II controlled substances as listed in s. 893.03 to a 7-day
 582 supply. The formulary must also restrict the prescribing of

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583 psychiatric mental health controlled substances for children
 584 younger than 18 years of age.

585 2. In establishing the formulary, the council shall consult
 586 with a pharmacist licensed under chapter 465, but not licensed
 587 under this chapter or chapter 459, who shall be selected by the
 588 State Surgeon General.

589 3. Only the council shall add to, delete from, or modify
 590 the formulary. Any person who requests an addition, a deletion,
 591 or a modification of a medicinal drug listed on such formulary
 592 has the burden of proof to show cause why such addition,
 593 deletion, or modification should be made.

594 4. The boards shall adopt the formulary required by this
 595 paragraph, and each addition, deletion, or modification to the
 596 formulary, by rule. Notwithstanding any provision of chapter 120
 597 to the contrary, the formulary rule shall be effective 60 days
 598 after the date it is filed with the Secretary of State. Upon
 599 adoption of the formulary, the department shall mail a copy of
 600 such formulary to each fully licensed physician assistant having
 601 prescribing authority under this section or s. 459.022, and to
 602 each pharmacy licensed by the state. The boards shall establish,
 603 by rule, a fee not to exceed \$200 to fund the provisions of this
 604 paragraph and paragraph (e).

605 Section 13. Subsection (2) of section 464.003, Florida
 606 Statutes, is amended to read:

607 464.003 Definitions.—As used in this part, the term:

608 (2) "Advanced or specialized nursing practice" means, in
 609 addition to the practice of professional nursing, the
 610 performance of advanced-level nursing acts approved by the board
 611 which, by virtue of postbasic specialized education, training,

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612 and experience, are appropriately performed by an advanced
 613 registered nurse practitioner. Within the context of advanced or
 614 specialized nursing practice, the advanced registered nurse
 615 practitioner may perform acts of nursing diagnosis and nursing
 616 treatment of alterations of the health status. The advanced
 617 registered nurse practitioner may also perform acts of medical
 618 diagnosis and treatment, prescription, and operation as
 619 authorized within the framework of an established supervisory
 620 protocol ~~which are identified and approved by a joint committee~~
 621 ~~composed of three members appointed by the Board of Nursing, two~~
 622 ~~of whom must be advanced registered nurse practitioners; three~~
 623 ~~members appointed by the Board of Medicine, two of whom must~~
 624 ~~have had work experience with advanced registered nurse~~
 625 ~~practitioners; and the State Surgeon General or the State~~
 626 ~~Surgeon General's designee. Each committee member appointed by a~~
 627 ~~board shall be appointed to a term of 4 years unless a shorter~~
 628 ~~term is required to establish or maintain staggered terms. The~~
 629 ~~Board of Nursing shall adopt rules authorizing the performance~~
 630 ~~of any such acts approved by the joint committee. Unless~~
 631 ~~otherwise specified by the joint committee, such acts must be~~
 632 ~~performed under the general supervision of a practitioner~~
 633 ~~licensed under chapter 458, chapter 459, or chapter 466 within~~
 634 ~~the framework of standing protocols which identify the medical~~
 635 ~~acts to be performed and the conditions for their performance.~~
 636 The department may, by rule, require that a copy of the protocol
 637 be filed with the department along with the notice required by
 638 s. 458.348.

639 Section 14. Section 464.012, Florida Statutes, is amended
 640 to read:

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641 464.012 Certification of advanced registered nurse
642 practitioners; fees; controlled substance prescribing.-

643 (1) Any nurse desiring to be certified as an advanced
644 registered nurse practitioner shall apply to the department and
645 submit proof that he or she holds a current license to practice
646 professional nursing and that he or she meets one or more of the
647 following requirements as determined by the board:

648 (a) Satisfactory completion of a formal postbasic
649 educational program of at least one academic year, the primary
650 purpose of which is to prepare nurses for advanced or
651 specialized practice.

652 (b) Certification by an appropriate specialty board. Such
653 certification shall be required for initial state certification
654 and any recertification as a registered nurse anesthetist or
655 nurse midwife. The board may by rule provide for provisional
656 state certification of graduate nurse anesthetists and nurse
657 midwives for a period of time determined to be appropriate for
658 preparing for and passing the national certification
659 examination.

660 (c) Graduation from a program leading to a master's degree
661 in a nursing clinical specialty area with preparation in
662 specialized practitioner skills. For applicants graduating on or
663 after October 1, 1998, graduation from a master's degree program
664 shall be required for initial certification as a nurse
665 practitioner under paragraph (4) (c). For applicants graduating
666 on or after October 1, 2001, graduation from a master's degree
667 program shall be required for initial certification as a
668 registered nurse anesthetist under paragraph (4) (a).

669 (2) The board shall provide by rule the appropriate

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670 requirements for advanced registered nurse practitioners in the
671 categories of certified registered nurse anesthetist, certified
672 nurse midwife, and nurse practitioner.

673 (3) An advanced registered nurse practitioner shall perform
674 those functions authorized in this section within the framework
675 of an established protocol that is filed with the board upon
676 biennial license renewal and within 30 days after entering into
677 a supervisory relationship with a physician or changes to the
678 protocol. The board shall review the protocol to ensure
679 compliance with applicable regulatory standards for protocols.
680 The board shall refer to the department licensees submitting
681 protocols that are not compliant with the regulatory standards
682 for protocols. A practitioner currently licensed under chapter
683 458, chapter 459, or chapter 466 shall maintain supervision for
684 directing the specific course of medical treatment. Within the
685 established framework, an advanced registered nurse practitioner
686 may:

687 (a) Monitor and alter drug therapies.

688 (b) Initiate appropriate therapies for certain conditions.

689 (c) Perform additional functions as may be determined by
690 rule in accordance with s. 464.003(2).

691 (d) Order diagnostic tests and physical and occupational
692 therapy.

693 (4) In addition to the general functions specified in
694 subsection (3), an advanced registered nurse practitioner may
695 perform the following acts within his or her specialty:

696 (a) The certified registered nurse anesthetist may, to the
697 extent authorized by established protocol approved by the
698 medical staff of the facility in which the anesthetic service is

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699 performed, perform any or all of the following:

700 1. Determine the health status of the patient as it relates
701 to the risk factors and to the anesthetic management of the
702 patient through the performance of the general functions.

703 2. Based on history, physical assessment, and supplemental
704 laboratory results, determine, with the consent of the
705 responsible physician, the appropriate type of anesthesia within
706 the framework of the protocol.

707 3. Order under the protocol preanesthetic medication.

708 4. Perform under the protocol procedures commonly used to
709 render the patient insensible to pain during the performance of
710 surgical, obstetrical, therapeutic, or diagnostic clinical
711 procedures. These procedures include ordering and administering
712 regional, spinal, and general anesthesia; inhalation agents and
713 techniques; intravenous agents and techniques; and techniques of
714 hypnosis.

715 5. Order or perform monitoring procedures indicated as
716 pertinent to the anesthetic health care management of the
717 patient.

718 6. Support life functions during anesthesia health care,
719 including induction and intubation procedures, the use of
720 appropriate mechanical supportive devices, and the management of
721 fluid, electrolyte, and blood component balances.

722 7. Recognize and take appropriate corrective action for
723 abnormal patient responses to anesthesia, adjunctive medication,
724 or other forms of therapy.

725 8. Recognize and treat a cardiac arrhythmia while the
726 patient is under anesthetic care.

727 9. Participate in management of the patient while in the

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728 postanesthesia recovery area, including ordering the
729 administration of fluids and drugs.

730 10. Place special peripheral and central venous and
731 arterial lines for blood sampling and monitoring as appropriate.

732 (b) The certified nurse midwife may, to the extent
733 authorized by an established protocol which has been approved by
734 the medical staff of the health care facility in which the
735 midwifery services are performed, or approved by the nurse
736 midwife's physician backup when the delivery is performed in a
737 patient's home, perform any or all of the following:

738 1. Perform superficial minor surgical procedures.

739 2. Manage the patient during labor and delivery to include
740 amniotomy, episiotomy, and repair.

741 3. Order, initiate, and perform appropriate anesthetic
742 procedures.

743 4. Perform postpartum examination.

744 5. Order appropriate medications.

745 6. Provide family-planning services and well-woman care.

746 7. Manage the medical care of the normal obstetrical
747 patient and the initial care of a newborn patient.

748 (c) The nurse practitioner may perform any or all of the
749 following acts within the framework of established protocol:

750 1. Manage selected medical problems.

751 2. Order physical and occupational therapy.

752 3. Initiate, monitor, or alter therapies for certain
753 uncomplicated acute illnesses.

754 4. Monitor and manage patients with stable chronic
755 diseases.

756 5. Establish behavioral problems and diagnosis and make

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757 treatment recommendations.

758 (5) The board shall certify, and the department shall issue
759 a certificate to, any nurse meeting the qualifications in this
760 section. The board shall establish an application fee not to
761 exceed \$100 and a biennial renewal fee not to exceed \$50. The
762 board is authorized to adopt such other rules as are necessary
763 to implement the provisions of this section.

764 (6) (a) The board shall establish a committee to recommend a
765 formulary of controlled substances that an advanced registered
766 nurse practitioner may not prescribe or may prescribe only for
767 specific uses or in limited quantities. The committee must
768 consist of three advanced registered nurse practitioners
769 licensed under this section, recommended by the board; three
770 physicians licensed under chapter 458 or chapter 459 who have
771 work experience with advanced registered nurse practitioners,
772 recommended by the Board of Medicine; and a pharmacist licensed
773 under chapter 465 who is a doctor of pharmacy, recommended by
774 the Board of Pharmacy. The committee may recommend an evidence-
775 based formulary applicable to all advanced registered nurse
776 practitioners which is limited by specialty certification, is
777 limited to approved uses of controlled substances, or is subject
778 to other similar restrictions the committee finds are necessary
779 to protect the health, safety, and welfare of the public. The
780 formulary must restrict the prescribing of psychiatric mental
781 health controlled substances for children younger than 18 years
782 of age to advanced registered nurse practitioners who also are
783 psychiatric nurses as defined in s. 394.455. The formulary must
784 also limit the prescribing of Schedule II controlled substances
785 as listed in s. 893.03 to a 7-day supply, except that such

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786 restriction does not apply to controlled substances that are
787 psychiatric medications prescribed by psychiatric nurses as
788 defined in s. 394.455.

789 (b) The board shall adopt by rule the recommended formulary
790 and any revision to the formulary which it finds is supported by
791 evidence-based clinical findings presented by the Board of
792 Medicine, the Board of Osteopathic Medicine, or the Board of
793 Dentistry.

794 (c) The formulary required under this subsection does not
795 apply to a controlled substance that is dispensed for
796 administration pursuant to an order, including an order for
797 medication authorized by subparagraph (4) (a) 3., subparagraph
798 (4) (a) 4., or subparagraph (4) (a) 9.

799 (d) The board shall adopt the committee's initial
800 recommendation no later than October 31, 2016.

801 Section 15. Effective January 1, 2017, subsection (3) of
802 section 464.012, Florida Statutes, as amended by this act, is
803 amended to read:

804 464.012 Certification of advanced registered nurse
805 practitioners; fees; controlled substance prescribing.—

806 (3) An advanced registered nurse practitioner shall perform
807 those functions authorized in this section within the framework
808 of an established protocol that is filed with the board upon
809 biennial license renewal and within 30 days after entering into
810 a supervisory relationship with a physician or changes to the
811 protocol. The board shall review the protocol to ensure
812 compliance with applicable regulatory standards for protocols.
813 The board shall refer to the department licensees submitting
814 protocols that are not compliant with the regulatory standards

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815 for protocols. A practitioner currently licensed under chapter
816 458, chapter 459, or chapter 466 shall maintain supervision for
817 directing the specific course of medical treatment. Within the
818 established framework, an advanced registered nurse practitioner
819 may:

820 (a) Prescribe, dispense, administer, or order any drug;
821 however, an advanced registered nurse practitioner may prescribe
822 or dispense a controlled substance as defined in s. 893.03 only
823 if the advanced registered nurse practitioner has graduated from
824 a program leading to a master's or doctoral degree in a clinical
825 nursing specialty area with training in specialized practitioner
826 skills Monitor and alter drug therapies.

827 (b) Initiate appropriate therapies for certain conditions.

828 (c) Perform additional functions as may be determined by
829 rule in accordance with s. 464.003(2).

830 (d) Order diagnostic tests and physical and occupational
831 therapy.

832 Section 16. Subsection (3) of section 464.013, Florida
833 Statutes, is amended to read:

834 464.013 Renewal of license or certificate.—

835 (3) The board shall by rule prescribe up to 30 hours of
836 continuing education biennially as a condition for renewal of a
837 license or certificate.

838 (a) A nurse who is certified by a health care specialty
839 program accredited by the National Commission for Certifying
840 Agencies or the Accreditation Board for Specialty Nursing
841 Certification is exempt from continuing education requirements.
842 The criteria for programs ~~must shall~~ be approved by the board.

843 (b) Notwithstanding the exemption in paragraph (a), as part

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844 of the maximum 30 hours of continuing education hours required
845 under this subsection, advanced registered nurse practitioners
846 certified under s. 464.012 must complete at least 3 hours of
847 continuing education on the safe and effective prescription of
848 controlled substances. Such continuing education courses must be
849 offered by a statewide professional association of physicians in
850 this state accredited to provide educational activities
851 designated for the American Medical Association Physician's
852 Recognition Award Category 1 credit, the American Nurses
853 Credentialing Center, the American Association of Nurse
854 Anesthetists, or the American Association of Nurse Practitioners
855 and may be offered in a distance learning format.

856 Section 17. Paragraph (p) is added to subsection (1) of
857 section 464.018, Florida Statutes, and subsection (2) of that
858 section is republished, to read:

859 464.018 Disciplinary actions.—

860 (1) The following acts constitute grounds for denial of a
861 license or disciplinary action, as specified in s. 456.072(2):

862 (p) For an advanced registered nurse practitioner:

863 1. Presigning blank prescription forms.

864 2. Prescribing for office use any medicinal drug appearing
865 on Schedule II in chapter 893.

866 3. Prescribing, ordering, dispensing, administering,
867 supplying, selling, or giving a drug that is an amphetamine, a
868 sympathomimetic amine drug, or a compound designated in s.
869 893.03(2) as a Schedule II controlled substance, to or for any
870 person except for:

871 a. The treatment of narcolepsy; hyperkinesis; behavioral
872 syndrome in children characterized by the developmentally

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873 inappropriate symptoms of moderate to severe distractibility,
 874 short attention span, hyperactivity, emotional lability, and
 875 impulsivity; or drug-induced brain dysfunction.
 876 b. The differential diagnostic psychiatric evaluation of
 877 depression or the treatment of depression shown to be refractory
 878 to other therapeutic modalities.
 879 c. The clinical investigation of the effects of such drugs
 880 or compounds when an investigative protocol is submitted to,
 881 reviewed by, and approved by the department before such
 882 investigation is begun.
 883 4. Prescribing, ordering, dispensing, administering,
 884 supplying, selling, or giving growth hormones, testosterone or
 885 its analogs, human chorionic gonadotropin (HCG), or other
 886 hormones for the purpose of muscle building or to enhance
 887 athletic performance. As used in this subparagraph, the term
 888 "muscle building" does not include the treatment of injured
 889 muscle. A prescription written for the drug products identified
 890 in this subparagraph may be dispensed by a pharmacist with the
 891 presumption that the prescription is for legitimate medical use.
 892 5. Promoting or advertising on any prescription form a
 893 community pharmacy unless the form also states: "This
 894 prescription may be filled at any pharmacy of your choice."
 895 6. Prescribing, dispensing, administering, mixing, or
 896 otherwise preparing a legend drug, including a controlled
 897 substance, other than in the course of his or her professional
 898 practice. For the purposes of this subparagraph, it is legally
 899 presumed that prescribing, dispensing, administering, mixing, or
 900 otherwise preparing legend drugs, including all controlled
 901 substances, inappropriately or in excessive or inappropriate

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902 quantities is not in the best interest of the patient and is not
 903 in the course of the advanced registered nurse practitioner's
 904 professional practice, without regard to his or her intent.
 905 7. Prescribing, dispensing, or administering a medicinal
 906 drug appearing on any schedule set forth in chapter 893 to
 907 himself or herself, except a drug prescribed, dispensed, or
 908 administered to the advanced registered nurse practitioner by
 909 another practitioner authorized to prescribe, dispense, or
 910 administer medicinal drugs.
 911 8. Prescribing, ordering, dispensing, administering,
 912 supplying, selling, or giving amygdalin (laetrile) to any
 913 person.
 914 9. Dispensing a substance designated in s. 893.03(2) or (3)
 915 as a substance controlled in Schedule II or Schedule III,
 916 respectively, in violation of s. 465.0276.
 917 10. Promoting or advertising through any communication
 918 medium the use, sale, or dispensing of a substance designated in
 919 s. 893.03 as a controlled substance.
 920 (2) The board may enter an order denying licensure or
 921 imposing any of the penalties in s. 456.072(2) against any
 922 applicant for licensure or licensee who is found guilty of
 923 violating any provision of subsection (1) of this section or who
 924 is found guilty of violating any provision of s. 456.072(1).
 925 Section 18. Section 627.42392, Florida Statutes, is created
 926 to read:
 927 627.42392 Prior authorization.—
 928 (1) As used in this section, the term "health insurer"
 929 means an authorized insurer offering health insurance as defined
 930 in s. 624.603, a managed care plan as defined in s. 409.962(9),

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931 or a health maintenance organization as defined in s.
 932 641.19(12).

933 (2) Notwithstanding any other provision of law, in order to
 934 establish uniformity in the submission of prior authorization
 935 forms on or after January 1, 2017, a health insurer, or a
 936 pharmacy benefits manager on behalf of the health insurer, which
 937 does not use an electronic prior authorization form for its
 938 contracted providers shall use only the prior authorization form
 939 that has been approved by the Financial Services Commission in
 940 consultation with the Agency for Health Care Administration to
 941 obtain a prior authorization for a medical procedure, course of
 942 treatment, or prescription drug benefit. Such form may not
 943 exceed two pages in length, excluding any instructions or
 944 guiding documentation.

945 (3) The Financial Services Commission in consultation with
 946 the Agency for Health Care Administration shall adopt by rule
 947 guidelines for all prior authorization forms which ensure the
 948 general uniformity of such forms.

949 Section 19. Subsection (11) of section 627.6131, Florida
 950 Statutes, is amended to read:

951 627.6131 Payment of claims.—

952 (11) A health insurer may not retroactively deny a claim
 953 because of insured ineligibility:

954 (a) At any time, if the health insurer verified the
 955 eligibility of an insured at the time of treatment and provided
 956 an authorization number.

957 (b) More than 1 year after the date of payment of the
 958 claim.

959 Section 20. Subsection (10) of section 641.3155, Florida

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960 Statutes, is amended to read:

961 641.3155 Prompt payment of claims.—

962 (10) A health maintenance organization may not
 963 retroactively deny a claim because of subscriber ineligibility:

964 (a) At any time, if the health maintenance organization
 965 verified the eligibility of an insured at the time of treatment
 966 and provided an authorization number.

967 (b) More than 1 year after the date of payment of the
 968 claim.

969 Section 21. Subsection (21) of section 893.02, Florida
 970 Statutes, is amended to read:

971 893.02 Definitions.—The following words and phrases as used
 972 in this chapter shall have the following meanings, unless the
 973 context otherwise requires:

974 (21) "Practitioner" means a physician licensed under
 975 ~~pursuant to~~ chapter 458, a dentist licensed under ~~pursuant to~~
 976 chapter 466, a veterinarian licensed under ~~pursuant to~~ chapter
 977 474, an osteopathic physician licensed under ~~pursuant to~~ chapter
 978 459, an advanced registered nurse practitioner certified under
 979 chapter 464, a naturopath licensed under ~~pursuant to~~ chapter
 980 462, a certified optometrist licensed under ~~pursuant to~~ chapter
 981 463, ~~or~~ a podiatric physician licensed under ~~pursuant to~~ chapter
 982 461, or a physician assistant licensed under chapter 458 or
 983 chapter 459, provided such practitioner holds a valid federal
 984 controlled substance registry number.

985 Section 22. Paragraph (n) of subsection (1) of section
 986 948.03, Florida Statutes, is amended to read:

987 948.03 Terms and conditions of probation.—

988 (1) The court shall determine the terms and conditions of

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989 probation. Conditions specified in this section do not require
 990 oral pronouncement at the time of sentencing and may be
 991 considered standard conditions of probation. These conditions
 992 may include among them the following, that the probationer or
 993 offender in community control shall:

994 (n) Be prohibited from using intoxicants to excess or
 995 possessing any drugs or narcotics unless prescribed by a
 996 physician, an advanced registered nurse practitioner, or a
 997 physician assistant. The probationer or community controllee may
 998 ~~shall~~ not knowingly visit places where intoxicants, drugs, or
 999 other dangerous substances are unlawfully sold, dispensed, or
 1000 used.

1001 Section 23. Paragraph (a) of subsection (1) and subsection
 1002 (2) of section 458.348, Florida Statutes, are amended to read:

1003 458.348 Formal supervisory relationships, standing orders,
 1004 and established protocols; notice; standards.—

1005 (1) NOTICE.—

1006 (a) When a physician enters into a formal supervisory
 1007 relationship or standing orders with an emergency medical
 1008 technician or paramedic licensed pursuant to s. 401.27, which
 1009 relationship or orders contemplate the performance of medical
 1010 acts, or when a physician enters into an established protocol
 1011 with an advanced registered nurse practitioner, which protocol
 1012 contemplates the performance of medical ~~acts identified and~~
 1013 ~~approved by the joint committee pursuant to s. 464.003(2) or~~
 1014 acts set forth in s. 464.012(3) and (4), the physician shall
 1015 submit notice to the board. The notice shall contain a statement
 1016 in substantially the following form:

1017

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1018 I, ...(name and professional license number of
 1019 physician)..., of ...(address of physician)... have hereby
 1020 entered into a formal supervisory relationship, standing orders,
 1021 or an established protocol with ...(number of persons)...
 1022 emergency medical technician(s), ...(number of persons)...
 1023 paramedic(s), or ...(number of persons)... advanced registered
 1024 nurse practitioner(s).

1025

1026 (2) ESTABLISHMENT OF STANDARDS BY JOINT COMMITTEE.—The
 1027 joint committee ~~created under s. 464.003(2)~~ shall determine
 1028 minimum standards for the content of established protocols
 1029 pursuant to which an advanced registered nurse practitioner may
 1030 perform medical acts ~~identified and approved by the joint~~
 1031 ~~committee pursuant to s. 464.003(2)~~ or acts set forth in s.
 1032 464.012(3) and (4) and shall determine minimum standards for
 1033 supervision of such acts by the physician, unless the joint
 1034 committee determines that any act set forth in s. 464.012(3) or
 1035 (4) is not a medical act. Such standards shall be based on risk
 1036 to the patient and acceptable standards of medical care and
 1037 shall take into account the special problems of medically
 1038 underserved areas. The standards developed by the joint
 1039 committee shall be adopted as rules by the Board of Nursing and
 1040 the Board of Medicine for purposes of carrying out their
 1041 responsibilities pursuant to part I of chapter 464 and this
 1042 chapter, respectively, but neither board shall have disciplinary
 1043 powers over the licensees of the other board.

1044

1045 Section 24. Paragraph (a) of subsection (1) of section
 1046 459.025, Florida Statutes, is amended to read:

1046

459.025 Formal supervisory relationships, standing orders,

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1047 and established protocols; notice; standards.-

1048 (1) NOTICE.-

1049 (a) When an osteopathic physician enters into a formal
1050 supervisory relationship or standing orders with an emergency
1051 medical technician or paramedic licensed pursuant to s. 401.27,
1052 which relationship or orders contemplate the performance of
1053 medical acts, or when an osteopathic physician enters into an
1054 established protocol with an advanced registered nurse
1055 practitioner, which protocol contemplates the performance of
1056 medical acts ~~identified and approved by the joint committee~~
1057 ~~pursuant to s. 464.003(2)~~ or acts set forth in s. 464.012(3) and
1058 (4), the osteopathic physician shall submit notice to the board.
1059 The notice must contain a statement in substantially the
1060 following form:

1061

1062 I, ... (name and professional license number of osteopathic
1063 physician)..., of ... (address of osteopathic physician)... have
1064 hereby entered into a formal supervisory relationship, standing
1065 orders, or an established protocol with ... (number of
1066 persons)... emergency medical technician(s), ... (number of
1067 persons)... paramedic(s), or ... (number of persons)... advanced
1068 registered nurse practitioner(s).

1069 Section 25. Subsection (10) of s. 458.331, paragraph (g) of
1070 subsection (7) of s. 458.347, subsection (10) of s. 459.015,
1071 paragraph (f) of subsection (7) of s. 459.022, and paragraph (b)
1072 of subsection (5) of s. 465.0158, Florida Statutes, are
1073 reenacted for the purpose of incorporating the amendment made by
1074 this act to s. 456.072, Florida Statutes, in references thereto.

1075 Section 26. Paragraph (mm) of subsection (1) of s. 456.072

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1076 and s. 466.02751, Florida Statutes, are reenacted for the
1077 purpose of incorporating the amendment made by this act to s.
1078 456.44, Florida Statutes, in references thereto.

1079 Section 27. Section 458.303, paragraph (b) of subsection
1080 (7) of s. 458.3475, paragraph (e) of subsection (4) and
1081 paragraph (c) of subsection (9) of s. 459.022, and paragraph (b)
1082 of subsection (7) of s. 459.023, Florida Statutes, are reenacted
1083 for the purpose of incorporating the amendment made by this act
1084 to s. 458.347, Florida Statutes, in references thereto.

1085 Section 28. Paragraph (c) of subsection (3) of s. 464.012,
1086 Florida Statutes, is reenacted for the purpose of incorporating
1087 the amendment made by this act to s. 464.003, Florida Statutes,
1088 in a reference thereto.

1089 Section 29. Paragraph (a) of subsection (1) of s. 456.041,
1090 subsections (1) and (2) of s. 458.348, and subsection (1) of s.
1091 459.025, Florida Statutes, are reenacted for the purpose of
1092 incorporating the amendment made by this act to s. 464.012,
1093 Florida Statutes, in references thereto.

1094 Section 30. Subsection (7) of s. 464.0205, Florida
1095 Statutes, is reenacted for the purpose of incorporating the
1096 amendment made by this act to s. 464.013, Florida Statutes, in a
1097 reference thereto.

1098 Section 31. Subsection (11) of s. 320.0848, subsection (2)
1099 of s. 464.008, subsection (5) of s. 464.009, and paragraph (b)
1100 of subsection (1), subsection (3), and paragraph (b) of
1101 subsection (4) of s. 464.0205, Florida Statutes, are reenacted
1102 for the purpose of incorporating the amendment made by this act
1103 to s. 464.018, Florida Statutes, in references thereto.

1104 Section 32. Section 775.051, Florida Statutes, is reenacted

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1105 for the purpose of incorporating the amendment made by this act
1106 to s. 893.02, Florida Statutes, in a reference thereto.

1107 Section 33. Paragraph (a) of subsection (3) of s. 944.17,
1108 subsection (8) of s. 948.001, and paragraph (e) of subsection
1109 (1) of s. 948.101, Florida Statutes, are reenacted for the
1110 purpose of incorporating the amendment made by this act to s.
1111 948.03, Florida Statutes, in references thereto.

1112 Section 34. Except as otherwise expressly provided in this
1113 act, this act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 27, 2016

I respectfully request that **Senate Bill #676**, relating to Access to Health Care Services, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

676

Bill Number (if applicable)

243646

Amendment Barcode (if applicable)

Topic Amendment to Name the Act

Name Jon Johnson

Job Title Consultant

Address 337 East Park Ave

Phone 224-1900

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

676

Bill Number (if applicable)

243646

Amendment Barcode (if applicable)

Topic ARNP + PA Prescribing

Name ALLISON CARVAJAL

Job Title Consultant

Address 120 S. MONROE ST.

Phone 727-7087

Street

TALLAHASSEE

City

FL

State

32303

Zip

Email allison@kambaconsulting.com

Speaking: For Against Information

Amendment
 Waive Speaking In Support Against
(The Chair will read this information into the record.)

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

676

Bill Number (if applicable)

273446

Amendment Barcode (if applicable)

Topic ARNP & PA Prescribing

Name Martha De Castro

Job Title VP for Nursing

Address 306 E. College Ave

Street

Phone 850-222-9800

Tallah
City

FL
State

32301
Zip

Email Martha@fha.org

Speaking: For Against Information

Waive Speaking: ^(Amendment) In Support Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

676

Bill Number (if applicable)

Topic Nurse Practitioner / PA Prescribing

Amendment Barcode (if applicable)

Name Barbara Lympton

Job Title CONSULTANT

Address 468 Green Spring Cr

Phone 407 227 7705

Street

Winton Springs

City

FL

State

32708

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Baptist Health South Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

676

Bill Number (if applicable)

Topic ARNP + PA Prescribing

Amendment Barcode (if applicable)

Name ALLISON CARVAJAL

Job Title CONSULTANT

Address 120 S. MONROE ST.

Phone 727-7087

Street

TALLAHASSEE

City

FL.

State

32303

Zip

Email allison@rambaconsulting.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

676

Bill Number (if applicable)

Topic ARNP + PA Prescribing

Amendment Barcode (if applicable)

Name Martha De Castro

Job Title VP for Nursing

Address 306 E. College Avenue

Phone 850-222-9800

Street

Tallahassee FL 32301

City

State

Zip

Email martha@fha.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2016

Meeting Date

SB 676

Bill Number (if applicable)

Topic HEALTH CARE

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLURSTONE PINES DRIVE

Phone 878-7364

Street

JALAHASSEE

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

SB 676

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
Street

Phone 850 251-2435

City

State

Zip

Email j.scott@flmedical.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

676

Bill Number (if applicable)

Topic ARNP/PA prescribing

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Mundon Way

Phone 850 567 1202

Tallahassee FL 32309

Email Watson.strategies@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against

Representing Florida CHAIN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

676
Bill Number (if applicable)

Topic ARNP/PA/Healthcare

Amendment Barcode (if applicable)

Name Melody Arnold

Job Title Govt Affairs Manager

Address 307 West Park Ave
Street

Phone 850 224 3907

JLH FL 32301
City State Zip

Email marrold@shca.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Healthcare Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

876
Bill Number (if applicable)

Topic Access to Health Care Services

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title consultant

Address 101 E. College Ave

Phone 813-624-5117

Street

Jalisco

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Assoc. of Nurse Practitioners

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

676
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Susan Salahshor

Job Title Lead PA Abdominal Transplant representing Florida Academy of PAs

Address 175 Queen Victoria Ave

Phone 904 710 9078

St Johns FL 32259
City State Zip

Email pasu@cares@umcjax.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/13/16
Meeting Date

Bill Number (if applicable)

Topic Quality Health Care Services

Amendment Barcode (if applicable)

Name Pat Nixon

Job Title Lobbyist

Address 19 E. Park Ave
Street

Phone 766-5795

Tallahassee FL 32301
City State Zip

Email patnixon@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Academy of Physician Assistants

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: PCS/CS/SB 684 (434300)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senators Gaetz and Stargel

SUBJECT: Choice in Sports

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bailey</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 684 revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;
- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.¹ The FHSAA is not a state agency, but is assigned quasi-governmental functions.²

Student Eligibility

To be eligible for participation in interscholastic³ extracurricular activities,⁴ a student must meet certain academic and conduct requirements.⁵ Each student must meet the other requirements for participation established by the district school board.⁶ The FHSAA is required to adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools.⁷

The FHSAA bylaws governing residence allow students to be eligible to participate in high school athletic competitions in the schools in which he or she:⁸

- First enrolls each school year; or
- Makes himself or herself a candidate for an athletic team by engaging in practice before enrolling.⁹

The FHSAA bylaws governing student transfers:¹⁰

- Allow a student to be eligible in the school to which the student transferred during the school year if the transfer was made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport.¹¹
- Require transfers to be allowed pursuant to the district school board policies in the case of transfer to a public school, or pursuant to the private school policies in the case of transfer to

¹ Section 1006.20, F.S.

² *Id.*

³ The FHSAA defines an “interscholastic contest” as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA, and is subject to all regulations pertaining to such contests. Bylaw 8.1.1, FHSAA.

⁴ “Extracurricular” means any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

⁵ Section 1006.15(3)(a), F.S.

⁶ Section 1006.15(4), F.S.

⁷ Section 1006.20(2)(a), F.S.

⁸ Section 1006.20(2)(a), F.S.

⁹ Section 1002.20(17), F.S.

¹⁰ Section 1006.20(2), F.S.

¹¹ Section 1006.20(2)(a), F.S.

a private school. The student shall remain eligible in that school so long as he or she is enrolled in that school.¹²

- Allow a student who transfers from a home education program, charter school, or from the Florida Virtual School full-time program to a public school before or during the first grading period of the school year to be academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student had a successful evaluation from the previous year.¹³
- Provide that requirements governing eligibility and transfer between member schools be applied similarly to public school students and private school students.¹⁴

The FHSAA, in cooperation with each district school board, facilitates a program for middle or high school students who attend a private school to be eligible to participate in an interscholastic or intrascholastic sport at a public high school, for which the student is zoned, if the private school is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program.¹⁵

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,¹⁶ may become a member of the FHSAA and participate in FHSAA activities.¹⁷ A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.¹⁸ Membership in the FHSAA is not mandatory for any school.¹⁹

The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization.²⁰ The FHSAA is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.²¹ The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them are governed, unless otherwise specified in statute.²² The FHSAA member schools may only engage in interscholastic contests with schools which are members of the FHSAA or with non-member schools that meet specific requirements designated in the FHSAA bylaws.²³

¹² *Id.*

¹³ Section 1006.15(3)(c)6.- (d)6 and (f), F.S.

¹⁴ Section 1006.20(2), F.S.

¹⁵ Section 1006.15(8), F.S.

¹⁶ A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws (2015-16)*, available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

¹⁷ Section 1006.20, F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at (1)

²² *Id.*

²³ Bylaw 8.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws (2015-16)*, available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

Recruitment of Student Athletes

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes.²⁴ Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes.²⁵ “Athletic recruiting” is defined by the FHSAA as any effort by a school employee, athletic department staff member or representative of a school’s athletic interests to pressure, urge, or entice a student to attend that school for the purpose of participating in interscholastic athletics.²⁶ The FHSAA sets forth specific behaviors that constitute recruiting, as well as identifying persons who are considered to represent a school’s athletic interests.²⁷

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle.²⁸

In addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representatives, the following penalties may be imposed against a school for recruiting violations:²⁹

- Public reprimand;
- Financial penalty of a minimum of \$2,500;
- Probation for one or more years;
- Prohibition against participating in certain interscholastic competitions;
- Prohibition against participating in any interscholastic competition for one or more years in the sport(s) in which the violation(s) occurred;
- Restricted membership for one or more years during which time some or all of the school’s membership privileges may be restricted or denied; and
- Expulsion from membership in the FHSAA for one or more years.

The FHSAA must adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA’s bylaws and policies.³⁰ The bylaws prescribe penalties and an appeals process for athletic recruiting violations.³¹

²⁴ Section 1006.20(2)(b), F.S.

²⁵ The FHSAA defines recruiting as the use of undue influence or special inducement by anyone associated with the school in an attempt to encourage a prospective student to attend or remain at that school for the purpose of participating in interscholastic athletics. Bylaw 6.3, FHSAA.

²⁶ Policy 36.2.1, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf.

²⁷ Policy 36, FHSAA.

²⁸ Section 1006.20(2)(b), F.S.

²⁹ Policy 36.5, FHSAA; Bylaw 10.1.2, FHSAA.

³⁰ Section 1006.20(2)(f), F.S. Major violations include, but are not limited to: knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest; or committing a violation of the FHSAA’s recruiting or sportsmanship policies.

³¹ *Id.*

The FHSAA must adopt bylaws for the process and standards for FHSAA student eligibility determinations.³² The bylaws must provide that student ineligibility must be established by clear and convincing evidence.³³

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.³⁴ School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.³⁵ The district school board must adopt by rule and post on the district website a controlled open enrollment plan.³⁶ The controlled open enrollment plan must:³⁷

- Adhere to federal desegregation requirements;
- Require an application process to participate in the controlled open enrollment program that allows parents to declare school preferences and includes placements of siblings within the same school;
- Use a lottery procedure to determine student assignment and establish an appeal process for hardship cases;
- Afford students in multiple session schools preferred access;
- Maintain socioeconomic, demographic, and racial balance; and
- Address the availability of transportation.

District school boards must annually report the number of students attending the various types of public schools of choice in the district.³⁸

III. Effect of Proposed Changes:

This bill revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;

³² Section 1006(2)(g), F.S.

³³ Section 1006.20(2)(g), F.S. Bylaw 4.6.2.3, FHSAA. The FHSAA defines clear and convincing evidence as the evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. Bylaw 1.4.33, FHSAA.

³⁴ Section 1002.31, F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 1002.31(3), F.S.

³⁸ Section 1002.31(4), F.S.

- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

Florida High School Athletics

Student Eligibility

The bill revises student eligibility requirements by:

- Prohibiting a school district from delaying eligibility or otherwise preventing a student participating in controlled open enrollment or a school choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities;
- Defining “eligible to participate” to include, but not be limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests, and does not require a student to be placed on any specific team for interscholastic or intrascholastic extracurricular activities; and
- Allowing a student who transfers during the school year to join an existing team if the activity roster has not reached maximum size and if the coach determines the student has the required skill and ability to participate.

Additionally, the bill increases student eligibility options by:

- Prohibiting the FHSAA and school district from declaring a transfer student ineligible due to the student’s inopportunity to comply with qualifying requirements;
- Enabling a private school student the option to participate at the public school zoned for the physical address, regardless of whether or not the school offers an interscholastic or intrascholastic athletic program; and
- Changing level of proof in an eligibility determination from “clear and convincing evidence” to “a preponderance of evidence.”³⁹

Membership in the FHSAA

The bill requires the FHSAA to allow a private school to join the FHSAA on a full-time or a per-sport basis. This offers a private school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports. In addition, the bill

³⁹ Preponderance of evidence is defined to mean the evidence which is at the greater weight or more convincing than the evidence which is offered in opposition to it. Black, Henry Campbell. A Dictionary of Law: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern ... New York, NY: Lawbook Exchange, 1991.

prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association.

The bill authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association.

Recruitment of Student Athletes

The bill establishes escalating penalties for the recruitment of student athletes. Specifically, the bill enhances current recruitment penalties found in the FHSAA bylaws by adding stringent penalties for the recruitment of a student athlete by a school district employee or contractor. The bill requires the following penalties:

- First offense is a \$5,000 forfeiture of pay.
- Second offense includes suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a \$5,000 forfeiture of pay.
- Third offense includes:
 - \$5,000 forfeiture of pay for the employee or contractor who committed the violation; and
 - For an individual who holds an educator certificate:
 - The FHSAA will refer the violation for review to determine if probable cause exists;
 - The Commissioner of Education will file a formal complaint against the individual if there is a finding of probable cause; and
 - If the complaint is upheld, the individual's educator certificate will be revoked by the Education Practices Commission for 3 years, in addition to FHSAA penalties. The Department of Education will also revoke any adjunct teaching certificates issued under s. 1012.57, F.S. and all permissions under s. 1012.39, F.S. and 1012.43, F.S. The educator will be ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

The bill also specifies that, in instances in which a student is recruited by an adult who is not a school district employee or contractor, a school will forfeit every competition in which the recruited student participates.

Controlled Open Enrollment

The bill expands the scope of a school district's controlled open enrollment options by:

- Allowing a parent from any district in the state, whose child is not subject to a current expulsion order or suspension order, to enroll and transport the child to any public school that has not reached capacity in the district, subject to maximum class size limits, including charter schools;
- Requiring the receiving school district to accept the student and report the student for funding;
- Allowing a student who transfers to remain at the school chosen by the parent until the student completes the highest grade level at the school; and
- Permitting a school district to provide transportation for students participating in a controlled open enrollment program.

The bill elevates the transparency of the district school board controlled open enrollment plans by requiring the district to adopt by rule and visibly post on its website the process required to participate in controlled open enrollment. Additionally, the bill requires that the controlled open enrollment process must:

- Provide preferential treatment to:
 - Dependent children of active duty military personnel whose move resulted from military orders;
 - Children who have been relocated due to a foster care placement in a different school zone;
 - Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order; or
 - Students residing in the school district;
- Maintain existing academic eligibility criteria for public school choice programs; and
- Identify schools that have not reached capacity.⁴⁰

The bill takes effect on 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:

Under PCS/CS/SB 684, school district employees or contractors in violation of FHSAA recruiting bylaws will experience forfeiture of pay in the amount of \$5,000 for each offense; potential suspension without pay for 12 months for a second offense; and revocation of the individual's educator certificate for a third offense.

⁴⁰ In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35. The bill.

C. Government Sector Impact:

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The Education Practices Commission (EPC) may experience an increase in workload as a result of educator discipline cases associated with the recruiting penalties specified in the bill. Since the number of additional cases which may occur as a result of this bill is not known, the impact on the EPC is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1006.15, 1006.20, 1012.795, and 1012.796.

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

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

Recommended CS/CS by Appropriations Subcommittee on Education on January 25, 2016:

The committee substitute specifies that, in addition to an expulsion order, a student must not be subject to a suspension order to be guaranteed enrollment under the controlled open enrollment options.

CS by Education Pre-K – 12 on January 14, 2016:

The committee substitute modifies the bill as follows:

- Omits the authority for public schools to join the FHSAA on a per sport basis; and
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association.

B. Amendments:

None.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to choice in sports; amending s. 1002.20, F.S.; revising public school choice options available to students to include CAPE digital tools, CAPE industry certifications, and collegiate high school programs; authorizing parents of public school students to seek private educational choice options through the Florida Personal Learning Scholarship Accounts Program under certain circumstances; revising student eligibility requirements for participating in high school athletic competitions; authorizing public schools to provide transportation to students participating in open enrollment; amending s. 1002.31, F.S.; requiring each district school board and charter school governing board to authorize a parent to have his or her child participate in controlled open enrollment; requiring the school district to report the student for purposes of the school district's funding; authorizing a school district to provide transportation to such students; requiring that each district school board adopt and publish on its website a controlled open enrollment process; specifying criteria for the process; prohibiting a school district from delaying or preventing a student who participates in controlled open enrollment from being immediately eligible to participate in certain activities; amending s. 1006.15, F.S.; defining the



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term "eligible to participate"; conforming provisions to changes made by the act; prohibiting a school district from delaying or preventing a student who participates in open controlled enrollment from being immediately eligible to participate in certain activities; authorizing a transfer student to immediately participate in interscholastic or intrascholastic activities under certain circumstances; prohibiting a school district or the Florida High School Athletic Association (FHSAA) from declaring a transfer student ineligible under certain circumstances; amending s. 1006.20, F.S.; requiring the FHSAA to allow a private school to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging a private school from maintaining membership in the FHSAA and another athletic association; authorizing the FHSAA to allow a public school to apply for consideration to join another athletic association; specifying penalties for recruiting violations; requiring a school to forfeit a competition in which a student who was recruited by specified adults participated; revising circumstances under which a student may be declared ineligible; requiring student ineligibility to be established by a preponderance of the evidence; amending ss. 1012.795 and 1012.796, F.S.; conforming provisions to changes made by the act; providing an effective date.



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57 Be It Enacted by the Legislature of the State of Florida:

58
59 Section 1. Paragraphs (a) and (b) of subsection (6),
60 paragraph (a) of subsection (17), and paragraph (a) of
61 subsection (22) of section 1002.20, Florida Statutes, are
62 amended to read:

63 1002.20 K-12 student and parent rights.—Parents of public
64 school students must receive accurate and timely information
65 regarding their child's academic progress and must be informed
66 of ways they can help their child to succeed in school. K-12
67 students and their parents are afforded numerous statutory
68 rights including, but not limited to, the following:

69 (6) EDUCATIONAL CHOICE.—

70 (a) *Public school choices.*—Parents of public school
71 students may seek any whatever public school choice options that
72 are applicable and available to students in their school
73 districts. These options may include controlled open enrollment,
74 single-gender programs, lab schools, virtual instruction
75 programs, charter schools, charter technical career centers,
76 magnet schools, alternative schools, special programs, auditory-
77 oral education programs, advanced placement, dual enrollment,
78 International Baccalaureate, International General Certificate
79 of Secondary Education (pre-AICE), CAPE digital tools, CAPE
80 industry certifications, collegiate high school programs,
81 Advanced International Certificate of Education, early
82 admissions, credit by examination or demonstration of
83 competency, the New World School of the Arts, the Florida School
84 for the Deaf and the Blind, and the Florida Virtual School.
85 These options may also include the public educational school



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86 choice options of the Opportunity Scholarship Program and the
87 McKay Scholarships for Students with Disabilities Program.

88 (b) *Private educational school choices.*—Parents of public
89 school students may seek private educational school choice
90 options under certain programs.

91 1. Under the McKay Scholarships for Students with
92 Disabilities Program, the parent of a public school student with
93 a disability may request and receive a McKay Scholarship for the
94 student to attend a private school in accordance with s.
95 1002.39.

96 2. Under the Florida Tax Credit Scholarship Program, the
97 parent of a student who qualifies for free or reduced-price
98 school lunch or who is currently placed, or during the previous
99 state fiscal year was placed, in foster care as defined in s.
100 39.01 may seek a scholarship from an eligible nonprofit
101 scholarship-funding organization in accordance with s. 1002.395.

102 3. Under the Florida Personal Learning Scholarship Accounts
103 Program, the parent of a student with a qualifying disability
104 may apply for a personal learning scholarship to be used for
105 individual educational needs in accordance with s. 1002.385.

106 (17) ATHLETICS; PUBLIC HIGH SCHOOL.—

107 (a) *Eligibility.*—Eligibility requirements for all students
108 participating in high school athletic competition must allow a
109 student to be immediately eligible in the school in which he or
110 she first enrolls each school year, the school in which the
111 student makes himself or herself a candidate for an athletic
112 team by engaging in practice before enrolling, or the school to
113 which the student has transferred ~~with approval of the district~~
114 ~~school board~~, in accordance with ~~the provisions of s.~~



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115 1006.20(2)(a).

116 (22) TRANSPORTATION.—

117 (a) *Transportation to school.*—Public school students shall
118 be provided transportation to school, in accordance with ~~the~~
119 ~~provisions of s. 1006.21(3)(a).~~ Public school students may be
120 provided transportation to school in accordance with the
121 controlled open enrollment provisions of s. 1002.31(2).

122 Section 2. Section 1002.31, Florida Statutes, is amended to
123 read:

124 1002.31 Controlled open enrollment; public school parental
125 choice.—

126 (1) As used in this section, “controlled open enrollment”
127 means a public education delivery system that allows school
128 districts to make student school assignments using parents’
129 indicated preferential school choice as a significant factor.

130 (2)(a) As part of a school district’s controlled open
131 enrollment, and in addition to the existing public school choice
132 programs provided in s. 1002.20(6)(a), each district school
133 board shall allow a parent from any school district in the state
134 whose child is not subject to a current expulsion or suspension
135 order to enroll his or her child in and transport his or her
136 child to any public school that has not reached capacity in the
137 district, subject to the maximum class size pursuant to s.
138 1003.03 and s. 1, Art. IX of the State Constitution. The school
139 district shall accept the student, pursuant to that school
140 district’s controlled open enrollment participation process, and
141 report the student for purposes of the school district’s funding
142 pursuant to the Florida Education Finance Program. A school
143 district may provide transportation to students described under



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144 this subsection at the district school board’s discretion.

145 (b) Each charter school governing board shall allow a
146 parent whose child is not subject to a current expulsion or
147 suspension order to enroll his or her child in and transport his
148 or her child to the charter school if the school has not reached
149 capacity, subject to the maximum class size pursuant to s.
150 1003.03 and s. 1, Art. IX of the State Constitution, and the
151 enrollment limitations pursuant to s. 1002.33(10)(e)1., 2., 5.,
152 6., and 7. A charter school may provide transportation to
153 students described under this subsection at the discretion of
154 the charter school’s governing board.

155 (c) For purposes of continuity of educational choice, a
156 student who transfers pursuant to paragraph (a) or paragraph (b)
157 may remain at the school chosen by the parent until the student
158 completes the highest grade level at the school ~~may offer~~
159 controlled open enrollment within the public schools which is in
160 addition to the existing choice programs such as virtual
161 instruction programs, magnet schools, alternative schools,
162 special programs, advanced placement, and dual enrollment.

163 (3) Each district school board ~~offering controlled open~~
164 ~~enrollment~~ shall adopt by rule and post on its website the
165 process required to participate in controlled open enrollment.
166 The process a controlled open enrollment plan which must:

167 (a) Adhere to federal desegregation requirements.

168 (b) ~~Allow~~ Include an application process required to
169 participate in controlled open enrollment that allows parents to
170 declare school preferences, including placement of siblings
171 within the same school.

172 (c) Provide a lottery procedure to determine student



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173 assignment and establish an appeals process for hardship cases.
174 (d) Afford parents of students in multiple session schools
175 preferred access to controlled open enrollment.

176 (e) Maintain socioeconomic, demographic, and racial
177 balance.

178 (f) Address the availability of transportation.

179 (g) Maintain existing academic eligibility criteria for
180 public school choice programs pursuant to s. 1002.20(6)(a).

181 (h) Identify schools that have not reached capacity, as
182 determined by the school district. In determining the capacity
183 of each school, the district school board shall incorporate the
184 specifications, plans, elements, and commitments contained in
185 the school district educational facilities plan and the long-
186 term work programs required under s. 1013.35.

187 (i) Ensure that each district school board adopts a policy
188 to provide preferential treatment to all of the following:

189 1. Dependent children of active duty military personnel
190 whose move resulted from military orders.

191 2. Children who have been relocated due to a foster care
192 placement in a different school zone.

193 3. Children who move due to a change in custody due to
194 separation, divorce, the serious illness of a custodial parent,
195 the death of a parent, or a court order.

196 4. Students residing in the school district.

197 (4) In accordance with the reporting requirements of s.
198 1011.62, each district school board shall annually report the
199 number of students exercising public school choice, by type
200 attending the various types of public schools of choice in the
201 district, in accordance with including schools such as virtual



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202 ~~instruction programs, magnet schools, and public charter~~
203 ~~schools, according to rules adopted by the State Board of~~
204 ~~Education.~~

205 (5) For a school or program that is a public school of
206 choice under this section, the calculation for compliance with
207 maximum class size pursuant to s. 1003.03 is the average number
208 of students at the school level.

209 (6) A school district may not delay eligibility or
210 otherwise prevent a student participating in controlled open
211 enrollment or a choice program from being immediately eligible
212 to participate in interscholastic and intrascholastic
213 extracurricular activities.

214 Section 3. Subsection (3) and paragraph (a) of subsection
215 (8) of section 1006.15, Florida Statutes, are amended, and
216 subsection (9) is added to that section, to read:

217 1006.15 Student standards for participation in
218 interscholastic and intrascholastic extracurricular student
219 activities; regulation.—

220 (3) (a) As used in this section and s. 1006.20, the term
221 "eligible to participate" includes, but is not limited to, a
222 student participating in tryouts, off-season conditioning,
223 summer workouts, preseason conditioning, in-season practice, or
224 contests. The term does not mean that a student must be placed
225 on any specific team for interscholastic or intrascholastic
226 extracurricular activities. To be eligible to participate in
227 interscholastic extracurricular student activities, a student
228 must:

229 1. Maintain a grade point average of 2.0 or above on a 4.0
230 scale, or its equivalent, in the previous semester or a



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231 cumulative grade point average of 2.0 or above on a 4.0 scale,
232 or its equivalent, in the courses required by s. 1002.3105(5) or
233 s. 1003.4282.

234 2. Execute and fulfill the requirements of an academic
235 performance contract between the student, the district school
236 board, the appropriate governing association, and the student's
237 parents, if the student's cumulative grade point average falls
238 below 2.0, or its equivalent, on a 4.0 scale in the courses
239 required by s. 1002.3105(5) or s. 1003.4282. At a minimum, the
240 contract must require that the student attend summer school, or
241 its graded equivalent, between grades 9 and 10 or grades 10 and
242 11, as necessary.

243 3. Have a cumulative grade point average of 2.0 or above on
244 a 4.0 scale, or its equivalent, in the courses required by s.
245 1002.3105(5) or s. 1003.4282 during his or her junior or senior
246 year.

247 4. Maintain satisfactory conduct, including adherence to
248 appropriate dress and other codes of student conduct policies
249 described in s. 1006.07(2). If a student is convicted of, or is
250 found to have committed, a felony or a delinquent act that would
251 have been a felony if committed by an adult, regardless of
252 whether adjudication is withheld, the student's participation in
253 interscholastic extracurricular activities is contingent upon
254 established and published district school board policy.

255 (b) Any student who is exempt from attending a full school
256 day based on rules adopted by the district school board for
257 double session schools or programs, experimental schools, or
258 schools operating under emergency conditions must maintain the
259 grade point average required by this section and pass each class



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260 for which he or she is enrolled.

261 (c) An individual home education student is eligible to
262 participate at the public school to which the student would be
263 assigned according to district school board attendance area
264 policies or which the student could ~~choose to attend pursuant to~~
265 ~~district or interdistrict controlled open enrollment provisions,~~
266 or may develop an agreement to participate at a private school,
267 in the interscholastic extracurricular activities of that
268 school, provided the following conditions are met:

269 1. The home education student must meet the requirements of
270 the home education program pursuant to s. 1002.41.

271 2. During the period of participation at a school, the home
272 education student must demonstrate educational progress as
273 required in paragraph (b) in all subjects taken in the home
274 education program by a method of evaluation agreed upon by the
275 parent and the school principal which may include: review of the
276 student's work by a certified teacher chosen by the parent;
277 grades earned through correspondence; grades earned in courses
278 taken at a Florida College System institution, university, or
279 trade school; standardized test scores above the 35th
280 percentile; or any other method designated in s. 1002.41.

281 3. The home education student must meet the same residency
282 requirements as other students in the school at which he or she
283 participates.

284 4. The home education student must meet the same standards
285 of acceptance, behavior, and performance as required of other
286 students in extracurricular activities.

287 5. The student must register with the school his or her
288 intent to participate in interscholastic extracurricular



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289 activities as a representative of the school before the
290 beginning date of the season for the activity in which he or she
291 wishes to participate. A home education student must be able to
292 participate in curricular activities if that is a requirement
293 for an extracurricular activity.

294 6. A student who transfers from a home education program to
295 a public school before or during the first grading period of the
296 school year is academically eligible to participate in
297 interscholastic extracurricular activities during the first
298 grading period provided the student has a successful evaluation
299 from the previous school year, pursuant to subparagraph 2.

300 7. Any public school or private school student who has been
301 unable to maintain academic eligibility for participation in
302 interscholastic extracurricular activities is ineligible to
303 participate in such activities as a home education student until
304 the student has successfully completed one grading period in
305 home education pursuant to subparagraph 2. to become eligible to
306 participate as a home education student.

307 (d) An individual charter school student pursuant to s.
308 1002.33 is eligible to participate at the public school to which
309 the student would be assigned according to district school board
310 attendance area policies or which the student could ~~choose to~~
311 ~~attend, pursuant to district or interdistrict controlled open-~~
312 ~~enrollment provisions,~~ in any interscholastic extracurricular
313 activity of that school, unless such activity is provided by the
314 student's charter school, if the following conditions are met:

315 1. The charter school student must meet the requirements of
316 the charter school education program as determined by the
317 charter school governing board.



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318 2. During the period of participation at a school, the
319 charter school student must demonstrate educational progress as
320 required in paragraph (b).

321 3. The charter school student must meet the same residency
322 requirements as other students in the school at which he or she
323 participates.

324 4. The charter school student must meet the same standards
325 of acceptance, behavior, and performance that are required of
326 other students in extracurricular activities.

327 5. The charter school student must register with the school
328 his or her intent to participate in interscholastic
329 extracurricular activities as a representative of the school
330 before the beginning date of the season for the activity in
331 which he or she wishes to participate. A charter school student
332 must be able to participate in curricular activities if that is
333 a requirement for an extracurricular activity.

334 6. A student who transfers from a charter school program to
335 a traditional public school before or during the first grading
336 period of the school year is academically eligible to
337 participate in interscholastic extracurricular activities during
338 the first grading period if the student has a successful
339 evaluation from the previous school year, pursuant to
340 subparagraph 2.

341 7. Any public school or private school student who has been
342 unable to maintain academic eligibility for participation in
343 interscholastic extracurricular activities is ineligible to
344 participate in such activities as a charter school student until
345 the student has successfully completed one grading period in a
346 charter school pursuant to subparagraph 2. to become eligible to



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347 participate as a charter school student.

348 (e) A student of the Florida Virtual School full-time
349 program may participate in any interscholastic extracurricular
350 activity at the public school to which the student would be
351 assigned according to district school board attendance area
352 policies or which the student could ~~choose to attend, pursuant~~
353 ~~to district or interdistrict controlled open enrollment~~
354 ~~policies~~, if the student:

355 1. During the period of participation in the
356 interscholastic extracurricular activity, meets the requirements
357 in paragraph (a).

358 2. Meets any additional requirements as determined by the
359 board of trustees of the Florida Virtual School.

360 3. Meets the same residency requirements as other students
361 in the school at which he or she participates.

362 4. Meets the same standards of acceptance, behavior, and
363 performance that are required of other students in
364 extracurricular activities.

365 5. Registers his or her intent to participate in
366 interscholastic extracurricular activities with the school
367 before the beginning date of the season for the activity in
368 which he or she wishes to participate. A Florida Virtual School
369 student must be able to participate in curricular activities if
370 that is a requirement for an extracurricular activity.

371 (f) A student who transfers from the Florida Virtual School
372 full-time program to a traditional public school before or
373 during the first grading period of the school year is
374 academically eligible to participate in interscholastic
375 extracurricular activities during the first grading period if



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376 the student has a successful evaluation from the previous school
377 year pursuant to paragraph (a).

378 (g) A public school or private school student who has been
379 unable to maintain academic eligibility for participation in
380 interscholastic extracurricular activities is ineligible to
381 participate in such activities as a Florida Virtual School
382 student until the student successfully completes one grading
383 period in the Florida Virtual School pursuant to paragraph (a).

384 (h) A school district may not delay eligibility or
385 otherwise prevent a student participating in controlled open
386 enrollment, or a choice program, from being immediately eligible
387 to participate in interscholastic and intrascholastic
388 extracurricular activities.

389 (8) (a) The Florida High School Athletic Association
390 (FHSAA), in cooperation with each district school board, shall
391 facilitate a program in which a middle school or high school
392 student who attends a private school shall be eligible to
393 participate in an interscholastic or intrascholastic sport at a
394 public high school, a public middle school, or a 6-12 public
395 school that is zoned for the physical address at which the
396 student resides if:

397 1. The private school in which the student is enrolled is
398 not a member of the FHSAA ~~and does not offer an interscholastic~~
399 ~~or intrascholastic athletic program.~~

400 2. The private school student meets the guidelines for the
401 conduct of the program established by the FHSAA's board of
402 directors and the district school board. At a minimum, such
403 guidelines shall provide:

404 a. A deadline for each sport by which the private school



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405 student's parents must register with the public school in
406 writing their intent for their child to participate at that
407 school in the sport.

408 b. Requirements for a private school student to
409 participate, including, but not limited to, meeting the same
410 standards of eligibility, acceptance, behavior, educational
411 progress, and performance which apply to other students
412 participating in interscholastic or intrascholastic sports at a
413 public school or FHSAA member private school.

414 (9) A student who transfers to a school during the school
415 year may seek to immediately join an existing team if the roster
416 for the specific interscholastic or intrascholastic
417 extracurricular activity has not reached the activity's
418 identified maximum size and if the coach for the activity
419 determines that the student has the requisite skill and ability
420 to participate. The FHSAA and school district may not declare
421 such a student ineligible because the student did not have the
422 opportunity to comply with qualifying requirements.

423 Section 4. Subsection (1) and paragraphs (a), (b), (c), and
424 (g) of subsection (2) of section 1006.20, Florida Statutes, are
425 amended to read:

426 1006.20 Athletics in public K-12 schools.—

427 (1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High
428 School Athletic Association (FHSAA) is designated as the
429 governing nonprofit organization of athletics in Florida public
430 schools. If the FHSAA fails to meet the provisions of this
431 section, the commissioner shall designate a nonprofit
432 organization to govern athletics with the approval of the State
433 Board of Education. The FHSAA is not a state agency as defined



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434 in s. 120.52. The FHSAA shall be subject to the provisions of s.
435 1006.19. A private school that wishes to engage in high school
436 athletic competition with a public high school may become a
437 member of the FHSAA. Any high school in the state, including
438 charter schools, virtual schools, and home education
439 cooperatives, may become a member of the FHSAA and participate
440 in the activities of the FHSAA. However, membership in the FHSAA
441 is not mandatory for any school. The FHSAA must allow a private
442 school the option of maintaining full membership in the
443 association or joining by sport and may not discourage a private
444 school from simultaneously maintaining membership in another
445 athletic association. The FHSAA may allow a public school the
446 option to apply for consideration to join another athletic
447 association. The FHSAA may not deny or discourage
448 interscholastic competition between its member schools and non-
449 FHSAA member Florida schools, including members of another
450 athletic governing organization, and may not take any
451 retributory or discriminatory action against any of its member
452 schools that participate in interscholastic competition with
453 non-FHSAA member Florida schools. The FHSAA may not unreasonably
454 withhold its approval of an application to become an affiliate
455 member of the National Federation of State High School
456 Associations submitted by any other organization that governs
457 interscholastic athletic competition in this state. The bylaws
458 of the FHSAA are the rules by which high school athletic
459 programs in its member schools, and the students who participate
460 in them, are governed, unless otherwise specifically provided by
461 statute. For the purposes of this section, "high school"
462 includes grades 6 through 12.



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463 (2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.-
464 (a) The FHSAA shall adopt bylaws that, unless specifically
465 provided by statute, establish eligibility requirements for all
466 students who participate in high school athletic competition in
467 its member schools. The bylaws governing residence and transfer
468 shall allow the student to be immediately eligible in the school
469 in which he or she first enrolls each school year or the school
470 in which the student makes himself or herself a candidate for an
471 athletic team by engaging in a practice prior to enrolling in
472 the school. The bylaws shall also allow the student to be
473 immediately eligible in the school to which the student has
474 ~~transferred during the school year if the transfer is made by a~~
475 ~~deadline established by the FHSAA, which may not be prior to the~~
476 ~~date authorized for the beginning of practice for the sport.~~
477 ~~These transfers shall be allowed pursuant to the district school~~
478 ~~board policies in the case of transfer to a public school or~~
479 ~~pursuant to the private school policies in the case of transfer~~
480 ~~to a private school.~~ The student shall be eligible in that
481 school so long as he or she remains enrolled in that school.
482 Subsequent eligibility shall be determined and enforced through
483 the FHSAA's bylaws. Requirements governing eligibility and
484 transfer between member schools shall be applied similarly to
485 public school students and private school students.
486 (b) The FHSAA shall adopt bylaws that specifically prohibit
487 the recruiting of students for athletic purposes. The bylaws
488 shall prescribe penalties and an appeals process for athletic
489 recruiting violations.
490 1. If it is determined that a school has recruited a
491 student in violation of FHSAA bylaws, the FHSAA may require the



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492 school to participate in a higher classification for the sport
493 in which the recruited student competes for a minimum of one
494 classification cycle, in addition to the penalties in
495 subparagraphs 2. and 3., and any other appropriate fine or and
496 sanction imposed on the school, its coaches, or adult
497 representatives who violate recruiting rules.
498 2. Any recruitment by a school district employee or
499 contractor in violation of FHSAA bylaws results in escalating
500 punishments as follows:
501 a. For a first offense, a \$5,000 forfeiture of pay for the
502 school district employee or contractor who committed the
503 violation.
504 b. For a second offense, suspension without pay for 12
505 months from coaching, directing, or advertising an
506 extracurricular activity and a \$5,000 forfeiture of pay for the
507 school district employee or contractor who committed the
508 violation.
509 c. For a third offense, a \$5,000 forfeiture of pay for the
510 school district employee or contractor who committed the
511 violation. If the individual who committed the violation holds
512 an educator certificate, the FHSAA shall also refer the
513 violation to the department for review pursuant to s. 1012.796
514 to determine whether probable cause exists, and, if there is a
515 finding of probable cause, the commissioner shall file a formal
516 complaint against the individual. If the complaint is upheld,
517 the individual's educator certificate shall be revoked for 3
518 years, in addition to any penalties available under s. 1012.796.
519 Additionally, the department shall revoke any adjunct teaching
520 certificates issued pursuant to s. 1012.57 and all permissions



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521 under ss. 1012.39 and 1012.43, and the educator is ineligible
522 for such certificates or permissions for a period of time equal
523 to the period of revocation of his or her state-issued
524 certificate.

525 3. Notwithstanding any other provision of law, a school
526 shall forfeit every competition in which a student participated
527 who was recruited by an adult who is not a school district
528 employee or contractor in violation of FHSAA bylaws.

529 4. A student may not be declared ineligible based on
530 violation of recruiting rules unless the student or parent has
531 falsified any enrollment or eligibility document or accepted any
532 benefit ~~or any promise of benefit~~ if such benefit is not
533 generally available to the school's students or family members
534 or is based in any way on athletic interest, potential, or
535 performance.

536 (c) The FHSAA shall adopt bylaws that require all students
537 participating in interscholastic athletic competition or who are
538 candidates for an interscholastic athletic team to
539 satisfactorily pass a medical evaluation each year prior to
540 participating in interscholastic athletic competition or
541 engaging in any practice, tryout, workout, or other physical
542 activity associated with the student's candidacy for an
543 interscholastic athletic team. Such medical evaluation may be
544 administered only by a practitioner licensed under chapter 458,
545 chapter 459, chapter 460, or s. 464.012, and in good standing
546 with the practitioner's regulatory board. The bylaws shall
547 establish requirements for eliciting a student's medical history
548 and performing the medical evaluation required under this
549 paragraph, which shall include a physical assessment of the



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550 student's physical capabilities to participate in
551 interscholastic athletic competition as contained in a uniform
552 preparticipation physical evaluation and history form. The
553 evaluation form shall incorporate the recommendations of the
554 American Heart Association for participation cardiovascular
555 screening and shall provide a place for the signature of the
556 practitioner performing the evaluation with an attestation that
557 each examination procedure listed on the form was performed by
558 the practitioner or by someone under the direct supervision of
559 the practitioner. The form shall also contain a place for the
560 practitioner to indicate if a referral to another practitioner
561 was made in lieu of completion of a certain examination
562 procedure. The form shall provide a place for the practitioner
563 to whom the student was referred to complete the remaining
564 sections and attest to that portion of the examination. The
565 preparticipation physical evaluation form shall advise students
566 to complete a cardiovascular assessment and shall include
567 information concerning alternative cardiovascular evaluation and
568 diagnostic tests. Results of such medical evaluation must be
569 provided to the school. A student is not ~~No student shall be~~
570 eligible to participate, as provided in s. 1006.15(3), in any
571 interscholastic athletic competition or engage in any practice,
572 tryout, workout, or other physical activity associated with the
573 student's candidacy for an interscholastic athletic team until
574 the results of the medical evaluation have been received and
575 approved by the school.

576 (g) The FHSAA shall adopt bylaws establishing the process
577 and standards by which FHSAA determinations of eligibility are
578 made. Such bylaws shall provide that:



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579 1. Ineligibility must be established by a preponderance of
580 the clear and convincing evidence;
581 2. Student athletes, parents, and schools must have notice
582 of the initiation of any investigation or other inquiry into
583 eligibility and may present, to the investigator and to the
584 individual making the eligibility determination, any information
585 or evidence that is credible, persuasive, and of a kind
586 reasonably prudent persons rely upon in the conduct of serious
587 affairs;
588 3. An investigator may not determine matters of eligibility
589 but must submit information and evidence to the executive
590 director or a person designated by the executive director or by
591 the board of directors for an unbiased and objective
592 determination of eligibility; and
593 4. A determination of ineligibility must be made in
594 writing, setting forth the findings of fact and specific
595 violation upon which the decision is based.
596 Section 5. Paragraph (o) is added to subsection (1) of
597 section 1012.795, Florida Statutes, and subsection (5) of that
598 section is amended, to read:
599 1012.795 Education Practices Commission; authority to
600 discipline.—
601 (1) The Education Practices Commission may suspend the
602 educator certificate of any person as defined in s. 1012.01(2)
603 or (3) for up to 5 years, thereby denying that person the right
604 to teach or otherwise be employed by a district school board or
605 public school in any capacity requiring direct contact with
606 students for that period of time, after which the holder may
607 return to teaching as provided in subsection (4); may revoke the



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608 educator certificate of any person, thereby denying that person
609 the right to teach or otherwise be employed by a district school
610 board or public school in any capacity requiring direct contact
611 with students for up to 10 years, with reinstatement subject to
612 the provisions of subsection (4); may revoke permanently the
613 educator certificate of any person thereby denying that person
614 the right to teach or otherwise be employed by a district school
615 board or public school in any capacity requiring direct contact
616 with students; may suspend the educator certificate, upon an
617 order of the court or notice by the Department of Revenue
618 relating to the payment of child support; or may impose any
619 other penalty provided by law, if the person:
620 (o) Has committed a third recruiting offense as determined
621 by the Florida High School Athletic Association (FHSAA) pursuant
622 to s. 1006.20(2)(b).
623 (5) Each district school superintendent and the governing
624 authority of each university lab school, state-supported school,
625 ~~or~~ private school, and the FHSAA shall report to the department
626 the name of any person certified pursuant to this chapter or
627 employed and qualified pursuant to s. 1012.39:
628 (a) Who has been convicted of, or who has pled nolo
629 contendere to, a misdemeanor, felony, or any other criminal
630 charge, other than a minor traffic infraction;
631 (b) Who that official has reason to believe has committed
632 or is found to have committed any act which would be a ground
633 for revocation or suspension under subsection (1); or
634 (c) Who has been dismissed or severed from employment
635 because of conduct involving any immoral, unnatural, or
636 lascivious act.



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637 Section 6. Subsections (3) and (7) of section 1012.796,
638 Florida Statutes, are amended to read:

639 1012.796 Complaints against teachers and administrators;
640 procedure; penalties.—

641 (3) The department staff shall advise the commissioner
642 concerning the findings of the investigation and of all
643 referrals by the Florida High School Athletic Association
644 (FHSAA) pursuant to ss. 1006.20(2)(b) and 1012.795. The
645 department general counsel or members of that staff shall review
646 the investigation or the referral and advise the commissioner
647 concerning probable cause or lack thereof. The determination of
648 probable cause shall be made by the commissioner. The
649 commissioner shall provide an opportunity for a conference, if
650 requested, prior to determining probable cause. The commissioner
651 may enter into deferred prosecution agreements in lieu of
652 finding probable cause if, in his or her judgment, such
653 agreements are in the best interests of the department, the
654 certificateholder, and the public. Such deferred prosecution
655 agreements shall become effective when filed with the clerk of
656 the Education Practices Commission. However, a deferred
657 prosecution agreement shall not be entered into if there is
658 probable cause to believe that a felony or an act of moral
659 turpitude, as defined by rule of the State Board of Education,
660 has occurred, or for referrals by the FHSAA. Upon finding no
661 probable cause, the commissioner shall dismiss the complaint.

662 (7) A panel of the commission shall enter a final order
663 either dismissing the complaint or imposing one or more of the
664 following penalties:

665 (a) Denial of an application for a teaching certificate or



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666 for an administrative or supervisory endorsement on a teaching
667 certificate. The denial may provide that the applicant may not
668 reapply for certification, and that the department may refuse to
669 consider that applicant's application, for a specified period of
670 time or permanently.

671 (b) Revocation or suspension of a certificate.

672 (c) Imposition of an administrative fine not to exceed
673 \$2,000 for each count or separate offense.

674 (d) Placement of the teacher, administrator, or supervisor
675 on probation for a period of time and subject to such conditions
676 as the commission may specify, including requiring the certified
677 teacher, administrator, or supervisor to complete additional
678 appropriate college courses or work with another certified
679 educator, with the administrative costs of monitoring the
680 probation assessed to the educator placed on probation. An
681 educator who has been placed on probation shall, at a minimum:

682 1. Immediately notify the investigative office in the
683 Department of Education upon employment or termination of
684 employment in the state in any public or private position
685 requiring a Florida educator's certificate.

686 2. Have his or her immediate supervisor submit annual
687 performance reports to the investigative office in the
688 Department of Education.

689 3. Pay to the commission within the first 6 months of each
690 probation year the administrative costs of monitoring probation
691 assessed to the educator.

692 4. Violate no law and shall fully comply with all district
693 school board policies, school rules, and State Board of
694 Education rules.



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695 5. Satisfactorily perform his or her assigned duties in a
696 competent, professional manner.

697 6. Bear all costs of complying with the terms of a final
698 order entered by the commission.

699 (e) Restriction of the authorized scope of practice of the
700 teacher, administrator, or supervisor.

701 (f) Reprimand of the teacher, administrator, or supervisor
702 in writing, with a copy to be placed in the certification file
703 of such person.

704 (g) Imposition of an administrative sanction, upon a person
705 whose teaching certificate has expired, for an act or acts
706 committed while that person possessed a teaching certificate or
707 an expired certificate subject to late renewal, which sanction
708 bars that person from applying for a new certificate for a
709 period of 10 years or less, or permanently.

710 (h) Refer the teacher, administrator, or supervisor to the
711 recovery network program provided in s. 1012.798 under such
712 terms and conditions as the commission may specify.

713

714 The penalties imposed under this subsection are in addition to,
715 and not in lieu of, the penalties required for a third
716 recruiting offense pursuant to s. 1006.20(2)(b).

717 Section 7. This act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/CS/SB 684

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senators Gaetz and Stargel

SUBJECT: Choice in Sports

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bailey</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 684 revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;
- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.¹ The FHSAA is not a state agency, but is assigned quasi-governmental functions.²

Student Eligibility

To be eligible for participation in interscholastic³ extracurricular activities,⁴ a student must meet certain academic and conduct requirements.⁵ Each student must meet the other requirements for participation established by the district school board.⁶ The FHSAA is required to adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools.⁷

The FHSAA bylaws governing residence allow students to be eligible to participate in high school athletic competitions in the schools in which he or she:⁸

- First enrolls each school year; or
- Makes himself or herself a candidate for an athletic team by engaging in practice before enrolling.⁹

The FHSAA bylaws governing student transfers:¹⁰

- Allow a student to be eligible in the school to which the student transferred during the school year if the transfer was made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport.¹¹
- Require transfers to be allowed pursuant to the district school board policies in the case of transfer to a public school, or pursuant to the private school policies in the case of transfer to

¹ Section 1006.20, F.S.

² *Id.*

³ The FHSAA defines an “interscholastic contest” as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA, and is subject to all regulations pertaining to such contests. Bylaw 8.1.1, FHSAA.

⁴ “Extracurricular” means any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

⁵ Section 1006.15(3)(a), F.S.

⁶ Section 1006.15(4), F.S.

⁷ Section 1006.20(2)(a), F.S.

⁸ Section 1006.20(2)(a), F.S.

⁹ Section 1002.20(17), F.S.

¹⁰ Section 1006.20(2), F.S.

¹¹ Section 1006.20(2)(a), F.S.

a private school. The student shall remain eligible in that school so long as he or she is enrolled in that school.¹²

- Allow a student who transfers from a home education program, charter school, or from the Florida Virtual School full-time program to a public school before or during the first grading period of the school year to be academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student had a successful evaluation from the previous year.¹³
- Provide that requirements governing eligibility and transfer between member schools be applied similarly to public school students and private school students.¹⁴

The FHSAA, in cooperation with each district school board, facilitates a program for middle or high school students who attend a private school to be eligible to participate in an interscholastic or intrascholastic sport at a public high school, for which the student is zoned, if the private school is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program.¹⁵

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,¹⁶ may become a member of the FHSAA and participate in FHSAA activities.¹⁷ A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.¹⁸ Membership in the FHSAA is not mandatory for any school.¹⁹

The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization.²⁰ The FHSAA is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.²¹ The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them are governed, unless otherwise specified in statute.²² The FHSAA member schools may only engage in interscholastic contests with schools which are members of the FHSAA or with non-member schools that meet specific requirements designated in the FHSAA bylaws.²³

¹² *Id.*

¹³ Section 1006.15(3)(c)6.- (d)6 and (f), F.S.

¹⁴ Section 1006.20(2), F.S.

¹⁵ Section 1006.15(8), F.S.

¹⁶ A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

¹⁷ Section 1006.20, F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at (1)

²² *Id.*

²³ Bylaw 8.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

Recruitment of Student Athletes

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes.²⁴ Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes.²⁵ “Athletic recruiting” is defined by the FHSAA as any effort by a school employee, athletic department staff member or representative of a school’s athletic interests to pressure, urge, or entice a student to attend that school for the purpose of participating in interscholastic athletics.²⁶ The FHSAA sets forth specific behaviors that constitute recruiting, as well as identifying persons who are considered to represent a school’s athletic interests.²⁷

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle.²⁸

In addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representatives, the following penalties may be imposed against a school for recruiting violations:²⁹

- Public reprimand;
- Financial penalty of a minimum of \$2,500;
- Probation for one or more years;
- Prohibition against participating in certain interscholastic competitions;
- Prohibition against participating in any interscholastic competition for one or more years in the sport(s) in which the violation(s) occurred;
- Restricted membership for one or more years during which time some or all of the school’s membership privileges may be restricted or denied; and
- Expulsion from membership in the FHSAA for one or more years.

The FHSAA must adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA’s bylaws and policies.³⁰ The bylaws prescribe penalties and an appeals process for athletic recruiting violations.³¹

²⁴ Section 1006.20(2)(b), F.S.

²⁵ The FHSAA defines recruiting as the use of undue influence or special inducement by anyone associated with the school in an attempt to encourage a prospective student to attend or remain at that school for the purpose of participating in interscholastic athletics. Bylaw 6.3, FHSAA.

²⁶ Policy 36.2.1, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf.

²⁷ Policy 36, FHSAA.

²⁸ Section 1006.20(2)(b), F.S.

²⁹ Policy 36.5, FHSAA; Bylaw 10.1.2, FHSAA.

³⁰ Section 1006.20(2)(f), F.S. Major violations include, but are not limited to: knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest; or committing a violation of the FHSAA’s recruiting or sportsmanship policies.

³¹ *Id.*

The FHSAA must adopt bylaws for the process and standards for FHSAA student eligibility determinations.³² The bylaws must provide that student ineligibility must be established by clear and convincing evidence.³³

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.³⁴ School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.³⁵ The district school board must adopt by rule and post on the district website a controlled open enrollment plan.³⁶ The controlled open enrollment plan must:³⁷

- Adhere to federal desegregation requirements;
- Require an application process to participate in the controlled open enrollment program that allows parents to declare school preferences and includes placements of siblings within the same school;
- Use a lottery procedure to determine student assignment and establish an appeal process for hardship cases;
- Afford students in multiple session schools preferred access;
- Maintain socioeconomic, demographic, and racial balance; and
- Address the availability of transportation.

District school boards must annually report the number of students attending the various types of public schools of choice in the district.³⁸

III. Effect of Proposed Changes:

This bill revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;

³² Section 1006(2)(g), F.S.

³³ Section 1006.20(2)(g), F.S. Bylaw 4.6.2.3, FHSAA. The FHSAA defines clear and convincing evidence as the evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. Bylaw 1.4.33, FHSAA.

³⁴ Section 1002.31, F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 1002.31(3), F.S.

³⁸ Section 1002.31(4), F.S.

- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

Florida High School Athletics

Student Eligibility

The bill revises student eligibility requirements by:

- Prohibiting a school district from delaying eligibility or otherwise preventing a student participating in controlled open enrollment or a school choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities;
- Defining “eligible to participate” to include, but not be limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests, and does not require a student to be placed on any specific team for interscholastic or intrascholastic extracurricular activities; and
- Allowing a student who transfers during the school year to join an existing team if the activity roster has not reached maximum size and if the coach determines the student has the required skill and ability to participate.

Additionally, the bill increases student eligibility options by:

- Prohibiting the FHSAA and school district from declaring a transfer student ineligible due to the student’s inopportunity to comply with qualifying requirements;
- Enabling a private school student the option to participate at the public school zoned for the physical address, regardless of whether or not the school offers an interscholastic or intrascholastic athletic program; and
- Changing level of proof in an eligibility determination from “clear and convincing evidence” to “a preponderance of evidence.”³⁹

Membership in the FHSAA

The bill requires the FHSAA to allow a private school to join the FHSAA on a full-time or a per-sport basis. This offers a private school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports. In addition, the bill

³⁹ Preponderance of evidence is defined to mean the evidence which is at the greater weight or more convincing than the evidence which is offered in opposition to it. Black, Henry Campbell. A Dictionary of Law: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern ... New York, NY: Lawbook Exchange, 1991.

prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association.

The bill authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association.

Recruitment of Student Athletes

The bill establishes escalating penalties for the recruitment of student athletes. Specifically, the bill enhances current recruitment penalties found in the FHSAA bylaws by adding stringent penalties for the recruitment of a student athlete by a school district employee or contractor. The bill requires the following penalties:

- First offense is a \$5,000 forfeiture of pay.
- Second offense includes suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a \$5,000 forfeiture of pay.
- Third offense includes:
 - \$5,000 forfeiture of pay for the employee or contractor who committed the violation; and
 - For an individual who holds an educator certificate:
 - The FHSAA will refer the violation for review to determine if probable cause exists;
 - The Commissioner of Education will file a formal complaint against the individual if there is a finding of probable cause; and
 - If the complaint is upheld, the individual's educator certificate will be revoked by the Education Practices Commission for 3 years, in addition to FHSAA penalties. The Department of Education will also revoke any adjunct teaching certificates issued under s. 1012.57, F.S. and all permissions under s. 1012.39, F.S. and 1012.43, F.S. The educator will be ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

The bill also specifies that, in instances in which a student is recruited by an adult who is not a school district employee or contractor, a school will forfeit every competition in which the recruited student participates.

Controlled Open Enrollment

The bill expands the scope of a school district's controlled open enrollment options by:

- Allowing a parent from any district in the state, whose child is not subject to a current expulsion order or suspension order, to enroll and transport the child to any public school that has not reached capacity in the district, subject to maximum class size limits, including charter schools;
- Requiring the receiving school district to accept the student and report the student for funding;
- Allowing a student who transfers to remain at the school chosen by the parent until the student completes the highest grade level at the school; and
- Permitting a school district to provide transportation for students participating in a controlled open enrollment program.

The bill elevates the transparency of the district school board controlled open enrollment plans by requiring the district to adopt by rule and visibly post on its website the process required to participate in controlled open enrollment. Additionally, the bill requires that the controlled open enrollment process must:

- Provide preferential treatment to:
 - Dependent children of active duty military personnel whose move resulted from military orders;
 - Children who have been relocated due to a foster care placement in a different school zone;
 - Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order; or
 - Students residing in the school district;
- Maintain existing academic eligibility criteria for public school choice programs; and
- Identify schools that have not reached capacity.⁴⁰

The bill takes effect on 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:

Under CS/CS/SB 684, school district employees or contractors in violation of FHSAA recruiting bylaws will experience forfeiture of pay in the amount of \$5,000 for each offense; potential suspension without pay for 12 months for a second offense; and revocation of the individual's educator certificate for a third offense.

⁴⁰ In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35. The bill.

C. Government Sector Impact:

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The Education Practices Commission (EPC) may experience an increase in workload as a result of educator discipline cases associated with the recruiting penalties specified in the bill. Since the number of additional cases which may occur as a result of this bill is not known, the impact on the EPC is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1006.15, 1006.20, 1012.795, and 1012.796.

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

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

CS/CS by Appropriations on February 18, 2016:

The committee substitute specifies that, in addition to an expulsion order, a student must not be subject to a suspension order to be guaranteed enrollment under the controlled open enrollment options.

CS by Education Pre-K – 12 on January 14, 2016:

The committee substitute modifies the bill as follows:

- Omits the authority for public schools to join the FHSAA on a per sport basis; and
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senators Gaetz and Stargel

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1 A bill to be entitled
 2 An act relating to choice in sports; amending s.
 3 1002.20, F.S.; revising public school choice options
 4 available to students to include CAPE digital tools,
 5 CAPE industry certifications, and collegiate high
 6 school programs; authorizing parents of public school
 7 students to seek private educational choice options
 8 through the Florida Personal Learning Scholarship
 9 Accounts Program under certain circumstances; revising
 10 student eligibility requirements for participating in
 11 high school athletic competitions; authorizing public
 12 schools to provide transportation to students
 13 participating in open enrollment; amending s. 1002.31,
 14 F.S.; requiring each district school board and charter
 15 school governing board to authorize a parent to have
 16 his or her child participate in controlled open
 17 enrollment; requiring the school district to report
 18 the student for purposes of the school district's
 19 funding; authorizing a school district to provide
 20 transportation to such students; requiring that each
 21 district school board adopt and publish on its website
 22 a controlled open enrollment process; specifying
 23 criteria for the process; prohibiting a school
 24 district from delaying or preventing a student who
 25 participates in controlled open enrollment from being
 26 immediately eligible to participate in certain
 27 activities; amending s. 1006.15, F.S.; defining the
 28 term "eligible to participate"; conforming provisions
 29 to changes made by the act; prohibiting a school
 30 district from delaying or preventing a student who
 31 participates in open controlled enrollment from being

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32 immediately eligible to participate in certain
 33 activities; authorizing a transfer student to
 34 immediately participate in interscholastic or
 35 intrascholastic activities under certain
 36 circumstances; prohibiting a school district or the
 37 Florida High School Athletic Association (FHSAA) from
 38 declaring a transfer student ineligible under certain
 39 circumstances; amending s. 1006.20, F.S.; requiring
 40 the FHSAA to allow a private school to maintain full
 41 membership in the association or to join by sport;
 42 prohibiting the FHSAA from discouraging a private
 43 school from maintaining membership in the FHSAA and
 44 another athletic association; authorizing the FHSAA to
 45 allow a public school to apply for consideration to
 46 join another athletic association; specifying
 47 penalties for recruiting violations; requiring a
 48 school to forfeit a competition in which a student who
 49 was recruited by specified adults participated;
 50 revising circumstances under which a student may be
 51 declared ineligible; requiring student ineligibility
 52 to be established by a preponderance of the evidence;
 53 amending ss. 1012.795 and 1012.796, F.S.; conforming
 54 provisions to changes made by the act; providing an
 55 effective date.

56
 57 Be It Enacted by the Legislature of the State of Florida:

58
 59 Section 1. Paragraphs (a) and (b) of subsection (6),
 60 paragraph (a) of subsection (17), and paragraph (a) of

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61 subsection (22) of section 1002.20, Florida Statutes, are
62 amended to read:

63 1002.20 K-12 student and parent rights.—Parents of public
64 school students must receive accurate and timely information
65 regarding their child’s academic progress and must be informed
66 of ways they can help their child to succeed in school. K-12
67 students and their parents are afforded numerous statutory
68 rights including, but not limited to, the following:

69 (6) EDUCATIONAL CHOICE.—

70 (a) *Public school choices.*—Parents of public school
71 students may seek any ~~whatever~~ public school choice options that
72 are applicable and available to students in their school
73 districts. These options may include controlled open enrollment,
74 single-gender programs, lab schools, virtual instruction
75 programs, charter schools, charter technical career centers,
76 magnet schools, alternative schools, special programs, auditory-
77 oral education programs, advanced placement, dual enrollment,
78 International Baccalaureate, International General Certificate
79 of Secondary Education (pre-AICE), CAPE digital tools, CAPE
80 industry certifications, collegiate high school programs,
81 Advanced International Certificate of Education, early
82 admissions, credit by examination or demonstration of
83 competency, the New World School of the Arts, the Florida School
84 for the Deaf and the Blind, and the Florida Virtual School.
85 These options may also include the public educational school
86 choice options of the Opportunity Scholarship Program and the
87 McKay Scholarships for Students with Disabilities Program.

88 (b) *Private educational school choices.*—Parents of public
89 school students may seek private educational school choice

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90 options under certain programs.

91 1. Under the McKay Scholarships for Students with
92 Disabilities Program, the parent of a public school student with
93 a disability may request and receive a McKay Scholarship for the
94 student to attend a private school in accordance with s.
95 1002.39.

96 2. Under the Florida Tax Credit Scholarship Program, the
97 parent of a student who qualifies for free or reduced-price
98 school lunch or who is currently placed, or during the previous
99 state fiscal year was placed, in foster care as defined in s.
100 39.01 may seek a scholarship from an eligible nonprofit
101 scholarship-funding organization in accordance with s. 1002.395.

102 3. Under the Florida Personal Learning Scholarship Accounts
103 Program, the parent of a student with a qualifying disability
104 may apply for a personal learning scholarship to be used for
105 individual educational needs in accordance with s. 1002.385.

106 (17) ATHLETICS; PUBLIC HIGH SCHOOL.—

107 (a) *Eligibility.*—Eligibility requirements for all students
108 participating in high school athletic competition must allow a
109 student to be immediately eligible in the school in which he or
110 she first enrolls each school year, the school in which the
111 student makes himself or herself a candidate for an athletic
112 team by engaging in practice before enrolling, or the school to
113 which the student has transferred ~~with approval of the district~~
114 ~~school board,~~ in accordance with ~~the provisions of s.~~
115 1006.20(2)(a).

116 (22) TRANSPORTATION.—

117 (a) *Transportation to school.*—Public school students shall
118 be provided transportation to school, in accordance with ~~the~~

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119 ~~provisions of s. 1006.21(3)(a). Public school students may be~~
 120 ~~provided transportation to school in accordance with the~~
 121 ~~controlled open enrollment provisions of s. 1002.31(2).~~

122 Section 2. Section 1002.31, Florida Statutes, is amended to
 123 read:

124 1002.31 Controlled open enrollment; public school parental
 125 choice.—

126 (1) As used in this section, "controlled open enrollment"
 127 means a public education delivery system that allows school
 128 districts to make student school assignments using parents'
 129 indicated preferential school choice as a significant factor.

130 (2)(a) As part of a school district's controlled open
 131 enrollment, and in addition to the existing public school choice
 132 programs provided in s. 1002.20(6)(a), each district school
 133 board shall allow a parent from any school district in the state
 134 whose child is not subject to a current expulsion order to
 135 enroll his or her child in and transport his or her child to any
 136 public school that has not reached capacity in the district,
 137 subject to the maximum class size pursuant to s. 1003.03 and s.
 138 1, Art. IX of the State Constitution. The school district shall
 139 accept the student, pursuant to that school district's
 140 controlled open enrollment participation process, and report the
 141 student for purposes of the school district's funding pursuant
 142 to the Florida Education Finance Program. A school district may
 143 provide transportation to students described under this
 144 subsection at the district school board's discretion.

145 (b) Each charter school governing board shall allow a
 146 parent whose child is not subject to a current expulsion order
 147 to enroll his or her child in and transport his or her child to

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148 the charter school if the school has not reached capacity,
 149 subject to the maximum class size pursuant to s. 1003.03 and s.
 150 1, Art. IX of the State Constitution, and the enrollment
 151 limitations pursuant to s. 1002.33(10)(e)1., 2., 5., 6., and 7.
 152 A charter school may provide transportation to students
 153 described under this subsection at the discretion of the charter
 154 school's governing board.

155 (c) For purposes of continuity of educational choice, a
 156 student who transfers pursuant to paragraph (a) or paragraph (b)
 157 may remain at the school chosen by the parent until the student
 158 completes the highest grade level at the school may offer
 159 controlled open enrollment within the public schools which is in
 160 addition to the existing choice programs such as virtual
 161 instruction programs, magnet schools, alternative schools,
 162 special programs, advanced placement, and dual enrollment.

163 (3) Each district school board ~~offering controlled open~~
 164 ~~enrollment~~ shall adopt by rule and post on its website the
 165 process required to participate in controlled open enrollment.

166 ~~The process a controlled open enrollment plan which~~ must:

167 (a) Adhere to federal desegregation requirements.

168 (b) ~~Allow~~ Include an application process required to
 169 ~~participate in controlled open enrollment that allows parents to~~
 170 declare school preferences, including placement of siblings
 171 within the same school.

172 (c) Provide a lottery procedure to determine student
 173 assignment and establish an appeals process for hardship cases.

174 (d) Afford parents of students in multiple session schools
 175 preferred access to controlled open enrollment.

176 (e) Maintain socioeconomic, demographic, and racial

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177 balance.

178 (f) Address the availability of transportation.

179 (g) Maintain existing academic eligibility criteria for
 180 public school choice programs pursuant to s. 1002.20(6)(a).

181 (h) Identify schools that have not reached capacity, as
 182 determined by the school district. In determining the capacity
 183 of each school, the district school board shall incorporate the
 184 specifications, plans, elements, and commitments contained in
 185 the school district educational facilities plan and the long-
 186 term work programs required under s. 1013.35.

187 (i) Ensure that each district school board adopts a policy
 188 to provide preferential treatment to all of the following:

189 1. Dependent children of active duty military personnel
 190 whose move resulted from military orders.

191 2. Children who have been relocated due to a foster care
 192 placement in a different school zone.

193 3. Children who move due to a change in custody due to
 194 separation, divorce, the serious illness of a custodial parent,
 195 the death of a parent, or a court order.

196 4. Students residing in the school district.

197 (4) In accordance with the reporting requirements of s.
 198 1011.62, each district school board shall annually report the
 199 number of students exercising public school choice, by type
 200 attending the various types of public schools of choice in the
 201 district, in accordance with including schools such as virtual
 202 instruction programs, magnet schools, and public charter
 203 schools, according to rules adopted by the State Board of
 204 Education.

205 (5) For a school or program that is a public school of

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206 choice under this section, the calculation for compliance with
 207 maximum class size pursuant to s. 1003.03 is the average number
 208 of students at the school level.

209 (6) A school district may not delay eligibility or
 210 otherwise prevent a student participating in controlled open
 211 enrollment or a choice program from being immediately eligible
 212 to participate in interscholastic and intrascholastic
 213 extracurricular activities.

214 Section 3. Subsection (3) and paragraph (a) of subsection
 215 (8) of section 1006.15, Florida Statutes, are amended, and
 216 subsection (9) is added to that section, to read:

217 1006.15 Student standards for participation in
 218 interscholastic and intrascholastic extracurricular student
 219 activities; regulation.—

220 (3) (a) As used in this section and s. 1006.20, the term
 221 "eligible to participate" includes, but is not limited to, a
 222 student participating in tryouts, off-season conditioning,
 223 summer workouts, preseason conditioning, in-season practice, or
 224 contests. The term does not mean that a student must be placed
 225 on any specific team for interscholastic or intrascholastic
 226 extracurricular activities. To be eligible to participate in
 227 interscholastic extracurricular student activities, a student
 228 must:

229 1. Maintain a grade point average of 2.0 or above on a 4.0
 230 scale, or its equivalent, in the previous semester or a
 231 cumulative grade point average of 2.0 or above on a 4.0 scale,
 232 or its equivalent, in the courses required by s. 1002.3105(5) or
 233 s. 1003.4282.

234 2. Execute and fulfill the requirements of an academic

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235 performance contract between the student, the district school
 236 board, the appropriate governing association, and the student's
 237 parents, if the student's cumulative grade point average falls
 238 below 2.0, or its equivalent, on a 4.0 scale in the courses
 239 required by s. 1002.3105(5) or s. 1003.4282. At a minimum, the
 240 contract must require that the student attend summer school, or
 241 its graded equivalent, between grades 9 and 10 or grades 10 and
 242 11, as necessary.

243 3. Have a cumulative grade point average of 2.0 or above on
 244 a 4.0 scale, or its equivalent, in the courses required by s.
 245 1002.3105(5) or s. 1003.4282 during his or her junior or senior
 246 year.

247 4. Maintain satisfactory conduct, including adherence to
 248 appropriate dress and other codes of student conduct policies
 249 described in s. 1006.07(2). If a student is convicted of, or is
 250 found to have committed, a felony or a delinquent act that would
 251 have been a felony if committed by an adult, regardless of
 252 whether adjudication is withheld, the student's participation in
 253 interscholastic extracurricular activities is contingent upon
 254 established and published district school board policy.

255 (b) Any student who is exempt from attending a full school
 256 day based on rules adopted by the district school board for
 257 double session schools or programs, experimental schools, or
 258 schools operating under emergency conditions must maintain the
 259 grade point average required by this section and pass each class
 260 for which he or she is enrolled.

261 (c) An individual home education student is eligible to
 262 participate at the public school to which the student would be
 263 assigned according to district school board attendance area

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264 policies or which the student could ~~choose to attend pursuant to~~
 265 ~~district or interdistrict controlled open enrollment provisions,~~
 266 or may develop an agreement to participate at a private school,
 267 in the interscholastic extracurricular activities of that
 268 school, provided the following conditions are met:

269 1. The home education student must meet the requirements of
 270 the home education program pursuant to s. 1002.41.

271 2. During the period of participation at a school, the home
 272 education student must demonstrate educational progress as
 273 required in paragraph (b) in all subjects taken in the home
 274 education program by a method of evaluation agreed upon by the
 275 parent and the school principal which may include: review of the
 276 student's work by a certified teacher chosen by the parent;
 277 grades earned through correspondence; grades earned in courses
 278 taken at a Florida College System institution, university, or
 279 trade school; standardized test scores above the 35th
 280 percentile; or any other method designated in s. 1002.41.

281 3. The home education student must meet the same residency
 282 requirements as other students in the school at which he or she
 283 participates.

284 4. The home education student must meet the same standards
 285 of acceptance, behavior, and performance as required of other
 286 students in extracurricular activities.

287 5. The student must register with the school his or her
 288 intent to participate in interscholastic extracurricular
 289 activities as a representative of the school before the
 290 beginning date of the season for the activity in which he or she
 291 wishes to participate. A home education student must be able to
 292 participate in curricular activities if that is a requirement

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293 for an extracurricular activity.

294 6. A student who transfers from a home education program to
295 a public school before or during the first grading period of the
296 school year is academically eligible to participate in
297 interscholastic extracurricular activities during the first
298 grading period provided the student has a successful evaluation
299 from the previous school year, pursuant to subparagraph 2.

300 7. Any public school or private school student who has been
301 unable to maintain academic eligibility for participation in
302 interscholastic extracurricular activities is ineligible to
303 participate in such activities as a home education student until
304 the student has successfully completed one grading period in
305 home education pursuant to subparagraph 2. to become eligible to
306 participate as a home education student.

307 (d) An individual charter school student pursuant to s.
308 1002.33 is eligible to participate at the public school to which
309 the student would be assigned according to district school board
310 attendance area policies or which the student could ~~choose to~~
311 ~~attend, pursuant to district or interdistrict controlled open-~~
312 ~~enrollment provisions,~~ in any interscholastic extracurricular
313 activity of that school, unless such activity is provided by the
314 student's charter school, if the following conditions are met:

315 1. The charter school student must meet the requirements of
316 the charter school education program as determined by the
317 charter school governing board.

318 2. During the period of participation at a school, the
319 charter school student must demonstrate educational progress as
320 required in paragraph (b).

321 3. The charter school student must meet the same residency

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322 requirements as other students in the school at which he or she
323 participates.

324 4. The charter school student must meet the same standards
325 of acceptance, behavior, and performance that are required of
326 other students in extracurricular activities.

327 5. The charter school student must register with the school
328 his or her intent to participate in interscholastic
329 extracurricular activities as a representative of the school
330 before the beginning date of the season for the activity in
331 which he or she wishes to participate. A charter school student
332 must be able to participate in curricular activities if that is
333 a requirement for an extracurricular activity.

334 6. A student who transfers from a charter school program to
335 a traditional public school before or during the first grading
336 period of the school year is academically eligible to
337 participate in interscholastic extracurricular activities during
338 the first grading period if the student has a successful
339 evaluation from the previous school year, pursuant to
340 subparagraph 2.

341 7. Any public school or private school student who has been
342 unable to maintain academic eligibility for participation in
343 interscholastic extracurricular activities is ineligible to
344 participate in such activities as a charter school student until
345 the student has successfully completed one grading period in a
346 charter school pursuant to subparagraph 2. to become eligible to
347 participate as a charter school student.

348 (e) A student of the Florida Virtual School full-time
349 program may participate in any interscholastic extracurricular
350 activity at the public school to which the student would be

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351 assigned according to district school board attendance area
 352 policies or which the student could ~~choose to attend, pursuant~~
 353 ~~to district or interdistrict controlled open enrollment~~
 354 ~~policies~~, if the student:

355 1. During the period of participation in the
 356 interscholastic extracurricular activity, meets the requirements
 357 in paragraph (a).

358 2. Meets any additional requirements as determined by the
 359 board of trustees of the Florida Virtual School.

360 3. Meets the same residency requirements as other students
 361 in the school at which he or she participates.

362 4. Meets the same standards of acceptance, behavior, and
 363 performance that are required of other students in
 364 extracurricular activities.

365 5. Registers his or her intent to participate in
 366 interscholastic extracurricular activities with the school
 367 before the beginning date of the season for the activity in
 368 which he or she wishes to participate. A Florida Virtual School
 369 student must be able to participate in curricular activities if
 370 that is a requirement for an extracurricular activity.

371 (f) A student who transfers from the Florida Virtual School
 372 full-time program to a traditional public school before or
 373 during the first grading period of the school year is
 374 academically eligible to participate in interscholastic
 375 extracurricular activities during the first grading period if
 376 the student has a successful evaluation from the previous school
 377 year pursuant to paragraph (a).

378 (g) A public school or private school student who has been
 379 unable to maintain academic eligibility for participation in

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380 interscholastic extracurricular activities is ineligible to
 381 participate in such activities as a Florida Virtual School
 382 student until the student successfully completes one grading
 383 period in the Florida Virtual School pursuant to paragraph (a).

384 (h) A school district may not delay eligibility or
 385 otherwise prevent a student participating in controlled open
 386 enrollment, or a choice program, from being immediately eligible
 387 to participate in interscholastic and intrascholastic
 388 extracurricular activities.

389 (8) (a) The Florida High School Athletic Association
 390 (FHSAA), in cooperation with each district school board, shall
 391 facilitate a program in which a middle school or high school
 392 student who attends a private school shall be eligible to
 393 participate in an interscholastic or intrascholastic sport at a
 394 public high school, a public middle school, or a 6-12 public
 395 school that is zoned for the physical address at which the
 396 student resides if:

397 1. The private school in which the student is enrolled is
 398 not a member of the FHSAA and ~~does not offer an interscholastic~~
 399 ~~or intrascholastic athletic program.~~

400 2. The private school student meets the guidelines for the
 401 conduct of the program established by the FHSAA's board of
 402 directors and the district school board. At a minimum, such
 403 guidelines shall provide:

404 a. A deadline for each sport by which the private school
 405 student's parents must register with the public school in
 406 writing their intent for their child to participate at that
 407 school in the sport.

408 b. Requirements for a private school student to

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409 participate, including, but not limited to, meeting the same
 410 standards of eligibility, acceptance, behavior, educational
 411 progress, and performance which apply to other students
 412 participating in interscholastic or intrascholastic sports at a
 413 public school or FHSAA member private school.

414 (9) A student who transfers to a school during the school
 415 year may seek to immediately join an existing team if the roster
 416 for the specific interscholastic or intrascholastic
 417 extracurricular activity has not reached the activity's
 418 identified maximum size and if the coach for the activity
 419 determines that the student has the requisite skill and ability
 420 to participate. The FHSAA and school district may not declare
 421 such a student ineligible because the student did not have the
 422 opportunity to comply with qualifying requirements.

423 Section 4. Subsection (1) and paragraphs (a), (b), (c), and
 424 (g) of subsection (2) of section 1006.20, Florida Statutes, are
 425 amended to read:

426 1006.20 Athletics in public K-12 schools.—

427 (1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High
 428 School Athletic Association (FHSAA) is designated as the
 429 governing nonprofit organization of athletics in Florida public
 430 schools. If the FHSAA fails to meet the provisions of this
 431 section, the commissioner shall designate a nonprofit
 432 organization to govern athletics with the approval of the State
 433 Board of Education. The FHSAA is not a state agency as defined
 434 in s. 120.52. The FHSAA shall be subject to the provisions of s.
 435 1006.19. A private school that wishes to engage in high school
 436 athletic competition with a public high school may become a
 437 member of the FHSAA. Any high school in the state, including

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438 charter schools, virtual schools, and home education
 439 cooperatives, may become a member of the FHSAA and participate
 440 in the activities of the FHSAA. However, membership in the FHSAA
 441 is not mandatory for any school. The FHSAA must allow a private
 442 school the option of maintaining full membership in the
 443 association or joining by sport and may not discourage a private
 444 school from simultaneously maintaining membership in another
 445 athletic association. The FHSAA may allow a public school the
 446 option to apply for consideration to join another athletic
 447 association. The FHSAA may not deny or discourage
 448 interscholastic competition between its member schools and non-
 449 FHSAA member Florida schools, including members of another
 450 athletic governing organization, and may not take any
 451 retributory or discriminatory action against any of its member
 452 schools that participate in interscholastic competition with
 453 non-FHSAA member Florida schools. The FHSAA may not unreasonably
 454 withhold its approval of an application to become an affiliate
 455 member of the National Federation of State High School
 456 Associations submitted by any other organization that governs
 457 interscholastic athletic competition in this state. The bylaws
 458 of the FHSAA are the rules by which high school athletic
 459 programs in its member schools, and the students who participate
 460 in them, are governed, unless otherwise specifically provided by
 461 statute. For the purposes of this section, "high school"
 462 includes grades 6 through 12.

463 (2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

464 (a) The FHSAA shall adopt bylaws that, unless specifically
 465 provided by statute, establish eligibility requirements for all
 466 students who participate in high school athletic competition in

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467 its member schools. The bylaws governing residence and transfer
 468 shall allow the student to be immediately eligible in the school
 469 in which he or she first enrolls each school year or the school
 470 in which the student makes himself or herself a candidate for an
 471 athletic team by engaging in a practice prior to enrolling in
 472 the school. The bylaws shall also allow the student to be
 473 immediately eligible in the school to which the student has
 474 transferred ~~during the school year if the transfer is made by a~~
 475 ~~deadline established by the FHSAA, which may not be prior to the~~
 476 ~~date authorized for the beginning of practice for the sport.~~
 477 ~~These transfers shall be allowed pursuant to the district school~~
 478 ~~board policies in the case of transfer to a public school or~~
 479 ~~pursuant to the private school policies in the case of transfer~~
 480 ~~to a private school.~~ The student shall be eligible in that
 481 school so long as he or she remains enrolled in that school.
 482 Subsequent eligibility shall be determined and enforced through
 483 the FHSAA's bylaws. Requirements governing eligibility and
 484 transfer between member schools shall be applied similarly to
 485 public school students and private school students.

486 (b) The FHSAA shall adopt bylaws that specifically prohibit
 487 the recruiting of students for athletic purposes. The bylaws
 488 shall prescribe penalties and an appeals process for athletic
 489 recruiting violations.

490 1. If it is determined that a school has recruited a
 491 student in violation of FHSAA bylaws, the FHSAA may require the
 492 school to participate in a higher classification for the sport
 493 in which the recruited student competes for a minimum of one
 494 classification cycle, in addition to the penalties in
 495 subparagraphs 2. and 3., and any other appropriate fine or and

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496 sanction imposed on the school, its coaches, or adult
 497 representatives who violate recruiting rules.

498 2. Any recruitment by a school district employee or
 499 contractor in violation of FHSAA bylaws results in escalating
 500 punishments as follows:

501 a. For a first offense, a \$5,000 forfeiture of pay for the
 502 school district employee or contractor who committed the
 503 violation.

504 b. For a second offense, suspension without pay for 12
 505 months from coaching, directing, or advertising an
 506 extracurricular activity and a \$5,000 forfeiture of pay for the
 507 school district employee or contractor who committed the
 508 violation.

509 c. For a third offense, a \$5,000 forfeiture of pay for the
 510 school district employee or contractor who committed the
 511 violation. If the individual who committed the violation holds
 512 an educator certificate, the FHSAA shall also refer the
 513 violation to the department for review pursuant to s. 1012.796
 514 to determine whether probable cause exists, and, if there is a
 515 finding of probable cause, the commissioner shall file a formal
 516 complaint against the individual. If the complaint is upheld,
 517 the individual's educator certificate shall be revoked for 3
 518 years, in addition to any penalties available under s. 1012.796.
 519 Additionally, the department shall revoke any adjunct teaching
 520 certificates issued pursuant to s. 1012.57 and all permissions
 521 under ss. 1012.39 and 1012.43, and the educator is ineligible
 522 for such certificates or permissions for a period of time equal
 523 to the period of revocation of his or her state-issued
 524 certificate.

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525 3. Notwithstanding any other provision of law, a school
 526 shall forfeit every competition in which a student participated
 527 who was recruited by an adult who is not a school district
 528 employee or contractor in violation of FHSAA bylaws.

529 4. A student may not be declared ineligible based on
 530 violation of recruiting rules unless the student or parent has
 531 falsified any enrollment or eligibility document or accepted any
 532 benefit ~~or any promise of benefit~~ if such benefit is not
 533 generally available to the school's students or family members
 534 or is based in any way on athletic interest, potential, or
 535 performance.

536 (c) The FHSAA shall adopt bylaws that require all students
 537 participating in interscholastic athletic competition or who are
 538 candidates for an interscholastic athletic team to
 539 satisfactorily pass a medical evaluation each year prior to
 540 participating in interscholastic athletic competition or
 541 engaging in any practice, tryout, workout, or other physical
 542 activity associated with the student's candidacy for an
 543 interscholastic athletic team. Such medical evaluation may be
 544 administered only by a practitioner licensed under chapter 458,
 545 chapter 459, chapter 460, or s. 464.012, and in good standing
 546 with the practitioner's regulatory board. The bylaws shall
 547 establish requirements for eliciting a student's medical history
 548 and performing the medical evaluation required under this
 549 paragraph, which shall include a physical assessment of the
 550 student's physical capabilities to participate in
 551 interscholastic athletic competition as contained in a uniform
 552 preparticipation physical evaluation and history form. The
 553 evaluation form shall incorporate the recommendations of the

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554 American Heart Association for participation cardiovascular
 555 screening and shall provide a place for the signature of the
 556 practitioner performing the evaluation with an attestation that
 557 each examination procedure listed on the form was performed by
 558 the practitioner or by someone under the direct supervision of
 559 the practitioner. The form shall also contain a place for the
 560 practitioner to indicate if a referral to another practitioner
 561 was made in lieu of completion of a certain examination
 562 procedure. The form shall provide a place for the practitioner
 563 to whom the student was referred to complete the remaining
 564 sections and attest to that portion of the examination. The
 565 preparticipation physical evaluation form shall advise students
 566 to complete a cardiovascular assessment and shall include
 567 information concerning alternative cardiovascular evaluation and
 568 diagnostic tests. Results of such medical evaluation must be
 569 provided to the school. A student is not ~~No student shall be~~
 570 eligible to participate, as provided in s. 1006.15(3), in any
 571 interscholastic athletic competition or engage in any practice,
 572 tryout, workout, or other physical activity associated with the
 573 student's candidacy for an interscholastic athletic team until
 574 the results of the medical evaluation have been received and
 575 approved by the school.

576 (g) The FHSAA shall adopt bylaws establishing the process
 577 and standards by which FHSAA determinations of eligibility are
 578 made. Such bylaws shall provide that:

579 1. Ineligibility must be established by a preponderance of
 580 the clear and convincing evidence;

581 2. Student athletes, parents, and schools must have notice
 582 of the initiation of any investigation or other inquiry into

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583 eligibility and may present, to the investigator and to the
584 individual making the eligibility determination, any information
585 or evidence that is credible, persuasive, and of a kind
586 reasonably prudent persons rely upon in the conduct of serious
587 affairs;

588 3. An investigator may not determine matters of eligibility
589 but must submit information and evidence to the executive
590 director or a person designated by the executive director or by
591 the board of directors for an unbiased and objective
592 determination of eligibility; and

593 4. A determination of ineligibility must be made in
594 writing, setting forth the findings of fact and specific
595 violation upon which the decision is based.

596 Section 5. Paragraph (o) is added to subsection (1) of
597 section 1012.795, Florida Statutes, and subsection (5) of that
598 section is amended, to read:

599 1012.795 Education Practices Commission; authority to
600 discipline.—

601 (1) The Education Practices Commission may suspend the
602 educator certificate of any person as defined in s. 1012.01(2)
603 or (3) for up to 5 years, thereby denying that person the right
604 to teach or otherwise be employed by a district school board or
605 public school in any capacity requiring direct contact with
606 students for that period of time, after which the holder may
607 return to teaching as provided in subsection (4); may revoke the
608 educator certificate of any person, thereby denying that person
609 the right to teach or otherwise be employed by a district school
610 board or public school in any capacity requiring direct contact
611 with students for up to 10 years, with reinstatement subject to

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612 the provisions of subsection (4); may revoke permanently the
613 educator certificate of any person thereby denying that person
614 the right to teach or otherwise be employed by a district school
615 board or public school in any capacity requiring direct contact
616 with students; may suspend the educator certificate, upon an
617 order of the court or notice by the Department of Revenue
618 relating to the payment of child support; or may impose any
619 other penalty provided by law, if the person:

620 (o) Has committed a third recruiting offense as determined
621 by the Florida High School Athletic Association (FHSAA) pursuant
622 to s. 1006.20(2)(b).

623 (5) Each district school superintendent and the governing
624 authority of each university lab school, state-supported school,
625 ~~or~~ private school, and the FHSAA shall report to the department
626 the name of any person certified pursuant to this chapter or
627 employed and qualified pursuant to s. 1012.39:

628 (a) Who has been convicted of, or who has pled nolo
629 contendere to, a misdemeanor, felony, or any other criminal
630 charge, other than a minor traffic infraction;

631 (b) Who that official has reason to believe has committed
632 or is found to have committed any act which would be a ground
633 for revocation or suspension under subsection (1); or

634 (c) Who has been dismissed or severed from employment
635 because of conduct involving any immoral, unnatural, or
636 lascivious act.

637 Section 6. Subsections (3) and (7) of section 1012.796,
638 Florida Statutes, are amended to read:

639 1012.796 Complaints against teachers and administrators;
640 procedure; penalties.—

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641 (3) The department staff shall advise the commissioner
 642 concerning the findings of the investigation and of all
 643 referrals by the Florida High School Athletic Association
 644 (FHSAA) pursuant to ss. 1006.20(2)(b) and 1012.795. The
 645 department general counsel or members of that staff shall review
 646 the investigation or the referral and advise the commissioner
 647 concerning probable cause or lack thereof. The determination of
 648 probable cause shall be made by the commissioner. The
 649 commissioner shall provide an opportunity for a conference, if
 650 requested, prior to determining probable cause. The commissioner
 651 may enter into deferred prosecution agreements in lieu of
 652 finding probable cause if, in his or her judgment, such
 653 agreements are in the best interests of the department, the
 654 certificateholder, and the public. Such deferred prosecution
 655 agreements shall become effective when filed with the clerk of
 656 the Education Practices Commission. However, a deferred
 657 prosecution agreement shall not be entered into if there is
 658 probable cause to believe that a felony or an act of moral
 659 turpitude, as defined by rule of the State Board of Education,
 660 has occurred, or for referrals by the FHSAA. Upon finding no
 661 probable cause, the commissioner shall dismiss the complaint.
 662 (7) A panel of the commission shall enter a final order
 663 either dismissing the complaint or imposing one or more of the
 664 following penalties:
 665 (a) Denial of an application for a teaching certificate or
 666 for an administrative or supervisory endorsement on a teaching
 667 certificate. The denial may provide that the applicant may not
 668 reapply for certification, and that the department may refuse to
 669 consider that applicant's application, for a specified period of

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670 time or permanently.
 671 (b) Revocation or suspension of a certificate.
 672 (c) Imposition of an administrative fine not to exceed
 673 \$2,000 for each count or separate offense.
 674 (d) Placement of the teacher, administrator, or supervisor
 675 on probation for a period of time and subject to such conditions
 676 as the commission may specify, including requiring the certified
 677 teacher, administrator, or supervisor to complete additional
 678 appropriate college courses or work with another certified
 679 educator, with the administrative costs of monitoring the
 680 probation assessed to the educator placed on probation. An
 681 educator who has been placed on probation shall, at a minimum:
 682 1. Immediately notify the investigative office in the
 683 Department of Education upon employment or termination of
 684 employment in the state in any public or private position
 685 requiring a Florida educator's certificate.
 686 2. Have his or her immediate supervisor submit annual
 687 performance reports to the investigative office in the
 688 Department of Education.
 689 3. Pay to the commission within the first 6 months of each
 690 probation year the administrative costs of monitoring probation
 691 assessed to the educator.
 692 4. Violate no law and shall fully comply with all district
 693 school board policies, school rules, and State Board of
 694 Education rules.
 695 5. Satisfactorily perform his or her assigned duties in a
 696 competent, professional manner.
 697 6. Bear all costs of complying with the terms of a final
 698 order entered by the commission.

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699 (e) Restriction of the authorized scope of practice of the
700 teacher, administrator, or supervisor.

701 (f) Reprimand of the teacher, administrator, or supervisor
702 in writing, with a copy to be placed in the certification file
703 of such person.

704 (g) Imposition of an administrative sanction, upon a person
705 whose teaching certificate has expired, for an act or acts
706 committed while that person possessed a teaching certificate or
707 an expired certificate subject to late renewal, which sanction
708 bars that person from applying for a new certificate for a
709 period of 10 years or less, or permanently.

710 (h) Refer the teacher, administrator, or supervisor to the
711 recovery network program provided in s. 1012.798 under such
712 terms and conditions as the commission may specify.

713

714 The penalties imposed under this subsection are in addition to,
715 and not in lieu of, the penalties required for a third
716 recruiting offense pursuant to s. 1006.20(2)(b).

717 Section 7. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ
1st District

Committee Request

To: Senator Tom Lee, Chair
Appropriations Committee

Subject: Committee Agenda Request

Date: January 27, 2016

SENATE APPROPRIATIONS
RECEIVED
16 JAN 28 PM 1:21
STAFF

I respectfully request that Senate Bill 684, Choice in Sports, be placed on the agenda for the Appropriations Committee at your convenience. Thank you for your time and consideration.

Respectfully,

Senator Don Gaetz

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

January 27, 2016

The Honorable Tom Lee
Senate Appropriations Committee, Chair
418 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Lee:

I respectfully request that SB 684, related to *Choice in Sports*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA
Lisa Roberts/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

684
Bill Number (if applicable)

Topic Choice in Sports

Amendment Barcode (if applicable)

Name Natalie King

Job Title _____

Address 235 W. Brandon Blvd.

Phone 813-924-8218

Street

Brandon

FL

33511

City

State

Zip

Email Natalie@rsaconsultingllc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sunshine State Athletic Conference

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/10/16
Meeting Date

SB0684
Bill Number (if applicable)

Topic Choice in Sports

Amendment Barcode (if applicable)

Name SANDRA MAUDENARO-ROSS

Job Title Teacher of Students with Special Needs

Address 6919 Compass Ct.
Street
Orlando, FL 32810
City State Zip

Phone 407-694-6481

Email sandrarossrec@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

SB 684
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Debbie Morham

Job Title Legislative Director

Address 215 S Monroe St.

Phone _____

Street

TH
City

FL
State

32301
Zip

Email debbie@excellen^{org}.red.

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Foundation for Florida's Future

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

SB 684

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron BOOK

Job Title _____

Address 104 W. Jefferson St
Street TLH 32301
City State Zip

Phone 850-224-3427

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FHSA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: PCS/CS/SB 708 (726460)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Governmental Oversight and Accountability Committee; and Senator Joyner

SUBJECT: Arthur G. Dozier School for Boys

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Miller</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 708 authorizes the Department of State (DOS) to reimburse the next of kin or pay the provider or funeral home up to \$7,500 for funeral, reinterment, and grave marker expenses for each child's remains recovered from the Arthur G. Dozier (Dozier) School for Boys by the University of South Florida (USF). The historical resources and artifacts recovered from Dozier are to remain in the custody of the USF pending release to the DOS; and any recovered human remains are to be held by the USF pending release to the next of kin or reinterment.

The bill requires the DOS to contract with the USF for identification and location of next of kin. The DOS will notify the next of kin and make arrangements for the payment or reimbursement of eligible expenses.

The bill establishes an eight-member task force to submit recommendations to the DOS by October 1, 2016 about creating and maintaining a memorial and the location of a site for the reinterment of unidentified or unclaimed remains. The task force recommendations must be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House or Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives. The bill also provides for the repeal of the task force on December 31, 2016.

The bill also requires the DOS to submit a report by February 1, 2018 to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on payments and expenditures required by the bill.

For Fiscal Year 2016-17, the bill appropriates \$500,000 in nonrecurring funds from the General Revenue Fund to the DOS to implement the provisions of the bill. Any unused funds will revert to the General Revenue Fund and are appropriated for Fiscal Year 2017-2018 for the same purpose.

The bill takes effect upon becoming law.

II. Present Situation:

Dozier School for Boys

Dozier was a state reform school located in Marianna, Florida and operated from January 1, 1900 to June 30, 2011. Dozier was one of two training schools operated by the Department of Juvenile Justice.¹ The Department of Education administered the education program for the youths at Dozier.²

In 2008, Governor Charlie Christ directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.³ The former students had lived at Dozier during the 1950's and 1960's and alleged that students who died as a result of abuse were buried at the school cemetery.⁴ FDLE identified 31 graves at Dozier but did not exhume any bodies.⁵ The University of South Florida (USF) subsequently conducted research which included excavation and exhumation.⁶ As of January 28, 2014, USF's work at Dozier has resulted in the discovery of 55 bodies.⁷ There are no official records that account for 24 of the 55 bodies found.⁸

Prompt Payment Law

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services.⁹ DFS must

¹ Section 985.03(56), F.S. (2010).

² Section 1003.52(20), F.S. (2013).

³ *Arthur G. Dozier School for Boys, Case Number EI-04-00005 and EI-73-8455*, Dated December 18, 2012, Office of Executive Investigations, Florida Department of Law Enforcement available at www.fdle.state.fl.us/Content/getattachment/7984bf67-8d1b-47f2-be9f-e1f9ab888874/FDLE-releases-response-regarding-Dozier-School.aspx (last visited December 19, 2015).

⁴ *Id.* at 1.

⁵ *Id.* at 4.

⁶ *Id.* at 4.

⁷ Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015 <http://www.miamiherald.com/news/state/florida/article5427669.html> (last visited December 19, 2015).

⁸ University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, <http://news.usf.edu/article/templates/?a=5997> (last visited December 22, 2015).

⁹ Section 215.422(1), F.S.

make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.¹⁰ If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency must pay the vendor interest¹¹ on the unpaid balance until payment is issued to the vendor.¹²

III. Effect of Proposed Changes:

This bill authorizes USF to retain custody of the following:

- Historical resources, records, archives, or artifacts recovered from Dozier until the DOS requests custody.
- Human remains exhumed from Dozier until the remains are returned to the next of kin or reburied.

The DOS is directed to contract with the USF for the university's continuing efforts to identify and locate the next of kin of the children whose remains were exhumed from Dozier.

The bill authorizes the DOS to spend up to \$7,500 for the cost of each child's funeral, reinterment, and grave marker. These expenditures may take the form of reimbursements to the next of kin, or payments made directly to a funeral home or other appropriate entity. The expenditures are to be made in accordance with current prompt payment laws. Charitable contributions made toward a burial are not eligible for reimbursement. DOS is required to submit a report to the Legislature by February 1, 2018 on the status of its expenditures. The bill provides the DOS rulemaking authority to administer these provisions.

The bill establishes an eight-member task force under the DOS which is responsible for advising the department about the creation and maintenance of a memorial, and the location of a site for reinterment of unidentified or unclaimed remains. The bill designates the following task force members:

- The Secretary of State, or his or her designee, who shall serve as the chair.
- One person appointed by the President of the Florida State Conference of the National Association for the Advancement of Colored People.
- One representative of the Florida Council of Churches, appointed by the executive director of the council.
- A next of kin of a deceased ward buried at the Dozier School for Boys appointed by the Attorney General.
- One representative who promotes the welfare of people who are former wards of the Dozier School for Boys appointed by the Chief Financial Officer.
- One person appointed by the President of the Senate.
- One person appointed by the Speaker of the House of Representatives;
- One person appointed by the Jackson County Board of County Commissioners.

¹⁰ Section 215.422(2), F.S.

¹¹ The CFO calculates the interest rate, which is based on the interest rates set by the Federal Reserve Bank. Sections 215.422(3)(b) and 55.03(1), F.S.

¹² Section 215.422(3)(b), F.S.

Task force recommendations must be submitted to the DOS by October 1, 2016. The task force recommendations are also required to be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives. The bill repeals the task force on December 31, 2016.

The bill appropriates the nonrecurring sum of \$500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill. Any unused funds will revert to the General Revenue Fund on July 1, 2017, and are appropriated for the 2017-2018 fiscal year to continue funding the provisions of the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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:

The impact of PCS/CS/SB 708 is indeterminate. Identified next of kin shall be reimbursed for costs related to reinterment of any human remains recovered from the Dozier site.

C. Government Sector Impact:

The bill appropriates \$500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill's provisions. Unexpended funds will revert to the General Revenue Fund on July 1, 2017, and will be appropriated for the same purpose in the 2017-2018 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 11, 2016:

The committee substitute:

- Clarifies that USF will retain custody of all artifacts and human remains until such time that the remains can be returned to the next of kin or reburied or the DOS is ready to take custody of the artifacts for preservation purposes.
- Requires the USF rather than the DOS, to identify and locate the next of kin and notify the DOS.
- Requires the DOS to promptly notify the next of kin about payment provisions.
- Adds the Governor and Cabinet to the list of recipients of the February report from the DOS.
- Provides for the following task force changes:
 - Refers to the task force as the “Dozier Task Force”;
 - Designates the task force members;
 - Adds additional report recipients; and
 - Adjusts its repeal date to December 31, 2016.

CS by Governmental Oversight and Accountability on January 26, 2016:

- Removes provisions requiring the DOS to perform research and develop evidence taken from Dozier.
- Removes a requirement that the DOS create a memorial and in its place creates a task force to make recommendations about the creation of a memorial and where unclaimed remains should be reinterred. The task force must produce a report by October 1, 2016.
- Removes the condition that payment be made to a funeral home only when the next of kin cannot pay for funeral and reinterment costs.
- Removes the requirement that the DOS make payment to the next of kin within 14 days and replaces that requirement with the current prompt payment law.
- Provides that charitable donations made for the funeral and burial costs will not be reimbursed or paid by the state.

- Provides that the DOS should locate the next of kin by December 31, 2017. More time was given so that the DOS would have sufficient time to locate the next of kin.
- Provides that the DOS should file a report with the Legislature on the status of payments made by February 1, 2018, so that the report will be available prior to the 2018 legislative session.
- Reduces funding to a total of \$500,000 to be spent over the next two fiscal years.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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	.	
	.	

The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment

Between lines 143 and 144
insert:

9. One person who represents a youth development organization that promotes the welfare of at-risk youth, appointed by the Commissioner of Agriculture.



726460

576-03402-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Transportation, Tourism, and
Economic Development)

A bill to be entitled

An act relating to the Arthur G. Dozier School for
Boys; requiring certain historical resources, records,
archives, artifacts, researches, medical records, and
human remains to remain in the custody of the
University of South Florida; providing exceptions;
requiring the Department of State to contract with the
university for the identification and location of
eligible next of kin of certain children; requiring
the department to notify the next of kin of certain
payment or reimbursement provisions; requiring the
department to reimburse the next of kin of children
whose bodies are buried and exhumed at the Dozier
School or to pay directly to a provider for the costs
associated with funeral services, reinterment, and
grave marker expenses; providing a process for
reimbursement or payment by the department; providing
that a charitable donation made toward funeral,
reinterment, and grave marker expenses is not eligible
for reimbursement; requiring the department to submit
a report; establishing a task force to make
recommendations regarding a memorial and a location of
a site for the reinterment of unidentified or
unclaimed remains; providing membership of the task
force; requiring the task force to submit its
recommendation to the department by a certain date;



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requiring the task force to submit its recommendations
to the Governor and Cabinet and to the Legislature;
authorizing the department to adopt rules; providing
appropriations; providing an effective date.

WHEREAS, the Arthur G. Dozier School for Boys, or the
Dozier School for Boys, operated from 1900 until it was closed
in 2011 after allegations of abuse were confirmed in separate
investigations by the Department of Law Enforcement in 2010 and
the Civil Rights Division of the United States Department of
Justice in 2011, and

WHEREAS, official records indicated that 31 graves had been
dug at the facility between 1914 and 1952, and

WHEREAS, a forensic investigation by the University of
South Florida found that there are no records of where children
who died at the Dozier School for Boys are buried and that
families were often notified after the child was buried or
denied access to their remains at the time of burial, and

WHEREAS, exhumations of bodies began in August 2013, and
the excavations yielded 55 burial sites, 24 more sites than
reported in official records, and

WHEREAS, one of the bodies exhumed during the forensic
investigation was of a child reported missing since 1940, and

WHEREAS, nearly 100 deaths were recorded at the school and
51 sets of remains were exhumed from burials, and additional
victims of a fatal fire in 1914 are still buried with the fire
debris on site, and

WHEREAS, many families of children whose bodies have been
exhumed lack the resources to properly reinter those children at



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56 a suitable location, and

57 WHEREAS, the State of Florida recognizes an obligation to
58 help the families of children formerly buried at the Dozier
59 School for Boys reinter the bodies of those children, NOW,
60 THEREFORE,

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. (1)(a) Any historical resource, record, archive,
65 artifact, public research, or medical record that was recovered
66 from the Arthur G. Dozier School for Boys by the University of
67 South Florida shall remain in the custody of the university for
68 archival and preservation until the Department of State requests
69 custody of such resource, record, archive, artifact, public
70 research, or medical record.

71 (b) Any human remains exhumed from the Arthur G. Dozier
72 School for Boys by the University of South Florida shall remain
73 in the custody of the university for identification purposes
74 until the remains are returned to the next of kin or reburied
75 pursuant to this act.

76 (2)(a) The Department of State shall contract with the
77 University of South Florida for the identification and location
78 of eligible next of kin for such children and the update of
79 information on associated artifacts and materials.

80 (b) No later than July 1, 2016, the University of South
81 Florida must provide the Department of State with contact
82 information for the next of kin for each set of human remains
83 which has been returned to a next to kin.

84 (c) For any identification of next of kin occurring on or



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85 after July 1, 2016, the University of South Florida must provide
86 location information of the next of kin to the Department of
87 State at least 5 days before returning the human remains to the
88 next of kin.

89 (d) Beginning July 1, 2016, the Department of State must
90 notify the next of kin responsible for a set of human remains
91 about the payment or reimbursement provisions under subsection
92 (3). Such notification must be made within 15 business days
93 after the department's receipt of the location information of
94 the next of kin.

95 (3) The Department of State shall reimburse the next of kin
96 or pay directly to the provider up to \$7,500 for funeral,
97 reinterment, and grave marker expenses for each child whose body
98 was buried at and exhumed, or otherwise recovered, from the
99 Dozier School for Boys.

100 (a) In order to receive reimbursement, the next of kin must
101 submit to the department receipts for, or documentation of,
102 expenses. Reimbursement shall be made pursuant to s. 215.422,
103 Florida Statutes.

104 (b) If expenses are to be paid directly to the provider,
105 the funeral home or other similar entity must submit an invoice
106 to the department for the cost of the child's funeral,
107 reinterment, and grave marker expenses. Payment shall be made
108 pursuant to s. 215.422, Florida Statutes.

109 (c) A charitable donation made toward funeral, reinterment,
110 and grave marker expenses is not eligible for reimbursement.

111 (4) By February 1, 2018, the Department of State shall
112 submit a report to the Governor and Cabinet, the President of
113 the Senate, and the Speaker of the House of Representatives



576-03402-16

114 regarding any payments and reimbursements made pursuant to this
115 section.

116 (5) The department may adopt rules necessary to administer
117 this section.

118 Section 2. (1) A task force is established adjunct to the
119 Department of State to advise the department and, except as
120 otherwise provided in this section, shall operate consistent
121 with s. 20.052, Florida Statutes. The task force shall be known
122 as the "Dozier Task Force." The Department of State shall
123 provide administrative and staff support services relating to
124 the functions of the task force.

125 (2) (a) The task force shall consist of the following
126 members:

127 1. The Secretary of State, or his or her designee, who
128 shall serve as the chair.

129 2. One person appointed by the President of the Florida
130 State Conference of the National Association for the Advancement
131 of Colored People.

132 3. One representative of the Florida Council of Churches,
133 appointed by the executive director of the council.

134 4. A next of kin of a deceased ward buried at the Dozier
135 School for Boys appointed by the Attorney General.

136 5. One representative who promotes the welfare of people
137 who are former wards of the Dozier School for Boys appointed by
138 the Chief Financial Officer.

139 6. One person appointed by the President of the Senate.

140 7. One person appointed by the Speaker of the House of
141 Representatives.

142 8. One person appointed by the Jackson County Board of



576-03402-16

143 County Commissioners.

144 (b) By October 1, 2016, the task force shall submit its
145 recommendations to the Department of State regarding the
146 creation and maintenance of a memorial and the location of a
147 site for the reinterment of unidentified or unclaimed remains.
148 The recommendations shall also be submitted to the Governor and
149 Cabinet, the President of the Senate, the Speaker of the House
150 of Representatives, the Minority Leader of the Senate, and the
151 Minority Leader of the House of Representatives.

152 (3) This section is repealed December 31, 2016.

153 Section 3. For the 2016-2017 fiscal year, the sum of
154 \$500,000 in nonrecurring funds is appropriated from the General
155 Revenue Fund to the Department of State for the purpose of
156 implementing this act. Funds remaining unexpended or
157 unencumbered from this appropriation as of July 1, 2017, shall
158 revert and be reappropriated for the same purpose in the 2017-
159 2018 fiscal year.

160 Section 4. This act shall take effect upon becoming a law.

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 Appropriations

BILL: CS/CS/SB 708

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Governmental Oversight and Accountability Committee; and Senator Joyner

SUBJECT: Arthur G. Dozier School for Boys

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Miller</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 708 authorizes the Department of State (DOS) to reimburse the next of kin or pay the provider or funeral home up to \$7,500 for funeral, reinterment, and grave marker expenses for each child's remains recovered from the Arthur G. Dozier (Dozier) School for Boys by the University of South Florida (USF). The historical resources and artifacts recovered from Dozier are to remain in the custody of the USF pending release to the DOS; and any recovered human remains are to be held by the USF pending release to the next of kin or reinterment.

The bill requires the DOS to contract with the USF for identification and location of next of kin. The DOS will notify the next of kin and make arrangements for the payment or reimbursement of eligible expenses.

The bill establishes a nine-member task force to submit recommendations to the DOS by October 1, 2016, about creating and maintaining a memorial and the location of a site for the reinterment of unidentified or unclaimed remains. The task force recommendations must be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House or Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives. The bill also provides for the repeal of the task force on December 31, 2016.

The bill also requires the DOS to submit a report by February 1, 2018, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on payments and expenditures required by the bill.

For Fiscal Year 2016-2017, the bill appropriates \$500,000 in nonrecurring funds from the General Revenue Fund to the DOS to implement the provisions of the bill. Any unused funds will revert to the General Revenue Fund and are appropriated for Fiscal Year 2017-2018 for the same purpose.

The bill takes effect upon becoming law.

II. Present Situation:

Dozier School for Boys

Dozier was a state reform school located in Marianna, Florida and operated from January 1, 1900 to June 30, 2011. Dozier was one of two training schools operated by the Department of Juvenile Justice.¹ The Department of Education administered the education program for the youths at Dozier.²

In 2008, Governor Charlie Christ directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.³ The former students had lived at Dozier during the 1950's and 1960's and alleged that students who died as a result of abuse were buried at the school cemetery.⁴ FDLE identified 31 graves at Dozier but did not exhume any bodies.⁵ The University of South Florida (USF) subsequently conducted research which included excavation and exhumation.⁶ As of January 28, 2014, USF's work at Dozier has resulted in the discovery of 55 bodies.⁷ There are no official records that account for 24 of the 55 bodies found.⁸

Prompt Payment Law

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services.⁹ DFS must

¹ Section 985.03(56), F.S. (2010).

² Section 1003.52(20), F.S. (2013).

³ *Arthur G. Dozier School for Boys, Case Number EI-04-00005 and EI-73-8455*, Dated December 18, 2012, Office of Executive Investigations, Florida Department of Law Enforcement available at www.fdle.state.fl.us/Content/getattachment/7984bf67-8d1b-47f2-be9f-e1f9ab888874/FDLE-releases-response-regarding-Dozier-School.aspx (last visited December 19, 2015).

⁴ Id. at 1.

⁵ Id. at 4.

⁶ Id. at 4.

⁷ Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015, <http://www.miamiherald.com/news/state/florida/article5427669.html> (last visited December 19, 2015).

⁸ University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, <http://news.usf.edu/article/templates/?a=5997> (last visited December 22, 2015).

⁹ Section 215.422(1), F.S.

make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.¹⁰ If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency must pay the vendor interest¹¹ on the unpaid balance until payment is issued to the vendor.¹²

III. Effect of Proposed Changes:

This bill authorizes USF to retain custody of the following:

- Historical resources, records, archives, or artifacts recovered from Dozier until the DOS requests custody.
- Human remains exhumed from Dozier until the remains are returned to the next of kin or reburied.

The DOS is directed to contract with the USF for the university's continuing efforts to identify and locate the next of kin of the children whose remains were exhumed from Dozier.

The bill authorizes the DOS to spend up to \$7,500 for the cost of each child's funeral, reinterment, and grave marker. These expenditures may take the form of reimbursements to the next of kin, or payments made directly to a funeral home or other appropriate entity. The expenditures are to be made in accordance with current prompt payment laws. Charitable contributions made toward a burial are not eligible for reimbursement. DOS is required to submit a report to the Legislature by February 1, 2018 on the status of its expenditures. The bill provides the DOS rulemaking authority to administer these provisions.

The bill establishes a nine-member task force under the DOS which is responsible for advising the department about the creation and maintenance of a memorial, and the location of a site for reinterment of unidentified or unclaimed remains. The bill designates the following task force members:

- The Secretary of State, or his or her designee, who shall serve as the chair.
- One person appointed by the President of the Florida State Conference of the National Association for the Advancement of Colored People.
- One representative of the Florida Council of Churches, appointed by the executive director of the council.
- A next of kin of a deceased ward buried at the Dozier School for Boys appointed by the Attorney General.
- One representative who promotes the welfare of people who are former wards of the Dozier School for Boys appointed by the Chief Financial Officer.
- One person appointed by the President of the Senate.
- One person appointed by the Speaker of the House of Representatives;
- One person appointed by the Jackson County Board of County Commissioners.
- One person who represents a youth development organization that promotes the welfare of at-risk youth, appointed by the Commission of Agriculture.

¹⁰ Section 215.422(2), F.S.

¹¹ The CFO calculates the interest rate, which is based on the interest rates set by the Federal Reserve Bank. Sections 215.422(3)(b) and 55.03(1), F.S.

¹² Section 215.422(3)(b), F.S.

Task force recommendations must be submitted to the DOS by October 1, 2016. The task force recommendations are also required to be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives. The bill repeals the task force on December 31, 2016.

The bill appropriates the nonrecurring sum of \$500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill. Any unused funds will revert to the General Revenue Fund on July 1, 2017, and are appropriated for the 2017-2018 fiscal year to continue funding the provisions of the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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:

The impact of CS/CS/SB 708 is indeterminate. Identified next of kin shall be reimbursed for costs related to reinterment of any human remains recovered from the Dozier site.

C. Government Sector Impact:

The bill appropriates \$500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill's provisions. Unexpended funds will revert to the General Revenue Fund on July 1, 2017, and will be appropriated for the same purpose in the 2017-2018 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:

The committee substitute:

- Clarifies that USF will retain custody of all artifacts and human remains until such time that the remains can be returned to the next of kin or reburied or the DOS is ready to take custody of the artifacts for preservation purposes.
- Requires the USF rather than the DOS, to identify and locate the next of kin and notify the DOS.
- Requires the DOS to promptly notify the next of kin about payment provisions.
- Adds the Governor and Cabinet to the list of recipients of the February report from the DOS.
- Provides for the following task force changes:
 - Refers to the task force as the “Dozier Task Force”;
 - Designates the task force members;
 - Adds additional report recipients; and
 - Adjusts its repeal date to December 31, 2016.
- Adds a member to the Dozier Task Force appointed by the Commissioner of Agriculture.

CS by Governmental Oversight and Accountability on January 26, 2016:

- Removes provisions requiring the DOS to perform research and develop evidence taken from Dozier.
- Removes a requirement that the DOS create a memorial and in its place creates a task force to make recommendations about the creation of a memorial and where unclaimed remains should be reinterred. The task force must produce a report by October 1, 2016.
- Removes the condition that payment be made to a funeral home only when the next of kin cannot pay for funeral and reinterment costs.
- Removes the requirement that the DOS make payment to the next of kin within 14 days and replaces that requirement with the current prompt payment law.

- Provides that charitable donations made for the funeral and burial costs will not be reimbursed or paid by the state.
- Provides that the DOS should locate the next of kin by December 31, 2017. More time was given so that the DOS would have sufficient time to locate the next of kin.
- Provides that the DOS should file a report with the Legislature on the status of payments made by February 1, 2018, so that the report will be available prior to the 2018 legislative session.
- Reduces funding to a total of \$500,000 to be spent over the next two fiscal years.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Joyner

585-02624A-16

2016708c1

A bill to be entitled

An act relating to the Arthur G. Dozier School for Boys; directing the Department of State to preserve historical resources, records, archives, and artifacts; directing the department to reimburse the next of kin of children whose bodies are buried and exhumed at the Dozier School or to pay directly to a provider for the costs associated with funeral services, reinterment, and grave marker expenses; providing a process for reimbursement by the department; providing that a charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement; establishing a task force to make recommendations regarding a memorial and a location of a site for the reinterment of unidentified or unclaimed remains; providing that members of the task force shall serve without compensation but are entitled certain per diem and travel expenses; requiring the task for to submit its recommendation to the department by a certain date, at which time the task force is abolished; authorizing the department to adopt rules; providing appropriations; providing an effective date.

WHEREAS, the Arthur G. Dozier School for Boys, or the Dozier School, operated from 1900 until it was closed in 2011 after allegations of abuse were confirmed in separate investigations by the Department of Law Enforcement in 2010 and the Civil Rights Division of the United States Department of Justice in 2011, and

WHEREAS, official records indicated that 31 graves had been

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dug at the facility between 1914 and 1952, and

WHEREAS, a forensic investigation by the University of South Florida found that there are no records of where children who died at the Dozier School are buried and that a second cemetery is likely to exist, and

WHEREAS, exhumations of bodies began in August 2013, and the excavations yielded 55 burial sites, 24 more sites than reported in official records, and

WHEREAS, one of the bodies exhumed during the forensic investigation was of a child reported missing since 1940, and

WHEREAS, representatives of children formerly held at the Dozier School have estimated that there could be 100 more bodies buried on the grounds of the school, and

WHEREAS, many families of children whose bodies have been exhumed lack the resources to properly reinter those children at a suitable location, and

WHEREAS, the State of Florida recognizes an obligation to help the families of children formerly buried at the Dozier School reinter the bodies of those children, NOW, THEREFORE,

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Be It Enacted by the Legislature of the State of Florida:

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Section 1. (1) Any historical resource, record, archive, or artifact and any human remains that are recovered from the Arthur G. Dozier School for Boys must be transferred to the Department of State. The department shall retain and preserve such historical resources, records, archives, and artifacts.

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(2) The Department of State shall reimburse the next of kin or pay directly to the provider up to \$7,500 for funeral,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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61 reinterment, and grave marker expenses for each child whose body
 62 was buried and exhumed at the Dozier School. The department
 63 shall identify and locate eligible next of kin of such children
 64 by December 31, 2017.

65 (a) To receive reimbursement, the next of kin must submit
 66 to the department receipts for or documentation of expenses.
 67 Reimbursement shall be made pursuant to s. 215.422.

68 (b) If expenses are to be paid directly to the provider,
 69 the funeral home or other similar entity shall submit an invoice
 70 to the department for the cost of the child's funeral,
 71 reinterment, and grave marker expenses. Payment shall be made
 72 pursuant to s. 215.422.

73 (c) A charitable donation made toward funeral, reinterment,
 74 and grave marker expenses is not eligible for reimbursement.

75 (3) By February 1, 2018, the Department of State shall
 76 report to the Legislature on the status of payments and
 77 reimbursements required by this act.

78 (4) (a) A task force, as defined in s. 20.03, is established
 79 adjunct to the Department of State to make recommendations to
 80 the department regarding the creation and maintenance of a
 81 memorial and the location of a site for the reinterment of
 82 unidentified or unclaimed remains.

83 (b) Task force members shall be appointed by the secretary
 84 of the Department of State and shall serve without compensation,
 85 but are entitled to reimbursement for per diem and travel
 86 expenses in accordance with s. 112.061.

87 (c) The recommendations of the task force must be submitted
 88 to the Department of State by October 1, 2016, at which time the
 89 task force is abolished.

585-02624A-16

2016708c1

90 (5) The department may adopt rules necessary to administer
 91 this section.

92 Section 2. For the 2016-2017 fiscal year, the sum of
 93 \$500,000 in nonrecurring funds is appropriated from the General
 94 Revenue Fund to the Department of State for the purpose of
 95 implementing this act. The unexpended balance of such funds
 96 shall revert immediately on July 1, 2017, and is appropriated
 97 for the 2017-2018 fiscal year for the same purpose.

98 Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

February 12, 2016

Senator Tom Lee, Chair
Senate Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This is to request that CS/CS/Senate Bill 708, Arthur G. Dozier School for Boys, be placed on the agenda for the Committee on Appropriations. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations

BILL: PCS/CS/SB 800 (380416)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Higher Education Committee; and Senator Brandes

SUBJECT: Private Postsecondary Education

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 800 modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education (CIE or commission).
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

According to the Department of Education (DOE or department), the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of \$165,604, to handle the

increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the Senate General Appropriations Bill.

The bill takes effect July 1, 2016.

II. Present Situation:

Private postsecondary educational institutions must be licensed to operate in Florida and meet specified fair consumer practices requirements.

Commission for Independent Education

The CIE, established in the DOE, is responsible for exercising all powers, duties, and functions concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure of institutions under its purview.¹ The commission is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction.² Independent postsecondary educational institution means “any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government.”³

The membership of the commission consists of:⁴

- Two representatives of independent colleges or universities licensed by the commission.
- Two representatives of independent, nondegree-granting schools licensed by the commission.
- One member from a public school district or Florida College System institution who is an administrator of career education.
- One representative of a religious college that is not under the jurisdiction or purview of the commission, based on meeting specified criteria in law.⁵
- One lay member who is not affiliated with an independent postsecondary educational institution.

Licensure of Institutions

The commission is responsible for developing minimum standards to evaluate institutions for licensure.⁶ Current law requires that the standards must, at a minimum, include the institution’s name, financial stability, purpose, administrative organization, admissions and recruitment, educational programs and curricula, retention, completion, career placement, faculty, learning

¹ Section 1005.21(1)-(2), F.S.

² *Id.*

³ Section 1005.02(11), F.S.

⁴ Section 1005.21(2), F.S.

⁵ Section 1005.06(1)(f), F.S.

⁶ Section 1005.31(2), F.S. “License” means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule and is permitted to operate in this state. Section 1005.02(13), F.S.

resources, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution related to professional certification and licensure.⁷ A postsecondary educational institution must obtain licensure from the commission to operate in the state of Florida, unless such institution is not within the commission's jurisdiction or purview, as specified in law.⁸

Licensure by Means of Accreditation

A private postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:⁹

- The institution has operated legally in this state for at least five consecutive years.
- The institution holds institutional accreditation by an accrediting agency evaluated and approved by the commission as having standards substantially equivalent to the commission's licensure standards.
- The institution has no unresolved complaints or actions in the past 12 months.
- The institution meets minimum requirements for financial responsibility as determined by the commission.
- The institution is a Florida corporation.

An institution that is granted a license by means of accreditation must comply with the standards and requirements in law.¹⁰ For instance, the institution must follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.¹¹ With the exception of submitting an annual audit report to the commission, the commission may not require institutions that are licensed by means of accreditation to submit reports that differ from the reports that such institutions submit to their accrediting association.¹²

Student Protection Fund

The CIE administers a statewide, fee-supported financial program, named the Student Protection Fund (Fund), to fund the completion of training a student who enrolls in a nonpublic school that terminates a program or ceases to operate before the student completes his or her program of study.¹³ The commission is authorized to assess a fee from the schools within the CIE's jurisdiction for such purpose.¹⁴ If a licensed school terminates a program before all students enrolled in that program complete their program of study, the commission must assess an additional fee from the school that is adequate to pay for the full cost of completing the training of such students.¹⁵

⁷ *Id.*

⁸ Sections 1005.31(1)(a) and 1005.06(1), F.S.

⁹ Section 1005.32, F.S.

¹⁰ *Id.*

¹¹ Section 1005.32(3), F.S.

¹² *Id.*

¹³ Section 1005.37(1), F.S.

¹⁴ Section 1005.37(2), F.S.

¹⁵ Section 1005.37(3), F.S.

The Fund must be actuarially sound, periodically audited by the Auditor General, and reviewed to determine if additional fees must be charged to the schools.¹⁶

Fair Consumer Practices

A private postsecondary educational institution that is under the jurisdiction of the commission or that is exempt from the jurisdiction or purview of the commission, as authorized in law, must do the following:¹⁷

- Disclose to each prospective student specified information (e.g., a statement of the purpose of the institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, and its fee schedule and policies). The institution must make the required written disclosures at least 1 week prior to enrollment or collection of any tuition from the prospective student. The disclosures may be made in the institution's current catalog.
- Use a reliable method to assess, before accepting a student into a program, the student's ability to successfully complete the course of study for which he or she has applied.
- Inform each student accurately about financial assistance and obligations for repayment of loans, describe any employment placement services provided and the limitations thereof, and refrain from misinforming the public about guaranteed placement, market availability, or salary amounts.
- Provide to prospective and enrolled students accurate program licensure information for practicing related occupations and professions in Florida.
- Ensure that all advertisements are accurate and not misleading.
- Publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines established by commission rule.
- Follow state and federal requirements for annual reporting of crime statistics and physical plant safety, and make such reports available to the public.
- Publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

Institutional Closings

Current law prescribes the requirements for lawful closure of a licensed postsecondary institution and the authority of the CIE in this process. Specifically,

- The CIE is authorized to prevent the operation of a licensed independent postsecondary educational institution by an owner who has unlawfully closed another institution.
- The CIE may assume control over student records upon closure of a licensed institution if the institution does not provide an orderly closure.
- The owners, directors, or administrators must notify the commission in writing at least 30 days prior to the closure of the institution and must organize an orderly closure of the institution. An owner, director, or administrator who fails to notify the commission at least 30 days prior to the institution's closure, or who fails to organize the orderly closure of the

¹⁶ Section 1005.37(7), F.S.

¹⁷ Section 1005.04(1), F.S.

institution and the train out of the students, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.

- The CIE may seek civil penalties up to \$10,000 from any owner, director, or administrator of an institution who knowingly destroys, abandons, or fails to convey or provide for the safekeeping of institutional and student records.
- The CIE may refer matters to the Department of Legal Affairs or the state attorney for investigation and prosecution.

Continuing Education for Administrators and Faculty

The commission is authorized to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The commission may exercise this authority over the chief administrator, director of education or training, placement director, admissions director, financial aid director, and faculty members.

III. Effect of Proposed Changes:

This bill modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education.
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

Commission for Independent Education

The bill revises the membership of the CIE by removing from the commission's membership, the representative of a religious college and the representative from a public school district or Florida College System institution. The bill adds one member who is an employer of graduates of institutions licensed by the CIE and one member who is a graduate of an institution subject to licensure by the CIE. The bill also limits commission members to serving no more than three consecutive terms.

The bill expands the powers and duties of the commission. Specifically, the bill:

- Requires the CIE to approve its annual budget.

- Requires the CIE to appoint a committee to review any complaints from students, faculty, and others concerning institutions under its purview, not closed within 90 days.
- Authorizes the CIE to prohibit, or limit, enrollment at a licensed institution, based on the institution's performance.

Licensure of Institutions

The bill modifies the minimum standards for evaluating institutions for licensure by specifying that the standards for retention and completion include a retention and completion management plan, prescribed by the commission. A retention and management plan may assist the institutions in developing strategies to improve student retention and completion outcomes, which may benefit the students¹⁸ attending such institutions in completing their respective programs of study and securing employment.

Provisional License

The bill authorizes the commission to require institutions that do not provide sufficient evidence of financial stability at the time of applying for a provisional license to post and maintain a surety bond with the commission. The surety bond may not exceed 50 percent of the amount of the first year's projected revenue.

The surety bond will increase the financial stability of certain new private postsecondary education institutions and assist with off-setting the burden on the Student Protection Fund if such institutions close improperly.¹⁹ Until a new institution achieves financial stability, the surety bond will also assist with providing protection to students.²⁰

As an alternative to the surety bond, the commission may allow a cash deposit escrow account or an irrevocable letter of credit payable to the commission. The amount of the cash deposit escrow account or the irrevocable letter of credit must be the same as the surety bond amount for the institution would have been.

The bill authorizes the CIE to adopt rules to implement the specified requirements for the granting of provisional license.

Licensure by Means of Accreditation

The bill changes the current requirements for licensure by means of accreditation to:

- Remove the criteria that an independent postsecondary educational institution be a Florida corporation. As a result, institutions that are non-Florida corporations will be able to use the licensure by means of accreditation process to operate in Florida.²¹

¹⁸ *Id.*

¹⁹ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²⁰ *Id.*

²¹ This modification supports the federal court ruling, which declared that “s. 1005.32(1)(e), Florida Statutes (2007), unconstitutionally makes licensure by means of accreditation available only to a Florida corporation.” *University of Phoenix v. Nancy Bradley*, No. 08-0217 (N.D. Fla. (Dec. 23, 2008); see also Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

- Add a requirement for a retention and completion management plan to the reporting requirements that an independent postsecondary educational institution must submit to the commission. A plan may assist the CIE in assessing the institutions' strategies to improve student retention and completion outcomes, which may benefit the students²² attending such institutions complete their respective programs of study and secure employment.

Application Review

The bill requires the CIE to, within 60 days after receiving an application for licensure, review the application, notify the applicant of any error or omission, and request additional information, if necessary. The specified notification deadline may help the institutions receive and address the commission's concerns in a timely manner.

Accountability for Licensed Institutions

The bill establishes accountability provisions for CIE licensed institutions. Annually, by November 30, each licensed institution must provide data to the CIE which includes, at a minimum, graduation rates, retention rates, and placement rates. The CIE must prepare an annual accountability report with this data for all licensed institutions by March 15. The commission must assess a \$1,000 fine on any institution that is delinquent in reporting the required data. The commission must also establish benchmarks to recognize high-performing licensed institutions.

Student Protection Fund

The bill expands the authority of the CIE to annually determine and assess fees, to support the Student Protection Fund (Fund), from only "schools" that fall within the CIE's jurisdiction to all licensed "institutions". Currently, the definition of a school²³ does not include degree-granting independent postsecondary educational institutions.²⁴ By comparison, licensed institutions include both degree and non-degree granting institutions.²⁵ Licensed institutions also include all institutions that are licensed by the commission²⁶ as well as the institutions that are licensed by means of accreditation.²⁷ As a result of this expansion, more students will be protected by the Fund.²⁸ However, the bill requires that if the Fund balance exceeds \$5 million on November 1 of any year, the fees may not be collected in the next calendar year.

Fair Consumer Practices

The bill modifies the fair consumer practices provisions in law by requiring each independent postsecondary educational institution to disclose to current and prospective students, in writing, all fees and costs that the students will incur to complete a program of study at the institution. This disclosure will assist students in planning ahead for completing a program of study and registering for courses each term at the institution.

²² Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²³ Section 1005.02(16), F.S.

²⁴ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²⁵ Telephone interview with Commission for Independent Education staff, Florida Department of Education (Jan. 12, 2016).

²⁶ Section 1005.31, F.S.

²⁷ Section 1005.32, F.S.

²⁸ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

Institutional Closings

The bill requires the CIE to establish a Closed Institution Panel (panel) by October 1, 2016. The panel will consist of one commission member, one commission staff member, one accrediting body staff member, and one administrator with experience managing licensed institutions. Upon notification by the CIE, the panel must convene to implement measures to minimize the impact of the institutional closing on its students. The panel's activities will be conducted at the expense of the closing institution.

The bill also changes the charge for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.

Continuing Education for Administrators and Faculty

The bill requires the commission to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The bill adds the chief campus officer to the list of specified positions for which the CIE is responsible for assessing qualifications and requiring continuing education and training. Beginning July 1, 2017, and annually thereafter, the CIE must verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

The bill takes effect 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:

PCS/CS/SB 800 authorizes the CIE to require new nonpublic postsecondary institutions that do not provide sufficient evidence of financial stability to post and maintain a surety bond, or authorized alternative, not to exceed 50 percent of the first year's projected revenues.

The bill expands the authority of the CIE to access fees to support the Student Protection Fund, which is used to assist students when a school improperly closes before completion of training of its students, to include all licensed institutions, not just non-degree granting schools. This will increase the number of students protected by the Fund. However, if the balance of this fund exceeds \$5 million by November 1 of any year, the fees may not be collected the next calendar year.

C. Government Sector Impact:

According the Department of Education, the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of \$165,604, to handle the increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the proposed Senate General Appropriations Bill for Fiscal Year 2016-2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1005.04, 1005.21, 1005.22, 1005.31, 1005.32, 1005.36, 1005.37, and 1005.39.

The bill creates section 1005.11 of the Florida Statutes.

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

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

Recommended CS/CS by Appropriations Subcommittee on Education on February 11, 2016:

The committee substitute:

- Requires the Commission for Independent Education (CIE or commission) to prepare an annual accountability report by March 15 each year.

- Requires licensed institutions to provide specified data to the CIE by November 30 each year or be subject to a \$1,000 fine.
- Revises the commission membership to:
 - Remove one member from a public school district or Florida College System institution and one member from an institution not under the purview of the commission:
 - Add one member who is an employer of graduates of institutions licensed by the commission and add one member who is a graduate of an institution licensed by the commission: and
 - Prohibit CIE members from serving more than 3 consecutive terms.
- Requires a committee, appointed by the CIE, to review complaints not resolved within 90 days.
- Provides for the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Changes the criminal penalty for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.
- Authorizes the commission to annually determine fees for the Student Protection Fund; however if the fund balance exceeds \$5 million by November 1 of any year, the fees may not be collected the next calendar year.

CS by Higher Education on January 25, 2016:

The committee substitute modifies the written disclosure requirement in SB 800 concerning fees and costs by clarifying that such information must be provided to current and prospective students in a format prescribed by the:

- Commission for Independent Education (commission) or
- Independent Colleges and Universities of Florida for the private colleges and universities that are exempt from the jurisdiction or purview of the commission based on criteria specified in law.

B. Amendments:

None.



380416

576-03411-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to independent postsecondary educational institutions; amending s. 1005.04, F.S.; requiring that certain institutions include specified information relating to student fees and costs in a disclosure to prospective students; creating s. 1005.11, F.S.; requiring the Commission for Independent Education to annually prepare an accountability report by a specified date; requiring licensed institutions to annually provide certain data to the commission by a specified date and authorizing administrative fines for an institution that fails to timely submit the data; requiring placement rates to be determined using a specified methodology; requiring the commission to establish a common set of data definitions; requiring the commission to establish certain benchmarks by rule; providing for the designation of certain licensed institutions as "high performing"; amending s. 1005.21, F.S.; revising the commission's membership; limiting the terms of commission members; amending s. 1005.22, F.S.; requiring the commission to approve an annual budget; providing for the review of certain complaints concerning institutions or programs which are not closed within a specified time; authorizing the commission to prohibit the enrollment of new students, or limit the number of students in a program at, a



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licensed institution under certain circumstances; amending s. 1005.31, F.S.; revising the commission's evaluation standards for licensure of an institution; requiring certain institutions to post a surety bond or similar financial security for specified purposes; requiring the commission to adopt rules; requiring the commission to examine an application for licensure and take certain actions within a specified period; amending s. 1005.32, F.S.; deleting a provision authorizing an institution that is a Florida corporation to apply for licensure by means of accreditation; requiring institutions granted licensure through accreditation to file a retention and completion management plan; amending s. 1005.36, F.S.; revising the criminal penalty for the unlawful closure of certain institutions; requiring the commission to create a Closed Institution Panel; providing membership and duties of the panel; providing that the panel's activities be conducted at the expense of certain institutions; amending s. 1005.37, F.S.; requiring the commission to annually determine fees to support the Student Protection Fund; providing that fees may not be collected under certain circumstances; amending s. 1005.39, F.S.; requiring the commission to determine whether certain personnel of licensed institutions are qualified and require certain personnel to complete continuing education and training; requiring the commission to annually verify that certain personnel have completed certain training



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57 by a specified date; authorizing continuing education
58 to be provided by licensed institutions under certain
59 circumstances; requiring certain evidence be included
60 in initial or renewal application forms provided by
61 the commission; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Subsection (1) of section 1005.04, Florida
66 Statutes, is amended to read:

67 1005.04 Fair consumer practices.—

68 (1) Every institution that is under the jurisdiction of the
69 commission or is exempt from the jurisdiction or purview of the
70 commission pursuant to s. 1005.06(1)(c) or (f) and that either
71 directly or indirectly solicits for enrollment any student
72 shall:

73 (a) Disclose to each prospective student a statement of the
74 purpose of such institution, its educational programs and
75 curricula, a description of its physical facilities, its status
76 regarding licensure, its fee schedule, including all fees and
77 costs that will be incurred by a student for completion of a
78 program at the institution, and policies regarding retaining
79 student fees if a student withdraws, and a statement regarding
80 the transferability of credits to and from other institutions.
81 The institution shall make the required disclosures in writing
82 at least 1 week prior to enrollment or collection of any tuition
83 from the prospective student. The required disclosures may be
84 made in the institution's current catalog;

85 (b) Use a reliable method to assess, before accepting a



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86 student into a program, the student's ability to complete
87 successfully the course of study for which he or she has
88 applied;

89 (c) Inform each student accurately about financial
90 assistance and obligations for repayment of loans; describe any
91 employment placement services provided and the limitations
92 thereof; and refrain from promising or implying guaranteed
93 placement, market availability, or salary amounts;

94 (d) Provide to prospective and enrolled students accurate
95 information regarding the relationship of its programs to state
96 licensure requirements for practicing related occupations and
97 professions in Florida;

98 (e) Ensure that all advertisements are accurate and not
99 misleading;

100 (f) Publish and follow an equitable prorated refund policy
101 for all students, and follow both the federal refund guidelines
102 for students receiving federal financial assistance and the
103 minimum refund guidelines set by commission rule;

104 (g) Follow the requirements of state and federal laws that
105 require annual reporting with respect to crime statistics and
106 physical plant safety and make those reports available to the
107 public; and

108 (h) Publish and follow procedures for handling student
109 complaints, disciplinary actions, and appeals.

110 Section 2. Section 1005.11, Florida Statutes, is created to
111 read:

112 1005.11 Accountability for institutions licensed by the
113 Commission for Independent Education.—

114 (1) By March 15 of each year, the commission shall prepare



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115 an annual accountability report for licensed institutions. The
116 report must contain, at a minimum, the graduation rates,
117 including the number of graduates by program, retention rates,
118 and placement rates for all licensed institutions.

119 (2) By November 30 of each year, each licensed institution
120 shall provide data to the commission in a format prescribed by
121 the commission. Placement rates shall be determined using
122 Florida Education and Training Placement Information Program
123 methodology. The commission shall establish a common set of data
124 definitions that are consistent with those used by the United
125 States Department of Education for institutional reporting
126 purposes.

127 (3) The commission shall impose an administrative fine of
128 not more than \$1,000 when a licensed institution fails to timely
129 submit the required data to the commission pursuant to this
130 section. Administrative fines collected under this subsection
131 shall be deposited into the Student Protection Fund.

132 (4) The commission shall establish by rule performance
133 benchmarks to identify high-performing institutions licensed by
134 the commission. Licensed institutions with graduation rates,
135 retention rates, and placement rates equal to or higher than the
136 average rates of all Florida universities, colleges, or career
137 centers, as appropriate, may receive and use the designation of
138 "high performing."

139 Section 3. Paragraphs (c) and (d) of subsection (2) and
140 subsection (3) of section 1005.21, Florida Statutes, are amended
141 to read:

142 1005.21 Commission for Independent Education.—

143 (2) The Commission for Independent Education shall consist



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154 of seven members who are residents of this state. The commission
155 shall function in matters concerning independent postsecondary
156 educational institutions in consumer protection, program
157 improvement, and licensure for institutions under its purview.
158 The Governor shall appoint the members of the commission who are
159 subject to confirmation by the Senate. The membership of the
160 commission shall consist of:

161 (c) One member who is an employer of graduates of
162 institutions licensed by the commission. The member may not have
163 any other relationship with an institution subject to licensure
164 by the commission except for his or her status as an employer of
165 graduates of the institution from a public school district or
166 Florida College System institution who is an administrator of
167 career education.

168 (d) One member who is a graduate of an institution subject
169 to licensure by the commission. The member may not have any
170 other relationship with an institution subject to licensure by
171 the commission except for his or her status as an alumnus
172 representative of a college that meets the criteria of s.
~~1005.06(1)(f).~~

164 (3) The members of the commission shall be appointed to 3-
165 year terms. Members may serve no more than three consecutive
166 terms or and until their successors are appointed and qualified,
167 whichever occurs first. If a vacancy on the commission occurs
168 before the expiration of a term, the Governor shall appoint a
169 successor to serve the unexpired portion of the term.

170 Section 4. Paragraphs (e) and (k) of subsection (1) of
171 section 1005.22, Florida Statutes, are amended, and paragraph
172 (j) is added to subsection (2) of that section, to read:



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173 1005.22 Powers and duties of commission.-
174 (1) The commission shall:
175 (e) Administer the provisions of this chapter. To this end,
176 the commission has the following administrative powers and
177 responsibilities:
178 1. The commission shall adopt rules pursuant to ss.
179 120.536(1) and 120.54 for the operation and establishment of
180 independent postsecondary educational institutions. The
181 commission shall submit the rules to the State Board of
182 Education for approval or disapproval. If the state board does
183 not act on a rule within 60 days after receiving it, the rule
184 shall be filed immediately with the Department of State.
185 2. The commission shall approve and submit an annual budget
186 to the State Board of Education.
187 3. The commission shall transmit all fees, donations, and
188 other receipts of money to the Institutional Assessment Trust
189 Fund.
190 4. The commission shall expend funds as necessary to assist
191 in the application and enforcement of its powers and duties. The
192 Chief Financial Officer shall pay out all moneys and funds as
193 directed under this chapter upon vouchers approved by the
194 Department of Education for all lawful purposes necessary to
195 administering this chapter. The commission shall make annual
196 reports to the State Board of Education showing in detail
197 amounts received and all expenditures. The commission shall
198 include in its annual report to the State Board of Education a
199 statement of its major activities during the period covered by
200 the report.
201 (k) Establish and publicize the procedures for receiving



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202 and responding to complaints from students, faculty, and others
203 concerning institutions or programs under the purview of the
204 commission, and keep records of such complaints in order to
205 determine the frequency and nature of complaints with respect to
206 specific institutions of higher education. Complaints not closed
207 within 90 days shall be reviewed by a committee appointed by the
208 commission.
209 (2) The commission may:
210 (j) Prohibit a licensed institution from enrolling new
211 students, or limit the number of students in a program at a
212 licensed institution, based on the institution's performance.
213 Section 5. Subsections (5) through (16) of section 1005.31,
214 Florida Statutes, are renumbered as subsections (6) through
215 (17), respectively, subsection (2) and present subsection (6)
216 are amended, and a new subsection (5) is added to that section,
217 to read:
218 1005.31 Licensure of institutions.-
219 (2) The commission shall develop minimum standards by which
220 to evaluate institutions for licensure. These standards must
221 include, at a minimum, at least the institution's: name,
222 financial stability, purpose, administrative organization,
223 admissions and recruitment, educational programs and curricula,
224 retention ~~and~~ completion, including a retention and completion
225 management plan, career placement, faculty, learning resources,
226 student personnel services, physical plant and facilities,
227 publications, and disclosure statements about the status of the
228 institution with respect to professional certification and
229 licensure. The commission may adopt rules to ensure that
230 institutions licensed under this section meet these standards in



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231 ways that are appropriate to achieve the stated intent of this
232 chapter, including provisions for nontraditional or distance
233 education programs and delivery.

234 (5) The commission may require institutions that do not
235 provide sufficient evidence of financial stability at the time
236 of application for a provisional license or that are dependent
237 upon financial resources located outside of the United States to
238 post and maintain a surety bond to assist each enrolled student
239 in completing his or her program of enrollment in the event that
240 the institution closes before receiving its first annual
241 licensure renewal. In lieu of a surety bond, the commission may
242 require an institution to establish and maintain a cash deposit
243 escrow account or an irrevocable letter of credit payable to the
244 commission in an amount not to exceed 50 percent of the
245 institution's projected revenue for its first year. The
246 commission shall adopt rules to implement this subsection.

247 (7) ~~(6)~~ The commission shall ensure through an investigative
248 process that applicants for licensure meet the standards as
249 defined in rule. Within 60 days after receipt of an application,
250 the commission shall examine the application, notify the
251 applicant of any apparent errors or omissions, and request any
252 necessary additional information from the applicant. When the
253 investigative process is not completed within the time set out
254 in s. 120.60(1) and the commission has reason to believe that
255 the applicant does not meet licensure standards, the commission
256 or the executive director of the commission may issue a 90-day
257 licensure delay, which shall be in writing and sufficient to
258 notify the applicant of the reason for the delay. The provisions
259 of this subsection shall control over any conflicting provisions



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260 of s. 120.60(1).

261 Section 6. Paragraph (e) of subsection (1) and subsection
262 (3) of section 1005.32, Florida Statutes, are amended to read:
263 1005.32 Licensure by means of accreditation.—

264 (1) An independent postsecondary educational institution
265 that meets the following criteria may apply for a license by
266 means of accreditation from the commission:

267 ~~(e) The institution is a Florida corporation.~~

268 (3) The commission may not require an institution granted a
269 license by means of accreditation to submit reports that differ
270 from the reports required by its accrediting association, except
271 that each institution must file with the commission an annual
272 audit report and a retention and completion management plan
273 pursuant to s. 1005.31. The institution must also follow the
274 commission's requirements for orderly closing, including
275 provisions for trainout or refunds and arranging for the proper
276 disposition of student and institutional records.

277 Section 7. Subsections (3) and (4) of section 1005.36,
278 Florida Statutes, are renumbered as subsections (4) and (5),
279 respectively, subsection (2) is amended, and a new subsection
280 (3) is added to that section, to read:

281 1005.36 Institutional closings.—

282 (2) At least 30 days ~~before~~ ~~prior to~~ closing an
283 institution, its owners, directors, or administrators shall
284 notify the commission in writing of the closure of the
285 institution. The owners, directors, and administrators must
286 organize an orderly closure of the institution, which means at
287 least providing for the completion of training of its students.
288 The commission must approve any such plan. An owner, director,



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289 or administrator who fails to notify the commission at least 30
290 days ~~before~~ ~~prior to~~ the institution's closure, or who fails to
291 organize the orderly closure of the institution and the trainout
292 of the students, commits a misdemeanor of the ~~first~~ ~~second~~
293 degree, punishable as provided in s. 775.082 or s. 775.083.

294 (3) By October 1, 2016, the commission shall establish a
295 Closed Institution Panel. The panel shall consist of at least
296 one commission member, one commission staff member, one
297 accrediting body staff member, and one administrator with
298 experience managing licensed institutions. The commission shall
299 notify the panel upon the closing of a licensed institution. For
300 any closure that does not comply with the requirements of
301 subsection (2), or at the discretion of the commission chair,
302 the panel shall convene to implement measures to minimize the
303 academic, logistical, and financial impact on students of the
304 institution. The panel is authorized to secure student records
305 and, to the extent possible, maintain the educational programs
306 at the institution for at least 30 days after it receives
307 notification that the institution is closing to assist each
308 student with completion of his or her educational program. The
309 panel's activities shall be conducted at the expense of the
310 institution that is closing.

311 Section 8. Section 1005.37, Florida Statutes, is amended to
312 read:

313 1005.37 Student Protection Fund.-

314 (1) The commission shall establish and administer a
315 statewide, fee-supported financial program through which funds
316 will be available to complete the training of a student who
317 enrolls in a licensed institution ~~nonpublic school~~ that



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318 terminates a program or ceases operation before the student has
319 completed his or her program of study. The financial program is
320 named the Student Protection Fund.

321 (2) The commission is authorized to assess a fee from the
322 licensed institutions ~~schools~~ within its jurisdiction for such
323 purpose. The commission shall assess a licensed institution
324 ~~school~~ an additional fee for its eligibility for the Student
325 Protection Fund. Fees to support the fund shall be determined
326 annually by the commission; however, if the fund balance exceeds
327 \$5 million on November 1 of any year, the fees may not be
328 collected in the next calendar year.

329 (3) If a licensed institution ~~school~~ terminates a program
330 before all students complete it, the commission shall also
331 assess that institution ~~school~~ a fee adequate to pay the full
332 cost to the Student Protection Fund of completing the training
333 of students.

334 (4) The fund shall consist entirely of fees assessed to
335 licensed institutions ~~schools~~ and shall not be funded under any
336 circumstances by public funds, nor shall the commission make
337 payments or be obligated to make payments in excess of the
338 assessments actually received from licensed institutions ~~schools~~
339 and deposited in the Institutional Assessment Trust Fund to the
340 credit of the Student Protection Fund.

341 (5) At each commission meeting, the commission shall
342 consider the need for and shall make required assessments, shall
343 review the collection status of unpaid assessments and take all
344 necessary steps to collect them, and shall review all moneys in
345 the fund and expenses incurred since the last reporting period.
346 This review must include administrative expenses, moneys



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347 received, and payments made to students or to lending
348 institutions.

349 (6) Staff of the commission must immediately inform the
350 commission upon learning of the closing of a licensed
351 institution ~~school~~ or the termination of a program that could
352 expose the fund to liability.

353 (7) The Student Protection Fund must be actuarially sound,
354 periodically audited by the Auditor General in connection with
355 his or her audit of the Department of Education, and reviewed to
356 determine if additional fees must be charged to licensed
357 institutions ~~schools~~ eligible to participate in the fund.

358 Section 9. Subsections (1), (3), and (4) of section
359 1005.39, Florida Statutes, are amended to read:

360 1005.39 Continuing education and training for
361 administrators and faculty.—

362 (1) The commission shall determine whether ~~is authorized to~~
363 ~~ensure that~~ the administrators of licensed institutions are
364 qualified to conduct the operations of their respective
365 positions and ~~to~~ require such administrators and faculty to
366 receive continuing education and training as adopted by rule of
367 the commission. The positions for which the commission must ~~may~~
368 review qualifications and require continuing education and
369 training may include the positions of chief administrator or
370 officer, chief campus officer, director of education or
371 training, placement director, admissions director, and financial
372 aid director and faculty members. By July 1, 2017, and annually
373 thereafter, the commission must verify that all administrators
374 subject to continuing education requirements have completed
375 training on state and federal laws and regulations specifically



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376 pertaining to the operation of nonpublic postsecondary
377 institutions.

378 (3) The commission shall adopt general qualifications for
379 each of the respective positions and establish guidelines for
380 the minimum amount and type of continuing education and training
381 to be required. The continuing education and training may be
382 provided by the commission, appropriate state or federal
383 agencies, or professional organizations familiar with the
384 requirements of the particular administrative positions.
385 Continuing education may also be provided by licensed
386 institutions upon approval of the commission. The actual
387 curricula should be left to the discretion of those agencies,
388 ~~and~~ organizations, and, if approved, licensed institutions.

389 (4) Evidence of administrator ~~the administrator's~~ and
390 faculty ~~member's~~ compliance with the continuing education and
391 training requirements established by the commission must ~~may~~ be
392 included in the initial and renewal application forms provided
393 to ~~by~~ the commission. Actual records of the continuing education
394 and training received by administrators and faculty shall be
395 maintained at the institution and available for inspection at
396 all times.

397 Section 10. This act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/CS/SB 800

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Higher Education Committee; and Senator Brandes

SUBJECT: Private Postsecondary Education

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 800 modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education (CIE or commission).
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

According to the Department of Education (DOE or department), the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of \$165,604, to handle the

increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the Senate General Appropriations Bill.

The bill takes effect July 1, 2016.

II. Present Situation:

Private postsecondary educational institutions must be licensed to operate in Florida and meet specified fair consumer practices requirements.

Commission for Independent Education

The CIE, established in the DOE, is responsible for exercising all powers, duties, and functions concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure of institutions under its purview.¹ The commission is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction.² Independent postsecondary educational institution means “any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government.”³

The membership of the commission consists of:⁴

- Two representatives of independent colleges or universities licensed by the commission.
- Two representatives of independent, nondegree-granting schools licensed by the commission.
- One member from a public school district or Florida College System institution who is an administrator of career education.
- One representative of a religious college that is not under the jurisdiction or purview of the commission, based on meeting specified criteria in law.⁵
- One lay member who is not affiliated with an independent postsecondary educational institution.

Licensure of Institutions

The commission is responsible for developing minimum standards to evaluate institutions for licensure.⁶ Current law requires that the standards must, at a minimum, include the institution’s name, financial stability, purpose, administrative organization, admissions and recruitment, educational programs and curricula, retention, completion, career placement, faculty, learning

¹ Section 1005.21(1)-(2), F.S.

² *Id.*

³ Section 1005.02(11), F.S.

⁴ Section 1005.21(2), F.S.

⁵ Section 1005.06(1)(f), F.S.

⁶ Section 1005.31(2), F.S. “License” means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule and is permitted to operate in this state. Section 1005.02(13), F.S.

resources, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution related to professional certification and licensure.⁷ A postsecondary educational institution must obtain licensure from the commission to operate in the state of Florida, unless such institution is not within the commission's jurisdiction or purview, as specified in law.⁸

Licensure by Means of Accreditation

A private postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:⁹

- The institution has operated legally in this state for at least five consecutive years.
- The institution holds institutional accreditation by an accrediting agency evaluated and approved by the commission as having standards substantially equivalent to the commission's licensure standards.
- The institution has no unresolved complaints or actions in the past 12 months.
- The institution meets minimum requirements for financial responsibility as determined by the commission.
- The institution is a Florida corporation.

An institution that is granted a license by means of accreditation must comply with the standards and requirements in law.¹⁰ For instance, the institution must follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.¹¹ With the exception of submitting an annual audit report to the commission, the commission may not require institutions that are licensed by means of accreditation to submit reports that differ from the reports that such institutions submit to their accrediting association.¹²

Student Protection Fund

The CIE administers a statewide, fee-supported financial program, named the Student Protection Fund (Fund), to fund the completion of training a student who enrolls in a nonpublic school that terminates a program or ceases to operate before the student completes his or her program of study.¹³ The commission is authorized to assess a fee from the schools within the CIE's jurisdiction for such purpose.¹⁴ If a licensed school terminates a program before all students enrolled in that program complete their program of study, the commission must assess an additional fee from the school that is adequate to pay for the full cost of completing the training of such students.¹⁵

⁷ *Id.*

⁸ Sections 1005.31(1)(a) and 1005.06(1), F.S.

⁹ Section 1005.32, F.S.

¹⁰ *Id.*

¹¹ Section 1005.32(3), F.S.

¹² *Id.*

¹³ Section 1005.37(1), F.S.

¹⁴ Section 1005.37(2), F.S.

¹⁵ Section 1005.37(3), F.S.

The Fund must be actuarially sound, periodically audited by the Auditor General, and reviewed to determine if additional fees must be charged to the schools.¹⁶

Fair Consumer Practices

A private postsecondary educational institution that is under the jurisdiction of the commission or that is exempt from the jurisdiction or purview of the commission, as authorized in law, must do the following:¹⁷

- Disclose to each prospective student specified information (e.g., a statement of the purpose of the institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, and its fee schedule and policies). The institution must make the required written disclosures at least 1 week prior to enrollment or collection of any tuition from the prospective student. The disclosures may be made in the institution's current catalog.
- Use a reliable method to assess, before accepting a student into a program, the student's ability to successfully complete the course of study for which he or she has applied.
- Inform each student accurately about financial assistance and obligations for repayment of loans, describe any employment placement services provided and the limitations thereof, and refrain from misinforming the public about guaranteed placement, market availability, or salary amounts.
- Provide to prospective and enrolled students accurate program licensure information for practicing related occupations and professions in Florida.
- Ensure that all advertisements are accurate and not misleading.
- Publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines established by commission rule.
- Follow state and federal requirements for annual reporting of crime statistics and physical plant safety, and make such reports available to the public.
- Publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

Institutional Closings

Current law prescribes the requirements for lawful closure of a licensed postsecondary institution and the authority of the CIE in this process. Specifically,

- The CIE is authorized to prevent the operation of a licensed independent postsecondary educational institution by an owner who has unlawfully closed another institution.
- The CIE may assume control over student records upon closure of a licensed institution if the institution does not provide an orderly closure.
- The owners, directors, or administrators must notify the commission in writing at least 30 days prior to the closure of the institution and must organize an orderly closure of the institution. An owner, director, or administrator who fails to notify the commission at least 30 days prior to the institution's closure, or who fails to organize the orderly closure of the

¹⁶ Section 1005.37(7), F.S.

¹⁷ Section 1005.04(1), F.S.

institution and the train out of the students, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.

- The CIE may seek civil penalties up to \$10,000 from any owner, director, or administrator of an institution who knowingly destroys, abandons, or fails to convey or provide for the safekeeping of institutional and student records.
- The CIE may refer matters to the Department of Legal Affairs or the state attorney for investigation and prosecution.

Continuing Education for Administrators and Faculty

The commission is authorized to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The commission may exercise this authority over the chief administrator, director of education or training, placement director, admissions director, financial aid director, and faculty members.

III. Effect of Proposed Changes:

This bill modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education.
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

Commission for Independent Education

The bill revises the membership of the CIE by removing from the commission's membership, the representative of a religious college and the representative from a public school district or Florida College System institution. The bill adds one member who is an employer of graduates of institutions licensed by the CIE and one member who is a graduate of an institution subject to licensure by the CIE. The bill also limits commission members to serving no more than three consecutive terms.

The bill expands the powers and duties of the commission. Specifically, the bill:

- Requires the CIE to approve its annual budget.

- Requires the CIE to appoint a committee to review any complaints from students, faculty, and others concerning institutions under its purview, not closed within 90 days.
- Authorizes the CIE to prohibit, or limit, enrollment at a licensed institution, based on the institution's performance.

Licensure of Institutions

The bill modifies the minimum standards for evaluating institutions for licensure by specifying that the standards for retention and completion include a retention and completion management plan, prescribed by the commission. A retention and management plan may assist the institutions in developing strategies to improve student retention and completion outcomes, which may benefit the students¹⁸ attending such institutions in completing their respective programs of study and securing employment.

Provisional License

The bill authorizes the commission to require institutions that do not provide sufficient evidence of financial stability at the time of applying for a provisional license to post and maintain a surety bond with the commission. The surety bond may not exceed 50 percent of the amount of the first year's projected revenue.

The surety bond will increase the financial stability of certain new private postsecondary education institutions and assist with off-setting the burden on the Student Protection Fund if such institutions close improperly.¹⁹ Until a new institution achieves financial stability, the surety bond will also assist with providing protection to students.²⁰

As an alternative to the surety bond, the commission may allow a cash deposit escrow account or an irrevocable letter of credit payable to the commission. The amount of the cash deposit escrow account or the irrevocable letter of credit must be the same as the surety bond amount for the institution would have been.

The bill authorizes the CIE to adopt rules to implement the specified requirements for the granting of provisional license.

Licensure by Means of Accreditation

The bill changes the current requirements for licensure by means of accreditation to:

- Remove the criteria that an independent postsecondary educational institution be a Florida corporation. As a result, institutions that are non-Florida corporations will be able to use the licensure by means of accreditation process to operate in Florida.²¹

¹⁸ *Id.*

¹⁹ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²⁰ *Id.*

²¹ This modification supports the federal court ruling, which declared that “s. 1005.32(1)(e), Florida Statutes (2007), unconstitutionally makes licensure by means of accreditation available only to a Florida corporation.” *University of Phoenix v. Nancy Bradley*, No. 08-0217 (N.D. Fla. (Dec. 23, 2008); see also Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

- Add a requirement for a retention and completion management plan to the reporting requirements that an independent postsecondary educational institution must submit to the commission. A plan may assist the CIE in assessing the institutions' strategies to improve student retention and completion outcomes, which may benefit the students²² attending such institutions complete their respective programs of study and secure employment.

Application Review

The bill requires the CIE to, within 60 days after receiving an application for licensure, review the application, notify the applicant of any error or omission, and request additional information, if necessary. The specified notification deadline may help the institutions receive and address the commission's concerns in a timely manner.

Accountability for Licensed Institutions

The bill establishes accountability provisions for CIE licensed institutions. Annually, by November 30, each licensed institution must provide data to the CIE which includes, at a minimum, graduation rates, retention rates, and placement rates. The CIE must prepare an annual accountability report with this data for all licensed institutions by March 15. The commission must assess a \$1,000 fine on any institution that is delinquent in reporting the required data. The commission must also establish benchmarks to recognize high-performing licensed institutions.

Student Protection Fund

The bill expands the authority of the CIE to annually determine and assess fees, to support the Student Protection Fund (Fund), from only "schools" that fall within the CIE's jurisdiction to all licensed "institutions". Currently, the definition of a school²³ does not include degree-granting independent postsecondary educational institutions.²⁴ By comparison, licensed institutions include both degree and non-degree granting institutions.²⁵ Licensed institutions also include all institutions that are licensed by the commission²⁶ as well as the institutions that are licensed by means of accreditation.²⁷ As a result of this expansion, more students will be protected by the Fund.²⁸ However, the bill requires that if the Fund balance exceeds \$5 million on November 1 of any year, the fees may not be collected in the next calendar year.

Fair Consumer Practices

The bill modifies the fair consumer practices provisions in law by requiring each independent postsecondary educational institution to disclose to current and prospective students, in writing, all fees and costs that the students will incur to complete a program of study at the institution. This disclosure will assist students in planning ahead for completing a program of study and registering for courses each term at the institution.

²² Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²³ Section 1005.02(16), F.S.

²⁴ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²⁵ Telephone interview with Commission for Independent Education staff, Florida Department of Education (Jan. 12, 2016).

²⁶ Section 1005.31, F.S.

²⁷ Section 1005.32, F.S.

²⁸ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

Institutional Closings

The bill requires the CIE to establish a Closed Institution Panel (panel) by October 1, 2016. The panel will consist of one commission member, one commission staff member, one accrediting body staff member, and one administrator with experience managing licensed institutions. Upon notification by the CIE, the panel must convene to implement measures to minimize the impact of the institutional closing on its students. The panel's activities will be conducted at the expense of the closing institution.

The bill also changes the charge for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.

Continuing Education for Administrators and Faculty

The bill requires the commission to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The bill adds the chief campus officer to the list of specified positions for which the CIE is responsible for assessing qualifications and requiring continuing education and training. Beginning July 1, 2017, and annually thereafter, the CIE must verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

The bill takes effect 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:

CS/CS/SB 800 authorizes the CIE to require new nonpublic postsecondary institutions that do not provide sufficient evidence of financial stability to post and maintain a surety bond, or authorized alternative, not to exceed 50 percent of the first year's projected revenues.

The bill expands the authority of the CIE to access fees to support the Student Protection Fund, which is used to assist students when a school improperly closes before completion of training of its students, to include all licensed institutions, not just non-degree granting schools. This will increase the number of students protected by the Fund. However, if the balance of this fund exceeds \$5 million by November 1 of any year, the fees may not be collected the next calendar year.

C. Government Sector Impact:

According to the Department of Education, the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of \$165,604, to handle the increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the proposed Senate General Appropriations Bill for Fiscal Year 2016-2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1005.04, 1005.21, 1005.22, 1005.31, 1005.32, 1005.36, 1005.37, and 1005.39.

The bill creates section 1005.11 of the Florida Statutes.

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

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

CS/CS by Appropriations on February 18, 2016:

The committee substitute:

- Requires the Commission for Independent Education (CIE or commission) to prepare an annual accountability report by March 15 each year.

- Requires licensed institutions to provide specified data to the CIE by November 30 each year or be subject to a \$1,000 fine.
- Revises the commission membership to:
 - Remove one member from a public school district or Florida College System institution and one member from an institution not under the purview of the commission:
 - Add one member who is an employer of graduates of institutions licensed by the commission and add one member who is a graduate of an institution licensed by the commission: and
 - Prohibit CIE members from serving more than 3 consecutive terms.
- Requires a committee, appointed by the CIE, to review complaints not resolved within 90 days.
- Provides for the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Changes the criminal penalty for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.
- Authorizes the commission to annually determine fees for the Student Protection Fund; however if the fund balance exceeds \$5 million by November 1 of any year, the fees may not be collected the next calendar year.

CS by Higher Education on January 25, 2016:

The committee substitute modifies the written disclosure requirement in SB 800 concerning fees and costs by clarifying that such information must be provided to current and prospective students in a format prescribed by the:

- Commission for Independent Education (commission) or
- Independent Colleges and Universities of Florida for the private colleges and universities that are exempt from the jurisdiction or purview of the commission based on criteria specified in law.

B. Amendments:

None.

By the Committee on Higher Education; and Senator Brandes

589-02538-16

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1 A bill to be entitled
 2 An act relating to private postsecondary education;
 3 amending s. 1005.04, F.S.; requiring certain
 4 institutions to provide a student with a written
 5 disclosure of all fees and costs that the student will
 6 incur to complete his or her program; amending s.
 7 1005.21, F.S.; revising the membership of the
 8 Commission for Independent Education; amending s.
 9 1005.31, F.S.; requiring the commission to include a
 10 retention and completion management plan in the
 11 minimum standards used to evaluate an institution for
 12 licensure; requiring an institution applying for a
 13 provisional license to post and maintain a surety bond
 14 with the commission; specifying the amount of the
 15 surety bond; specifying the amount of time the surety
 16 bond remains in effect; authorizing the commission to
 17 allow a cash deposit escrow account or an irrevocable
 18 letter of credit as an alternative to the surety bond;
 19 providing for rulemaking; requiring the commission to
 20 review an application and request any necessary
 21 additional information from an applicant within a
 22 certain timeframe; amending s. 1005.32, F.S.; revising
 23 the criteria for licensure by means of accreditation;
 24 deleting the requirement that an applicant be a
 25 Florida corporation; requiring an institution that
 26 applies for licensure by means of accreditation to
 27 file a retention and completion management plan with
 28 the commission; amending s. 1005.37, F.S.; revising
 29 the institutions included in the Student Protection
 30 Fund to include licensed institutions; providing an
 31 effective date.
 32

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33 Be It Enacted by the Legislature of the State of Florida:
 34

35 Section 1. Subsection (1) of section 1005.04, Florida
 36 Statutes, is amended to read:

37 1005.04 Fair consumer practices.—

38 (1) Every institution that is under the jurisdiction of the
 39 commission or is exempt from the jurisdiction or purview of the
 40 commission pursuant to s. 1005.06(1)(c) or (f) and that either
 41 directly or indirectly solicits for enrollment any student
 42 shall:

43 (a) Disclose to each prospective student a statement of the
 44 purpose of such institution, its educational programs and
 45 curricula, a description of its physical facilities, its status
 46 regarding licensure, its fee schedule and policies regarding
 47 retaining student fees if a student withdraws, and a statement
 48 regarding the transferability of credits to and from other
 49 institutions. The institution shall make the required
 50 disclosures in writing at least 1 week prior to enrollment or
 51 collection of any tuition from the prospective student. The
 52 required disclosures may be made in the institution's current
 53 catalog;

54 (b) Use a reliable method to assess, before accepting a
 55 student into a program, the student's ability to complete
 56 successfully the course of study for which he or she has
 57 applied;

58 (c) Inform each student accurately about financial
 59 assistance and obligations for repayment of loans; describe any
 60 employment placement services provided and the limitations
 61 thereof; and refrain from promising or implying guaranteed

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62 placement, market availability, or salary amounts;

63 (d) Provide to prospective and enrolled students accurate
64 information regarding the relationship of its programs to state
65 licensure requirements for practicing related occupations and
66 professions in Florida;

67 (e) Ensure that all advertisements are accurate and not
68 misleading;

69 (f) Publish and follow an equitable prorated refund policy
70 for all students, and follow both the federal refund guidelines
71 for students receiving federal financial assistance and the
72 minimum refund guidelines set by commission rule;

73 (g) Follow the requirements of state and federal laws that
74 require annual reporting with respect to crime statistics and
75 physical plant safety and make those reports available to the
76 public; ~~and~~

77 (h) Publish and follow procedures for handling student
78 complaints, disciplinary actions, and appeals; ~~and-~~

79 (i) Before enrollment, provide to students and prospective
80 students, in a format prescribed by the commission or by the
81 Independent Colleges and Universities of Florida for those
82 institutions exempt from the jurisdiction or purview of the
83 commission under s. 1005.06(1)(c), a written disclosure of all
84 fees and costs they will incur to complete the program.

85 Section 2. Paragraphs (c), (d), and (e) of subsection (2)
86 of section 1005.21, Florida Statutes, are amended to read:

87 1005.21 Commission for Independent Education.—

88 (2) The Commission for Independent Education shall consist
89 of seven members who are residents of this state. The commission
90 shall function in matters concerning independent postsecondary

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91 educational institutions in consumer protection, program
92 improvement, and licensure for institutions under its purview.
93 The Governor shall appoint the members of the commission who are
94 subject to confirmation by the Senate. The membership of the
95 commission shall consist of:

96 (c) Two members ~~One member~~ from a public school district or
97 Florida College System institution who are administrators ~~is an~~
98 ~~administrator~~ of career education.

99 ~~(d) One representative of a college that meets the criteria~~
100 ~~of s. 1005.06(1)(f).~~

101 ~~(d)(e)~~ One lay member who is not affiliated with an
102 independent postsecondary educational institution.

103 Section 3. Present subsection (2) of section 1005.31,
104 Florida Statutes, is amended, present subsections (5) through
105 (15) of that section are redesignated as subsections (6) through
106 (16), respectively, a new subsection (5) is added to that
107 section, and present subsection (6) of that section is amended,
108 to read:

109 1005.31 Licensure of institutions.—

110 (2) The commission shall develop minimum standards ~~by which~~
111 to evaluate institutions for licensure. These standards must
112 include at least the institution's name; ~~;~~ financial stability; ~~;~~
113 purpose; ~~;~~ administrative organization; ~~;~~ admissions and
114 recruitment; ~~;~~ educational programs and curricula; ~~;~~ retention
115 ~~and~~ completion, including a retention and completion management
116 plan prescribed by the commission; career placement; ~~;~~ faculty; ~~;~~
117 learning resources; ~~;~~ student personnel services; ~~;~~ physical plant
118 and facilities; ~~;~~ publications; ~~;~~ and disclosure statements about
119 the status of the institution with respect to professional

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120 certification and licensure. The commission may adopt rules to
 121 ensure that institutions licensed under this section meet these
 122 standards in ways that are appropriate to achieve the stated
 123 intent of this chapter, including provisions for nontraditional
 124 or distance education programs and delivery.

125 (5) (a) An institution applying for a provisional license
 126 shall post and maintain a surety bond with the commission in a
 127 format prescribed by the commission. The surety bond shall be
 128 executed by a surety company authorized to do business in this
 129 state, with the applicant as the principal. The surety bond
 130 shall be payable to the commission to assist the commission in
 131 aiding a student damaged by an institution ceasing operation
 132 before the student has completed his or her contracted program.

133 (b) The surety bond must be for at least \$100,000, and may
 134 not exceed 50 percent of the amount of the first year's
 135 projected revenue.

136 (c) A surety bond shall remain in effect until the
 137 institution applies for and receives a first annual licensure
 138 renewal and demonstrates financial stability as determined by
 139 the commission.

140 (d) As an alternative to a surety bond, the commission may
 141 allow an institution to establish and maintain a cash deposit
 142 escrow account or an irrevocable letter of credit payable to the
 143 commission. The amount of the cash deposit escrow account or the
 144 irrevocable letter of credit shall be the same as the bond
 145 amount would have been for the institution.

146 (e) The commission may adopt rules to implement this
 147 subsection.

148 (7)(6) The commission shall ensure through an investigative

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149 process that applicants for licensure meet the standards as
 150 defined in rule. Within 60 days after receipt of an application,
 151 the commission shall examine the application, notify the
 152 applicant of any apparent error or omission, and request any
 153 necessary additional information. When the investigative process
 154 is not completed within the time set out in s. 120.60(1) and the
 155 commission has reason to believe that the applicant does not
 156 meet licensure standards, the commission or the executive
 157 director of the commission may issue a 90-day licensure delay,
 158 which shall be in writing and sufficient to notify the applicant
 159 of the reason for the delay. The provisions of this subsection
 160 shall control over any conflicting provisions of s. 120.60(1).

161 Section 4. Paragraph (e) of subsection (1) and subsection
 162 (3) of section 1005.32, Florida Statutes, are amended to read:
 163 1005.32 Licensure by means of accreditation.—

164 (1) An independent postsecondary educational institution
 165 that meets the following criteria may apply for a license by
 166 means of accreditation from the commission:

167 ~~(e) The institution is a Florida corporation.~~

168 (3) The commission may not require an institution granted a
 169 license by means of accreditation to submit reports that differ
 170 from the reports required by its accrediting association, except
 171 that each institution must file with the commission an annual
 172 audit report and a retention and completion management plan as
 173 required in s. 1005.31. The institution must also ~~and~~ follow the
 174 commission's requirements for orderly closing, including
 175 provisions for trainout or refunds and arranging for the proper
 176 disposition of student and institutional records.

177 Section 5. Section 1005.37, Florida Statutes, is amended to

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178 read:

179 1005.37 Student Protection Fund.—

180 (1) The commission shall establish and administer a
 181 statewide, fee-supported financial program through which funds
 182 will be available to complete the training of a student who
 183 enrolls in a licensed institution ~~nonpublic school~~ that
 184 terminates a program or ceases operation before the student has
 185 completed his or her program of study. The financial program is
 186 named the Student Protection Fund.

187 (2) The commission is authorized to assess a fee from the
 188 licensed institutions ~~schools~~ within its jurisdiction for such
 189 purpose. The commission shall assess a licensed institution
 190 ~~school~~ an additional fee for its eligibility for the Student
 191 Protection Fund.

192 (3) If a licensed institution ~~school~~ terminates a program
 193 before all students complete it, the commission shall also
 194 assess that institution ~~school~~ a fee adequate to pay the full
 195 cost to the Student Protection Fund of completing the training
 196 of students.

197 (4) The fund shall consist entirely of fees assessed to
 198 licensed institutions ~~schools~~ and shall not be funded under any
 199 circumstances by public funds, nor shall the commission make
 200 payments or be obligated to make payments in excess of the
 201 assessments actually received from licensed institutions ~~schools~~
 202 and deposited in the Institutional Assessment Trust Fund to the
 203 credit of the Student Protection Fund.

204 (5) At each commission meeting, the commission shall
 205 consider the need for and shall make required assessments, shall
 206 review the collection status of unpaid assessments and take all

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207 necessary steps to collect them, and shall review all moneys in
 208 the fund and expenses incurred since the last reporting period.
 209 This review must include administrative expenses, moneys
 210 received, and payments made to students or to lending
 211 institutions.

212 (6) Staff of the commission must immediately inform the
 213 commission upon learning of the closing of a licensed
 214 institution ~~school~~ or the termination of a program that could
 215 expose the fund to liability.

216 (7) The Student Protection Fund must be actuarially sound,
 217 periodically audited by the Auditor General in connection with
 218 his or her audit of the Department of Education, and reviewed to
 219 determine if additional fees must be charged to licensed
 220 institutions ~~schools~~ eligible to participate in the fund.

221 Section 6. This act shall take effect July 1, 2016.

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The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #800**, relating to **Private Postsecondary Education**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016

Meeting Date

SB 800

Bill Number (if applicable)

380416 PCS

Topic Independent Postsecondary Educational Institutions

Amendment Barcode (if applicable)

Name Curtis Austin

Job Title Executive Director

Address 150 S. Monroe St. Suite 303

Phone 850-894-2810

Street

Tallahassee

FL

32312

Email Curtis@FAPSC.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Association of Postsecondary Schools and Colleges (FAPSC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

800
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Bob Harris

Job Title _____

Address 2618 Centennial Place

Phone 222-0720

Tallahassee FL 32308
City State Zip

Email bharris@lawfla.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing De Vry University; City College

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: SB 806

INTRODUCER: Senator Legg

SUBJECT: Instruction for Homebound and Hospitalized Students

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	_____	Klebacha	ED	Favorable
2.	Sikes	Elwell	AED	Recommend: Favorable
3.	Sikes	Kynoch	AP	Favorable

I. Summary:

SB 806 obligates school districts to provide instruction to homebound or hospitalized students as part of its program of special instruction for exceptional students. More specifically, the bill requires:

- Each school district with a children’s hospital located within the district, to enter into an agreement with the hospital no later than August 15, 2016, to establish a process by which the hospital will notify the district of students who may be eligible for educational instruction, and to establish timeliness for determining student eligibility and providing educational instruction.
- Each school district with a children’s specialty hospital located within the district to provide educational instruction to eligible students receiving treatment in the hospital, until the district is able to enter into an agreement with the school district where the student resides.
- Each district school board, at least every three years, to submit its proposed procedures for the provision of special instruction and service for exceptional students to the Department of Education.
- State Board of Education rules to establish: criteria and procedures for determining student eligibility; appropriate methods and requirements for providing instruction for eligible students; and a standard agreement for schools districts to use when students receiving services from a children’s specialty hospital transition between school districts.

The bill codifies current district practice and State Board of Education rules regulating instruction for homebound and hospitalized students. Since school districts are already meeting the minimum requirements for providing instruction to such students there is no anticipated fiscal impact.

The bill takes effect July 1, 2016.

II. Present Situation:

Homebound or Hospitalized Students

A homebound or hospitalized student is a student who “has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time.”¹

Homebound or hospitalized students are included within the definition of an “exceptional student.”² As such, they are entitled to all the rights and protections of the Individual with Disabilities Education Act (IEA), including a free appropriate public education.³ Thus, homebound or hospitalized students are eligible for certain exceptional student education services.⁴

The school district in which an eligible, homebound or hospitalized student resides is responsible for providing educational services to the student even if the student is placed at a hospital in another district (e.g., a children’s specialty hospital) for treatment.⁵

Eligibility for Specifically Designed Instruction

The minimal evaluation for a student to determine eligibility shall be an annual medical statement from a licensed physician, including a description of the disabling condition or diagnosis with any medical implications for instruction.⁶ This report must state that the student is unable to attend school, describe the plan of treatment, provide recommendations regarding school re-entry, and give an estimated duration of condition or prognosis.⁷

A student who is homebound or hospitalized is eligible for specifically designed instruction if the following criteria are met:⁸

- A licensed physician⁹ must certify that the student:

¹ Rule 6A-6.03020(1), F.A.C. A licensed physician must make the medical diagnosis. *Id.*

² Section 1003.01(3)(a), F.S.

³ Florida Department of Education, Bureau of Exceptional Education and Student Services, *Policy and Procedures Manual Hospital/Homebound Program and Services (2008)*, available at <http://www.fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf>

⁴ Section 1003.01(3)(a), F.S.; Rule 6A-6.03020, F.A.C.

⁵ E-mail, Florida Department of Education (January 18, 2016); Florida Department of Education, Bureau of Exceptional Education and Student Services, *Policy and Procedures Manual Hospital/Homebound Program and Services (2008)*, available at <http://www.fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf>

⁶ Rule 6A-6.03020(4)(a), F.A.C.

⁷ *Id.* The team may require additional evaluation, which shall be provided at no cost to the parent. *Id.* A physical reexamination and medical report may be requested by the administrator of exceptional education on a more frequent basis and may be required if the student is scheduled to attend part of the school day during a recuperative period of adjustment to a full school schedule. Rule 6A-6.03020(4)(b), F.A.C. This physical reexamination and medical report shall be provided at no cost to the parent. *Id.*

⁸ Rule 6A-6.03020(3), F.A.C. Procedures for determining eligibility must be in accordance with Rule 6A-6.00331, F.A.C.

⁹ The physician must be licensed under chapter 458 or 459, F.S.

- Is expected to be absent from school due to a physical or psychiatric condition for at least 15 consecutive school days, or due to a chronic condition, for at least 15 consecutive or nonconsecutive school days, which need not run consecutively;¹⁰
- Is confined to home or hospital;
- Will be able to participate in and benefit from an instructional program;
- Is under medical care for illness or injury which is acute, catastrophic, or chronic in nature; and
- Can receive instructional services without endangering the health and safety of the instructor or other students with whom the instructor may come in contact.
- The student is enrolled in a public school in kindergarten through 12th grade prior to the referral for homebound or hospitalized services, unless a student already meets eligibility criteria for other exceptional student education services.¹¹
- The student's parent, guardian, or primary caregiver must sign an agreement concerning homebound or hospitalized policies and parental cooperation.¹²

An individual educational plan must be developed or revised for the student before he or she is assigned to a homebound or hospitalized student services program.¹³

Instructional Services

The following settings and instructional modes, or a combination thereof, are appropriate methods for providing instruction to students determined eligible for these services¹⁴:

- Instruction in a hospital. The hospital administrator or designee is required to provide appropriate space for the teacher and student to work and allow for the establishment of a schedule for student study between teacher visits.
- Instruction at home. The parent, guardian or primary caregiver is required to provide a quiet, clean, well-ventilated setting where a teacher and student will work; ensure that a responsible adult is present; and establish a schedule for student study between teacher visits which takes into account the student's medical condition and the requirements of the student's coursework.
- Instruction through telecommunications or computer devices. When the IEP team determines that instruction is by telecommunications or computer devices, an open, uninterrupted telecommunication link shall be provided at no additional costs to the parent, during the instructional period. The parent shall ensure that the student is prepared to actively participate in learning.

¹⁰ Or the equivalent on a block schedule. *Id.* No prior absence is required, and districts are encouraged to be proactive in initiating procedures to establish eligibility to avoid any interruption of the student's education. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Policy and Procedures Manual Hospital/Homebound Program and Services (2008)*, available at <http://www.fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf>

¹¹ Rule 6A-6.03020(3)(b), F.A.C.

¹² Rule 6A-6.03020(3)(c), F.A.C.

¹³ Rule 6A-6.03020(6), F.A.C. A student may be alternatively assigned to the homebound or hospitalized program and to a school-based program due to an acute, chronic, or intermittent condition as certified by a licensed physician. *Id.* This decision shall be made by the IEP team. *Id.*

¹⁴ Rule 6A-6.03020(7), F.A.C.

Children's Specialty Hospitals

There are three children's specialty hospitals in Florida that meet the licensing criteria in Part 1 of chapter 395, Florida Statutes. The facilities are:¹⁵

- All Children's Hospital, in Pinellas County.
- Nicklaus Children's Hospital, in Miami-Dade County.
- Nemours Children's Specialty Care, in Orange County.

As previously mentioned, the school district in which an eligible, homebound or hospitalized student resides is responsible for providing educational services to the student even if the student is placed at a children's specialty hospital located in another school district for treatment.¹⁶

This placement may delay initiation of educational services for the student while the hospital, the school district in which the hospital is located, and the school district in which the student resides determine when, how and where to deliver the services.¹⁷

III. Effect of Proposed Changes:

This bill obligates school districts to provide instruction to homebound or hospitalized students as part of its program of special instruction for exceptional students. More specifically, the bill requires:

- Each school district with children's hospital located within the district, to enter into an agreement with the hospital no later than August 15, 2016, to establish a process by which the hospital will notify the district of students who may be eligible for educational instruction, and to establish timeliness for determining student eligibility and providing educational instruction.
- Each school district with a children's specialty hospital located within the district to provide educational instruction to eligible students receiving treatment in the hospital, until the district is able to enter into an agreement with the school district where the student resides.
- Each district school board, at least every three years, to submit its proposed procedures for the provision of special instruction and service for exceptional students to the Department of Education.
- State Board of Education rules to establish: criteria and procedures for determining student eligibility; appropriate methods and requirements for providing instruction for eligible students; and a standard agreement for schools districts to use when students receiving services from a children's specialty hospital transition between school districts.

Seamless Provision of Instructional Services

The bill requires each school district in which a children's specialty hospital¹⁸ is located to:

- Enter into an agreement with the hospital, no later than August 15, 2016, to establish a process for the hospital to notify the school district of patients who may be eligible for instruction.

¹⁵ E-mail, All Children's Hospital Johns Hopkins Medicine, Government and Corporate Relations (January 19, 2016).

¹⁶ Footnote 5.

¹⁷ E-mail, All Children's Hospital Johns Hopkins Medicine, Government and Corporate Relations (January 19, 2016).

¹⁸ The bill requires the children's specialty hospital to be licensed under part I of chapter 395, Florida Statutes.

- Provide instruction to eligible students until the district enters into an agreement with the school district in which the student resides.

Review of School District's Special Instruction Procedures

The bill requires the district to submit its proposed procedures for the provision of special instruction and services for exceptional students to the Department of Education at least once every three years.

State Board of Education Implementation

The bill provides specific State Board of Education rulemaking authority for hospitalized and homebound students. Furthermore, the bill requires State Board of Education rules, at minimum, to address:

- Criteria for eligibility of K-12 homebound or hospitalized students for specially designed instruction.
- Procedures for determining student eligibility.
- A list of appropriate methods for providing instruction to homebound or hospitalized students.
- Requirements for initiating instructional services for a homebound or hospitalized student once the student is determined to be eligible.
- Developing a standard agreement for use by school districts to provide seamless instruction to students who transition between school districts while receiving treatment in the children's specialty hospital.

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:

None.

C. Government Sector Impact:

SB 806 codifies current district practice and State Board of Education rules regulating instruction for homebound and hospitalized students. Since school districts are already meeting the minimum requirements for providing instruction to such students there is no anticipated fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.57 of the Florida Statutes:

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.

By Senator Legg

17-00160-16

2016806__

1 A bill to be entitled
 2 An act relating to instruction for homebound and
 3 hospitalized students; amending s. 1003.57, F.S.;
 4 requiring school districts to provide instruction to
 5 homebound or hospitalized students; requiring the
 6 State Board of Education to adopt rules related to
 7 student eligibility, methods of providing instruction
 8 to homebound or hospitalized students, and the
 9 initiation of services; requiring the department to
 10 develop a standard agreement for school districts;
 11 requiring each school district to enter into an
 12 agreement with certain hospitals within its district
 13 by a specified date; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Paragraph (b) of subsection (1) of section
 18 1003.57, Florida Statutes, is amended to read:
 19 1003.57 Exceptional students instruction.-
 20 (1)
 21 (b) Each district school board shall provide for an
 22 appropriate program of special instruction, facilities, and
 23 services for exceptional students as prescribed by the State
 24 Board of Education as acceptable. Each district program must,
 25 including provisions that:
 26 1. ~~The district school board~~ Provide the necessary
 27 professional services for diagnosis and evaluation of
 28 exceptional students. At least once every 3 years, the district
 29 school board shall submit to the department its proposed

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

17-00160-16

2016806__

30 procedures for the provision of special instruction and services
 31 for exceptional students.
 32 2. ~~The district school board~~ Provide the special
 33 instruction, classes, and services, either within the district
 34 school system, in cooperation with other district school
 35 systems, or through contractual arrangements with approved
 36 private schools or community facilities that meet standards
 37 established by the commissioner.
 38 3. ~~The district school board~~ Annually provide information
 39 describing the Florida School for the Deaf and the Blind and all
 40 other programs and methods of instruction available to the
 41 parent of a sensory-impaired student.
 42 4. Provide instruction to homebound or hospitalized
 43 students in accordance with this section and rules adopted by
 44 the state board.
 45 a. The rules adopted by the state board must establish, at
 46 a minimum, the following:
 47 (I) Criteria to be used in determining the eligibility of
 48 K-12 homebound or hospitalized students for specially designed
 49 instruction.
 50 (II) Procedures for determining student eligibility.
 51 (III) A list of appropriate methods for providing
 52 instruction to homebound or hospitalized students.
 53 (IV) Requirements for providing instructional services for
 54 a homebound or hospitalized student once the student is
 55 determined to be eligible for such services. A school district
 56 must provide educational instruction to an eligible student who
 57 receives treatment in a children's specialty hospital that is
 58 licensed under part I of chapter 395 and that is located within

Page 2 of 3

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17-00160-16

2016806__

59 its district until the district is able to enter into an
60 agreement with the school district where the student resides.
61 The department shall develop a standard agreement for school
62 districts to use in providing seamless educational instruction
63 to a student who transitions between school districts while
64 receiving services from a children's specialty hospital.

65 b. No later than August 15, 2016, each school district
66 shall enter into an agreement with any children's specialty
67 hospital licensed under part I of chapter 395 and that is
68 located within its district to establish a process by which the
69 hospital must notify the school district of students who may be
70 eligible for instruction consistent with this subparagraph and
71 to establish the timelines for determining student eligibility
72 and for providing educational instruction to eligible students
73 ~~The district school board, once every 3 years, submit to the~~
74 ~~department its proposed procedures for the provision of special~~
75 ~~instruction and services for exceptional students.~~

76 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

January 28, 2016

The Honorable Tom Lee
Committee on Appropriations, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 806 - Instruction for Homebound and Hospitalized Students

Dear Chair Lee:

SB 806: Instruction for Homebound and Hospitalized Students has been referred to your committee. I respectfully request that it be placed on the Committee on Appropriations Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Legg".

John Legg
State Senator, District 17

cc: Cindy Kynoch, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

806

Bill Number (if applicable)

Topic Instruction for Homebound + Hospitalized Students Amendment Barcode (if applicable)

Name Amy Maguire

Job Title Vice President, Government, Community + Corporate Relations

Address 501 6th Avenue Phone (727) 656-8413
Street

St. Petersburg, FL 33701 Email amymaguire.jhmi.edu
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing All Childrens Hospital Johns Hopkins Medicine

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL: SB 834

INTRODUCER: Senator Detert

SUBJECT: Minimum Term School Funding

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

I. Summary:

SB 834 revises minimum school term requirements and associated funding provisions for public school students and schools. Specifically, the bill:

- Provides that schools (including double-session schools and schools utilizing an experimental calendar) that operate for less than the minimum term will generate proportionally fewer full-time equivalent (FTE).
- Repeals alternative minimum term provisions for double-session schools and schools utilizing an experimental calendar.
- Repeals the requirement for the Department of Education (DOE) to approve an experimental school calendar.
- Clarifies minimum term requirement by which DOE may approve the operation of schools under emergency conditions.

The bill has no impact on state funds. A school district or charter school that continues to operate under a double session or experimental calendar for less than minimum required instructional hours specified in the bill will experience a proportional reduction in their FTE and funding as calculated through the Florida Education Finance Program.

The bill takes effect upon becoming a law.

II. Present Situation:

The present situation for the relevant portions of this bill is discussed in the Effect of Proposed Changes section of this analysis.

III. Effect of Proposed Changes:

This bill revises minimum school term requirements and associated funding provisions for students and schools. Provisions of the bill affect statutory requirements related to traditional public schools, double-session schools, schools operating on an experimental calendar, and schools operating under emergency conditions.

Traditional Public Schools

Present Situation

Each school district is required to annually operate all schools for a term of 180 actual teaching days or the equivalent on an hourly basis as specified in SBE rules.¹ The SBE has provided that the hourly equivalent to the 180-day school year is determined as prescribed below:²

- Grades 4 through 12: Not less than 900 net instructional hours.
- Kindergarten through grade 3 or in an authorized prekindergarten exceptional program: Not less than 720 net instructional hours.

For the purposes of the Florida Education Finance Program (FEFP), a full time equivalent student (FTE) in each program of the district is defined in terms of full-time students and part time students, as follows:³

- A full-time student is one student on the membership roll of one school program or a combination of school programs for the school year or the equivalent for instruction in a standard school comprising no less than the hourly equivalent prescribed by the SBE.⁴
- A part-time student is a student on the active membership roll of a school program or combination of school program who is less than a full time student. Part time students are funded based on their proportional share of hours of instruction.⁵

Effect of Proposed Changes

The bill clarifies that a part-time student generates FTE proportional to the amount of instructional hours provided by the school divided by the minimum term requirements. In effect, a student who attends a school that operates for less than the minimum term will continue to generate proportionally fewer FTE,⁶ and the school will continue to receive proportionally less funding.

¹ Section 1011.60(2), F.S.

² Rule 6A-1.045111(1), F.A.C.

³ Section 1011.61(1), F.S.

⁴ See the previous paragraph. Exceptions exist for double-session schools or a school utilizing an experimental calendar approved by the Department of Education (discussed further herein) and for students who moved with their parents for the purpose of engaging in the farm labor or fish industries. *Id.*

⁵ E-mail, Department of Education, January 23, 2016.

⁶ Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).

Double-Session Schools

Present Situation

Double-session schools are not defined in statute or rule.⁷ Schools operating on a double-session calendar must operate for a term of 180 actual teaching days, or the hourly equivalent as prescribed below:⁸

- Grades 4 through 12: Not less than 810 net instructional hours.
- Kindergarten through grade 3: Not less than 630 net instructional hours.

For the purposes of the FEFP, students in double-sessions schools that meet the hourly equivalent are considered full-time students⁹ Thus, a student in grade 9 at a double-session school who is provided 810 instructional hours generates 1.0 FTE ($810/810=1.0$).¹⁰

There are currently 13 double-session schools operating in Florida in the 2015-2016 fiscal year.¹¹ Several charter schools are operating with double-session or multiple sessions for which 810 instructional hours are provided.¹²

Effect of Proposed Changes

The bill eliminates the ability for a student at a double-session school to meet the definition of a full-time student if the student receives instruction that comprises:

- Less than 900 but more than 810 net hours in grades 4 through 12, or
- Less than 720 but more than 630 net hours in kindergarten through grade 3.

In effect, instead of generating 1.0 FTE while operating for less than 900 hours but for more than 810 hours, the school will generate FTE proportional to the amount of instructional hours divided by the minimum term requirement of 900 hours.¹³ Under the bill, a student receiving 810 instructional hours would now generate 0.9 FTE ($810/900=0.9$),¹⁴ and the school would receive proportionally less funding.

⁷ Differing interpretations of “double-session schools” may exist. *Compare*, a DOE statement that in Florida, double-session schools have historically existed in instances where districts held two sessions per day at one school location due to school construction delay or storm damage. *Id.*; *But see*, Statutory maximum class size implementation options direct district school boards to consider operating more than one session of school during the day in order to meet constitutional class size requirements. Section 1003.03(3)(i), F.S.

⁸ Section 1011.61(1)(a)2., F.S.; Rule 6A-1.045111(2), F.A.C. The DOE is not required to approve double-session schools. Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).

⁹ Section 1011.61(1)(a)2., F.S.

¹⁰ Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Schools Operating on an Experimental Calendar

Present Situation

Schools utilizing an experimental calendar that is approved by the Department of Education, must operate for a term of 180 actual teaching days or the hourly equivalent as prescribed below:¹⁵

- Grades 4 through 12: Not less than 810 net instructional hours.
- Kindergarten through grade 3: Not less than 630 net instructional hours.

For the purposes of the FEFP, students at a school utilizing an experimental school calendar approved by the Department of Education are considered full-time students if the instruction meets the minimum term requirements.¹⁶ Thus, a student in grade 9 at such a school who is provided 810 instructional hours generates 1.0 FTE ($810/810=1.0$).¹⁷

Additionally, the Department is required to determine and implement an equitable method of equivalent funding for experimental schools which have been approved by the DOE to operate for less than the minimum school day.¹⁸

Effect of Proposed Changes

The bill eliminates the ability for a student at a school utilizing an experimental school calendar to meet the definition of a full-time student if the student receives instruction that comprises:

- Less than 900 but more than 810 net hours in grades 4 through 12, or
- Less than 720 but more than 630 net hours in kindergarten through grade 3.

The bill eliminates statutory language requiring the DOE to determine and implement an equitable method of equivalent funding for experimental schools which have been approved by the DOE to operate for less than the minimum school day.¹⁹

In effect, a student who attends a school operating on an experimental calendar that operates for less than the minimum term will generate proportionally fewer FTE.²⁰ Thus, instead of generating 1.0 FTE while operating for less than 900 hours but for more than 810 hours, the school will generate FTE proportional to the amount of instructional hours divided by the minimum term requirement of 900 hours.²¹ Under the bill, a student receiving 810 instructional hours would now generate 0.9 FTE ($810/900=0.9$),²² and the school would receive proportionally less funding.

¹⁵ Section 1011.61(1)(a)2., F.S.; Rule 6A-1.045111(2), F.A.C.

¹⁶ Section 1011.61(1)(a)2., F.S.

¹⁷ Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).

¹⁸ Section 1011.61(1), F.S. (Flush left provisions)

¹⁹ Section 1011.61(1), F.S. (Flush left provisions)

²⁰ Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).

²¹ *Id.*

²² *Id.*

Emergency Conditions

Present Situation

Upon written application, the SBE is authorized to alter the 180 day minimum term requirement during a national, state, or local emergency if the SBE determines that is not feasible to make up lost days or hours.²³

At the discretion of the Commissioner of Education, and if the SBE determines that the reduction of school days or hours is caused by the existence of a bona fide emergency, the apportionment may be reduced for such district or districts in proportion to the decrease in the length of term in any such school or schools.²⁴

The Department is required to determine and implement an equitable method of equivalent funding for schools operating under emergency conditions, which have been approved by the DOE to operate for less than the minimum school day.²⁵

Effect of Proposed Changes

The bill clarifies schools approved by the DOE to operate for less than the minimum school day means the minimum term as provided in s. 1011.60, F.S.²⁶

The bill takes effect upon becoming a law.

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.

²³ Section 1011.60(2), F.S. The SBE is authorized to prescribe procedures for altering this requirement. *Id.*

²⁴ Section 1011.60(2), F.S. A strike, as defined in s. 447.203(6), by employees of the school district may not be considered an emergency. *Id.*

²⁵ Section 1011.61(1), F.S. (Flush left provisions)

²⁶ Section 1011.61(1), F.S. (Flush left provisions) This section identifies minimum requirements of the FEFP. *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 834 has no impact on state funds. A school district or charter school that continues to operate under a double session or experimental calendar for less than minimum required instructional hours specified in the bill will experience a proportional reduction in their FTE and funding as calculated through the Florida Education Finance Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1011.61 of the Florida Statutes.

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.

By Senator Detert

28-00640-16

2016834__

1 A bill to be entitled
 2 An act relating to minimum term school funding;
 3 amending s. 1011.61, F.S.; revising the term "full-
 4 time student" to delete references to membership in a
 5 double-session school or a school that uses a
 6 specified experimental calendar; clarifying how "full
 7 time equivalency" is calculated for students in
 8 schools that operate for less than the minimum term;
 9 providing an effective date.

10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (1) of section 1011.61, Florida
 12 Statutes, is amended to read:

13 1011.61 Definitions.—Notwithstanding the provisions of s.
 14 1000.21, the following terms are defined as follows for the
 15 purposes of the Florida Education Finance Program:

16 (1) A "full-time equivalent student" in each program of the
 17 district is defined in terms of full-time students and part-time
 18 students as follows:

19 (a) A "full-time student" is one student on the membership
 20 roll of one school program or a combination of school programs
 21 listed in s. 1011.62(1)(c) for the school year or the equivalent
 22 for:

23 1. Instruction in a standard school, comprising not less
 24 than 900 net hours for a student in or at the grade level of 4
 25 through 12, or not less than 720 net hours for a student in or
 26 at the grade level of kindergarten through grade 3 or in an
 27 authorized prekindergarten exceptional program; or
 28
 29

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30 ~~2. Instruction in a double-session school or a school~~
 31 ~~utilizing an experimental school calendar approved by the~~
 32 ~~Department of Education, comprising not less than the equivalent~~
 33 ~~of 810 net hours in grades 4 through 12 or not less than 630 net~~
 34 ~~hours in kindergarten through grade 3; or~~
 35 2.3- Instruction comprising the appropriate number of net
 36 hours set forth in subparagraph 1. ~~or subparagraph 2.~~ for
 37 students who, within the past year, have moved with their
 38 parents for the purpose of engaging in the farm labor or fish
 39 industries, if a plan furnishing such an extended school day or
 40 week, or a combination thereof, has been approved by the
 41 commissioner. Such plan may be approved to accommodate the needs
 42 of migrant students only or may serve all students in schools
 43 having a high percentage of migrant students. The plan described
 44 in this subparagraph is optional for any school district and is
 45 not mandated by the state.

46 (b) A "part-time student" is a student on the active
 47 membership roll of a school program or combination of school
 48 programs listed in s. 1011.62(1)(c) who is less than a full-time
 49 student. A student who receives instruction in a school that
 50 operates for less than the minimum term shall generate a full-
 51 time equivalent student proportional to the amount of
 52 instructional hours provided by the school divided by the
 53 minimum term requirement as defined in s. 1011.60.

54 (c)1. A "full-time equivalent student" is:
 55 a. A full-time student in any one of the programs listed in
 56 s. 1011.62(1)(c); or
 57 b. A combination of full-time or part-time students in any
 58 one of the programs listed in s. 1011.62(1)(c) which is the

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59 equivalent of one full-time student based on the following
60 calculations:

61 (I) A full-time student in a combination of programs listed
62 in s. 1011.62(1)(c) shall be a fraction of a full-time
63 equivalent membership in each special program equal to the
64 number of net hours per school year for which he or she is a
65 member, divided by the appropriate number of hours set forth in
66 subparagraph (a)1. ~~or subparagraph (a)2.~~ The difference between
67 that fraction or sum of fractions and the maximum value as set
68 forth in subsection (4) for each full-time student is presumed
69 to be the balance of the student's time not spent in a special
70 program and shall be recorded as time in the appropriate basic
71 program.

72 (II) A prekindergarten student with a disability shall meet
73 the requirements specified for kindergarten students.

74 (III) A full-time equivalent student for students in
75 kindergarten through grade 12 in a full-time virtual instruction
76 program under s. 1002.45 or a virtual charter school under s.
77 1002.33 shall consist of six full-credit completions or the
78 prescribed level of content that counts toward promotion to the
79 next grade in programs listed in s. 1011.62(1)(c). Credit
80 completions may be a combination of full-credit courses or half-
81 credit courses. Beginning in the 2016-2017 fiscal year, the
82 reported full-time equivalent students and associated funding of
83 students enrolled in courses requiring passage of an end-of-
84 course assessment under s. 1003.4282 to earn a standard high
85 school diploma shall be adjusted if the student does not pass
86 the end-of-course assessment. However, no adjustment shall be
87 made for a student who enrolls in a segmented remedial course

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88 delivered online.

89 (IV) A full-time equivalent student for students in
90 kindergarten through grade 12 in a part-time virtual instruction
91 program under s. 1002.45 shall consist of six full-credit
92 completions in programs listed in s. 1011.62(1)(c)1. and 3.
93 Credit completions may be a combination of full-credit courses
94 or half-credit courses. Beginning in the 2016-2017 fiscal year,
95 the reported full-time equivalent students and associated
96 funding of students enrolled in courses requiring passage of an
97 end-of-course assessment under s. 1003.4282 to earn a standard
98 high school diploma shall be adjusted if the student does not
99 pass the end-of-course assessment. However, no adjustment shall
100 be made for a student who enrolls in a segmented remedial course
101 delivered online.

102 (V) A Florida Virtual School full-time equivalent student
103 shall consist of six full-credit completions or the prescribed
104 level of content that counts toward promotion to the next grade
105 in the programs listed in s. 1011.62(1)(c)1. and 3. for students
106 participating in kindergarten through grade 12 part-time virtual
107 instruction and the programs listed in s. 1011.62(1)(c) for
108 students participating in kindergarten through grade 12 full-
109 time virtual instruction. Credit completions may be a
110 combination of full-credit courses or half-credit courses.
111 Beginning in the 2016-2017 fiscal year, the reported full-time
112 equivalent students and associated funding of students enrolled
113 in courses requiring passage of an end-of-course assessment
114 under s. 1003.4282 to earn a standard high school diploma shall
115 be adjusted if the student does not pass the end-of-course
116 assessment. However, no adjustment shall be made for a student

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117 who enrolls in a segmented remedial course delivered online.

118 (VI) Each successfully completed full-credit course earned
119 through an online course delivered by a district other than the
120 one in which the student resides shall be calculated as 1/6 FTE.

121 (VII) A full-time equivalent student for courses requiring
122 passage of a statewide, standardized end-of-course assessment
123 under s. 1003.4282 to earn a standard high school diploma shall
124 be defined and reported based on the number of instructional
125 hours as provided in this subsection until the 2016-2017 fiscal
126 year. Beginning in the 2016-2017 fiscal year, the FTE for the
127 course shall be assessment-based and shall be equal to 1/6 FTE.
128 The reported FTE shall be adjusted if the student does not pass
129 the end-of-course assessment. However, no adjustment shall be
130 made for a student who enrolls in a segmented remedial course
131 delivered online.

132 (VIII) For students enrolled in a school district as a
133 full-time student, the district may report 1/6 FTE for each
134 student who passes a statewide, standardized end-of-course
135 assessment without being enrolled in the corresponding course.

136 2. A student in membership in a program scheduled for more
137 or less than 180 school days or the equivalent on an hourly
138 basis as specified by rules of the State Board of Education is a
139 fraction of a full-time equivalent membership equal to the
140 number of instructional hours in membership divided by the
141 appropriate number of hours set forth in subparagraph (a)1.;
142 however, for the purposes of this subparagraph, membership in
143 programs scheduled for more than 180 days is limited to students
144 enrolled in:

145 a. Juvenile justice education programs.

Page 5 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

28-00640-16

2016834__

146 b. The Florida Virtual School.

147 c. Virtual instruction programs and virtual charter schools
148 for the purpose of course completion and credit recovery
149 pursuant to ss. 1002.45 and 1003.498. Course completion applies
150 only to a student who is reported during the second or third
151 membership surveys and who does not complete a virtual education
152 course by the end of the regular school year. The course must be
153 completed no later than the deadline for amending the final
154 student enrollment survey for that year. Credit recovery applies
155 only to a student who has unsuccessfully completed a traditional
156 or virtual education course during the regular school year and
157 must re-take the course in order to be eligible to graduate with
158 the student's class.

159 The full-time equivalent student enrollment calculated under
160 this subsection is subject to the requirements in subsection
161 (4).
162

163
164 The department shall determine and implement an equitable method
165 of equivalent funding for ~~experimental schools and for~~ schools
166 operating under emergency conditions, which schools have been
167 approved by the department to operate for less than the minimum
168 term requirement as provided in s. 1011.60 school day.

169 Section 2. This act shall take effect upon becoming a law.

Page 6 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #834**, relating to Minimum Term School Funding, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/18/2016

Meeting Date

SB 834

Bill Number (if applicable)

Topic SB 834: Minimum Term School Funding

Amendment Barcode (if applicable)

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines St.

Phone 850-245-0507

Street

Tallahassee

Fl

32399

Email Tanya.Cooper@fldoe.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Department of Education

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 0834
Bill Number (if applicable)

Topic Minimum Term School Funding

Amendment Barcode (if applicable)

Name SANDRA MALDONADO - ROSS

Job Title Teacher of Students with Special Needs

Address 6919 Compass Ct.
Street
Orlando, FL 32810
City State Zip

Phone 407-694-6481

Email Sandra.rossrec@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/CS/SB 894

INTRODUCER: Education Pre-K - 12 Committee and Senator Detert

SUBJECT: Education Personnel

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	Fav/CS
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 894 modifies and expands several statutory provisions relating to education personnel.

Specifically, the bill:

- Adds Department of Education (DOE) employees and agents, who investigate or prosecute educator misconduct, to the list of individuals authorized to access records relating to child abuse, abandonment, or neglect.
- Authorizes the DOE to use information from the Central Abuse Hotline for educator certification discipline and review.
- Authorizes the Commissioner of Education to issue a letter of guidance to an educator in lieu of finding probable cause to prosecute misconduct.
- Modifies the membership of the Education Practices Commission.
- Prohibits postsecondary education institutions and school districts from requiring students participating in a clinical field experience to purchase liability insurance.
- Authorizes DOE to sponsor an educator job fair.
- Requires DOE to coordinate a best practices community to assist school districts with teacher recruitment and other human resource functions.
- Removes State Board of Education rulemaking authority regarding school district assignment of newly hired instructional personnel.
- Establishes in law state approval of school leader preparation programs.

The bill has no impact on state funds.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

The present situation for the relevant portions of this bill is discussed in the Effect of Proposed Changes section of this analysis.

III. Effect of Proposed Changes:

This bill modifies and expands several statutory provisions relating to education personnel.

Educator Misconduct

Present Situation

Florida law requires that each person¹ in a position who provides direct instruction to students meet the state's educator certification requirements and criteria. The Office of Professional Practices Services² (PPS) within the Department of Education (DOE) investigates misconduct by educators who hold a Florida Educator Certificate or a valid application for a Florida Educator Certificate.³

The DOE is required to investigate legally sufficient⁴ complaints of misconduct⁵ committed by certified educators and advise the Commissioner of Education (Commissioner) on whether probable cause exists.⁶ Upon a finding of probable cause, the Commissioner must file a formal

¹ Such persons include instructional personnel (*e.g.*, classroom teachers, student advisors, or certified school counselors) or administrative personnel (*e.g.*, deputy superintendents, school principals, or assistance principals). Section 1012.01(2)-(3), F.S.

² Florida Department of Education, Professional Practices, <http://www.fldoe.org/teaching/professional-practices> (last visited January 14, 2016).

³ Florida Department of Education, Role of Professional Practices Services, <http://www.fldoe.org/teaching/professional-practices/role-of-professional-practices-service.stml> (last visited January 13, 2016).

⁴ Section 1012.796(1)(a), F.S. The complaint is legally sufficient if it contains ultimate facts showing a violation has occurred. *Id.* and s. 1012.795, F.S.

⁵ Misconduct may include fraudulently obtaining an educator certificate, knowingly failing to report actual or suspected child abuse, or breach of contract. Section 1012.795(1), F.S.

⁶ Section 1012.796(3), F.S.

complaint and prosecute the complaint pursuant to chapter 120, F.S.⁷ If the Commissioner does not find probable cause, the complaint must be dismissed.⁸

Currently, the PPS is not legally authorized to access records relating to cases of child abuse, abandonment, or neglect involving a certified educator.⁹ Records held by the Department of Children and Families (DCF) regarding reports of child abuse, abandonment, or neglect, including reports made to the statewide Central Abuse Hotline, are confidential and exempt from public records requirements, unless specifically authorized in law.¹⁰

Access to records, excluding the name of the person reporting abuse, is granted to a limited list of persons, officials, and agencies (*e.g.*, Department of Health employees responsible for child protective investigations, criminal justice agencies, or school district employees designated as a liaison between the school district and DCF).¹¹ Employees of the PPS, who are responsible for investigating educator misconduct, are not included on the list of persons or entities granted access to records relating to child abuse, abandonment, or neglect or reports made to the statewide Central Abuse Hotline.

The Education Practices Commission (EPC), as a quasi-judicial body, issues penalties against an educator's certificate.¹² The EPC interprets and applies the standards¹³ of professional practice established by the State Board of Education (State Board); revokes or suspends educator certificates, or takes other disciplinary action, for misconduct; reports to and meets with the State Board; and adopts rules.¹⁴

⁷ *Id.* at (6). An administrative law judge assigned to hear the complaint makes recommendations to the EPC for review and preparation of final order issued by a panel of five EPC members. Sections 1012.79(8)(a), 1012.795(6), and 1012.796(1), F.S. In 2014, 16 of the 19 hearings involved teacher misconduct. Florida Department of Education, Division of K-12 Educator Quality, *2015 Agency Legislative Bill Analysis* for HB 587 (March 16, 2015) at 2, on file with the Committee on Education Pre-K – 12. Unless the complaint involves a felony or crime of moral turpitude, the Commissioner may enter into a deferred prosecution agreement with the certified educator in lieu of finding probable cause. Section 1012.796(3), F.S. An educator may be directed to participate through a deferred prosecution agreement or final order of the EPC in the recovery network program for assistance in obtaining treatment and services for alcohol abuse, drug abuse, or a mental condition. Section 1012.798(1), F.S. Voluntary participation in the program may be considered as a mitigating factor or a condition of disciplinary action. *Id.* at (5).

⁸ *Id.* For the period starting January 1, 2015, and ending November 24, 2015, the Commissioner issued findings of probable cause to 565 educators and no probable cause to 356 educators. *See* Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 5, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

⁹ Any person who knows, or has reason to suspect, that a child is abused, abandoned, or neglected must report such knowledge or suspicion to the Department of Children and Families (DCF). Section 39.201(1), F.S. School teachers and other school officials or personnel are required to make such reports and the failure to do so is a felony of the third degree. Sections 39.201(1)(d) and 39.205(2), F.S.

¹⁰ Sections 39.202(1) and 39.2021(1), F.S.

¹¹ Section 39.202(2), F.S.

¹² *Id.*

¹³ Code of Ethics of the Education Profession in Florida, Rule 6A-10.080, F.A.C., and Principles of Professional Conduct for the Education Profession in Florida, Rule 6A-10.081, F.A.C., <http://www.fldoe.org/teaching/professional-practices/code-of-ethics-principles-of-professio.html> (last visited January 13, 2016).

¹⁴ Sections 1012.79(7) and 1012.795(1), F.S. A district school board retains its authority to discipline teachers and administrators. Section 1012.79(8)(b), F.S.

The EPC consists of 25 members including:¹⁵

- Eight teachers;
- Five administrators, at least one of whom must represent a private school;
- Seven lay citizens, five of whom must be parents of public school students with no family relation to a public school employee and two of whom must be former district school board members; and
- Five sworn law enforcement officials.

The members are appointed by the State Board based upon nominations made by the Commissioner, subject to confirmation by the Florida Senate.¹⁶

Effect of Proposed Changes

The bill authorizes, in addition to other individuals and agencies authorized by law,¹⁷ the DCF to release records pertaining to child abuse, abandonment, or neglect cases, which are otherwise confidential and exempt from public records requirements, to DOE employees or agents who investigate or prosecute misconduct by certified educators. Allowing access to such records may assist the DOE in conducting more thorough and informed investigations of educator misconduct.

Also, the bill authorizes the Commissioner to issue a letter of guidance to a certified educator who has had a complaint of misconduct filed against him or her, rather than finding probable cause to prosecute. The bill may provide the Commissioner with more flexibility in determining the course of action to take regarding complaints of educator misconduct by permitting him or her to issue a letter of guidance if deemed more appropriate under the circumstances.

Furthermore, the bill increases the number of teacher members and diversifies the representation on the EPC by including virtual school administrators, former charter school governing board members, and public school officials, while also ensuring that members are citizens of the state.

Specifically, the bill makes the following revisions to EPC membership:

- Redistributes the number of teacher, lay citizen, and sworn law enforcement members while retaining the existing number of members (25) as follows:
 - The number of teacher members is increased from 8 to 10.
 - The number of lay citizen members is reduced from 7 to 4, all of whom must be parents of public school students.
 - The number of sworn law enforcement officials is reduced from 5 to 4.
- Revises the membership to include:

¹⁵ Section 1012.79(1), F.S. The eight teacher members comprise 32 percent of the total EPC membership. *See* Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 4, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

¹⁶ Section 1012.79(1), F.S. Before making nominations, the Commissioner must consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. *Id.* Teachers, school administrators, and lay citizens who wish to serve on the EPC must be Florida residents to be appointed; however, law enforcement officials are not required to be Florida residents, but they must have expertise in child safety. *Id.*

¹⁷ Section 39.202(2), F.S.

- Former charter governing board members or former superintendents, assistant superintendents, or deputy superintendents.
- Virtual school administrators.
- Requires all members to be Florida residents.
- Authorizes the Commissioner, upon request or recommendation from the EPC, to appoint up to 5 emeritus members from previous membership of the EPC to serve 1-year terms and who:
 - May serve up to five 1-year terms;
 - Are voting members for discipline hearings; and
 - Are consulting, nonvoting members for business meetings.

Educator Liability Insurance

Present Situation

Public school educators are immune from personal liability through the doctrine of sovereign immunity.¹⁸ Each district school board may provide legal services for officers and employees charged with civil or criminal actions arising out of, or in the performance of, their assigned duties and responsibilities.¹⁹ Except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver, may not be held civilly or criminally liable for any action carried out in conformity with State Board and district school board rules regarding the control, discipline, suspension, and expulsion of students.²⁰

Furthermore, a student who is enrolled in a state-approved teacher preparation program and who is jointly assigned a clinical field experience under the direction of a regularly employed and certified educator is given the same protection of law as that of the certified educator except for the right to bargain collectively as an employee of the district school board.²¹

During the 2015A Special Session A, the Legislature adopted the educator liability insurance program (program) in ch. 2015-222, L.O.F., the implementing bill for the 2015-2016 General Appropriations Act. The 2015-2016 GAA appropriated \$1.2 million for the program to be administered by the DOE.²² The purpose of the program is to protect full-time instructional personnel from liability for monetary damages and the costs of defending actions as a result of claims arising from incidents that occur during the course of performing professional responsibilities.²³

¹⁸ No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Section 768.28(9)(a), F.S.

¹⁹ Section 1012.26, F.S. District school boards must reimburse reasonable legal expenses incurred by officers and employees of school boards who are charged with civil or criminal actions arising out of or in the performance of assigned duties and responsibilities upon successful defense by the employee or officer. *Id.*

²⁰ Section 1012.75, F.S.

²¹ Section 1012.39(3), F.S.

²² Section 10, ch. 2015-222, L.O.F., *implementing* Specific Appropriation 99B, s. 2, ch. 2015-232, L.O.F.

²³ Section 1012.75(3), F.S., *as amended by* s. 10, ch. 2015-222, L.O.F.

Under the program, a minimum of \$2 million in liability coverage must be provided to full-time instructional personnel, while other individuals may choose to participate at their own cost, including part-time instructional personnel, administrative personnel, and students enrolled in a state-approved teacher preparation program.²⁴ The DOE and each district school board is required to notify personnel of the availability of liability coverage.²⁵ The program is scheduled to expire July 1, 2016.²⁶

Effect of Proposed Changes

The bill requires a district school board to provide electronic or written notification to a student participating in a clinical field experience of the availability of educator liability insurance for purchase at his or her own cost. Also, each district school board or postsecondary education institution is prohibited from requiring a student enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation. In effect, the bill ensures that students enrolled in a state approved teacher preparation program are able to participate in such programs without conditional limitations.

Educator Recruitment, Retention, and Assignment

Present Situation

The DOE is responsible for cooperating with teacher organizations, district personnel offices, schools, colleges, and departments of all public and nonpublic postsecondary educational institutions to focus on the recruitment and retention of qualified teachers in the state.²⁷ In order to fulfill this responsibility, the DOE is required to perform the following duties, including, but not limited to:²⁸

- Developing and implementing a system for posting teaching vacancies and establishing a database of applicants accessible within and outside the state.
- Developing and distributing promotional materials relating to a career in teaching.
- Identifying best practices for retaining high-quality teachers.

Current law requires the DOE, in cooperation with district personnel offices, to sponsor a job fair in the central part of the state to match in-state and out-of-state educators and potential educators with teaching opportunities in the state.²⁹ The DOE may collect a registration fee not to exceed \$20 per person and a booth fee not to exceed \$250 per school district or other interested participant.³⁰ The fees are used to promote and operate the job fair and may be used to purchase promotional items such as mementos, awards, and plaques.³¹

In 2006, the Legislature found that there were disparities in the qualifications of teachers assigned to teach in a school with a grade of “A” versus those that were assigned to teach in a

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 1012.05(1), F.S.

²⁸ *Id.* at (2).

²⁹ *Id.* at (4).

³⁰ *Id.*

³¹ *Id.*

school with a grade of “F.”³² The disparities were in the average years of experience, number of out-of-field teachers, median salary, and teacher performance on certification examinations.³³ To address such disparities, the Legislature prohibited school districts from assigning to schools graded “D” or “F” a higher percentage than the school district average of first-time teachers, temporarily certified teachers, teachers in need of improvement, and out-of-field teachers.³⁴ Each school district was required to certify to the Commissioner that it had met its duty to assign teachers equitably.³⁵

Beginning July 1, 2014, school districts were authorized to assign an individual newly hired as instructional personnel to a school that earned a grade of “F” in the previous year or any combination of three consecutive grades of “D” or “F” in the previous 3 years if the individual meets specified criteria (*e.g.*, has received an effective or highly effective rating in previous year or has successfully completed or is enrolled in a teacher preparation program).³⁶

The State Board has rulemaking authority regarding those particular teacher assignments; however, it has not adopted any rules to that effect.³⁷ Although the State Board has not adopted rules, the Commissioner continues to have oversight authority to ensure that school districts are complying with the teacher assignment requirements.³⁸ Moreover, the State Board has enforcement authority upon notification from the Commissioner that a school district has failed to comply with the requirements.³⁹

Effect of Proposed Changes

The bill grants DOE the discretion to sponsor a centrally located job fair for educators and potential educators. In effect, DOE may decide to reallocate resources, which would otherwise be used to sponsor the job fair, in support of other recruitment and retention efforts as it deems necessary.

Also, the bill requires the DOE to coordinate and establish a best practices community to assist school district personnel responsible for recruiting educators and performing other human resource-related functions.

Additionally, the bill removes the State Board’s rulemaking authority regarding the assignment of newly hired as instructional personnel to a school that earned a grade of “F” in the previous year or any combination of three consecutive grades of “D” or “F” in the previous 3 years. The State Board has not adopted rules addressing such assignments; however, the Commissioner and State Board retain oversight and enforcement authority, respectively, to ensure that school districts are complying with the requirements.

³² Section 57, ch. 2006-74, L.O.F., *codified as* s. 1012.2315, F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 2, ch. 2014-32, L.O.F.; *codified as* s. 1012.2315(2)(b), F.S.

³⁷ Section 1012.2315(2)(b)3., F.S.

³⁸ Section 1012.2315(2), F.S.

³⁹ *Id.*

School Leader Preparation Programs

Present Situation

School leaders include school administrators, school principals, school directors, career center directors, and assistant principals.⁴⁰ School principals or school directors serve as the administrative head of a school and are responsible for coordinating and administering the instructional and noninstructional activities of the school.⁴¹ Assistant principals are staff members who assist the administrative head of the school regarding curricular and administrative matters.⁴²

The Florida Principal Leadership Standards (FPLS) are Florida's core expectations for effective school administrators.⁴³ The FPLS are research-based; represent necessary knowledge, skills, and abilities for effective school leadership; and are the basis for school administrator preparation programs, certification competencies, certification examinations, performance evaluations, and professional development systems.⁴⁴ The FPLS emphasize the ability to improve student learning results; develop and retain quality classroom teachers; and manage the organization, operations, and facilities of a school.⁴⁵ The job performance of school administrators must be evaluated annually.⁴⁶

The law requires school leaders to be certified and directs the State Board to classify school services, designate certification subject areas, establish competencies for certification, and certification requirements for all school-based personnel.⁴⁷ The State Board has established in rule two classes of certification for school administrators – educational leadership and school principal. Certification in educational leadership qualifies one for any position falling under the classification “school administrator.”⁴⁸ In order to advance to certification as a school principal, one must first be certified in educational leadership.⁴⁹

In Florida, aspiring school administrators must complete a school leader preparation program approved by DOE.⁵⁰ State Board rule authorizes DOE to approve two types of school leader

⁴⁰ Section 1012.01(3), F.S. Administrative personnel are K-12 personnel who perform management activities such as developing and executing broad policies for the school district. Administrative personnel include district-based instructional and noninstructional administrators, as well as school administrators who perform administrative duties at the school-level. *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Rule 6A-5.080, F.A.C.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Section 1012.34(3)(a), F.S. The criteria used to measure school administrator performance are student performance, instructional leadership, and professional and job responsibilities. *Id.* At least one-third of a school administrator's evaluation must be based upon student performance. *Id.* Based upon these criteria, an administrator is assigned a performance rating of highly effective, effective, needs improvement, or unsatisfactory. *Id.* at (2)(e).

⁴⁷ Section 1012.55(1)(a)-(b), F.S.

⁴⁸ Rule 6A-5.081, F.A.C.

⁴⁹ Rule 6A-4.0083, F.A.C.

⁵⁰ Rule 6A-5.081, F.A.C. The William Cecil Golden Professional Development Program for School Leaders is a professional development program for school principals. The program was established in collaboration with state and national professional leadership organizations. It is designed to respond to Florida's needs for quality school leadership and support

preparation programs.⁵¹ Level I programs may be offered by school districts and postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators.⁵² Level II programs may be offered by school districts, build upon Level I training, and lead to certification as a school principal.⁵³ State Board rule specifies criteria for initial and continued approval of Level I and Level II school leader preparation programs.⁵⁴

Effect of Proposed Changes

The bill establishes in law a system of accountability and state approval for school leader preparation programs offered by Florida postsecondary institutions and public school districts. Currently, the criteria for approval of school leader programs, including a bi-level certification and preparation process, exists in State Board rule.⁵⁵ In effect, the bill codifies the existing approval process and criteria that exists in State Board rule with slight modifications.

The bill provides an effective date of 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:

None.

the efforts of school leaders in improving instruction and student achievement and developing and retaining quality teachers. Professional development provided through the program must be based upon the FPLS and other school leadership standards. Section 1012.986, F.S.

⁵¹ Rule 6A-5.081, F.A.C.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

C. **Government Sector Impact:**

CS/CS/SB 894 has no impact on state funds.

The DOE estimates that \$3,500 in annual travel expenses would be incurred for all five emeritus members appointed to the Education Practices Commission (EPC), plus an additional \$1,250 per year for substitute teacher reimbursements to account for emeritus members who are teachers and for increasing teacher members on the EPC.⁵⁶

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 1012.05, 1012.2315, 1012.39, 1012.79, and 1012.796.

This bill creates section 1012.562 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Appropriations on February 18, 2016:

The committee substitute removes the provision granting a general revenue service charge exemption for the Educational Certification and Service Trust Fund.

CS by Education Pre-K – 12 on January 20, 2016:

The committee substitute makes the following substantial changes to the bill:

- Authorizes the Department of Education to use information from the statewide Central Abuse Hotline, which is administered by the Department of Children and Families, for purposes of educator certification discipline and review.
- Removes the State Board of Education’s rulemaking authority regarding school district assignment of newly hired instructional personnel to schools that earned a grade of “F” in the previous year or any combination of three consecutive grades of “D” or “F” in the previous 3 years.
- Removes provisions relating to the educator liability insurance program.

⁵⁶ Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 8, *r’cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



237190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 61 - 69.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 8 - 10

and insert:

s. 1012.05, F.S.; authorizing

By the Committee on Education Pre-K - 12; and Senator Detert

581-02365-16

2016894c1

A bill to be entitled

An act relating to education personnel; amending s. 39.201, F.S.; authorizing certain information to be used for educator certification discipline and review; amending s. 39.202, F.S.; authorizing certain employees or agents of the Department of Education to have access to certain reports and records; amending s. 215.22, F.S.; providing that certain provisions do not apply to the Educational Certification and Service Trust Fund; amending s. 1012.05, F.S.; authorizing rather than requiring the Department of Education to sponsor a job fair meeting certain criteria; requiring the department to coordinate a best practice community; amending s. 1012.2315, F.S.; eliminating certain State Board of Education rulemaking authority related to teacher assignment; amending s. 1012.39, F.S.; providing requirements regarding liability insurance for students performing clinical field experience; creating s. 1012.562, F.S.; requiring the department to approve school leader preparation programs; providing for approval; providing program requirements; providing for rulemaking; amending s. 1012.79, F.S.; revising membership of the Education Practices Commission; authorizing the Commissioner of Education to appoint emeritus members to the commission; amending s. 1012.796, F.S.; authorizing the commissioner to issue a letter of guidance in response to a complaint against a certified teacher or administrator; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Page 1 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

581-02365-16

2016894c1

Section 1. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2) (a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176. Pursuant to s. 39.202(2) (q), the information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review.

Section 2. Paragraphs (q), (r), and (s) of subsection (2) of section 39.202, Florida Statutes, are redesignated as paragraphs (r), (s), and (t), respectively, and a new paragraph (q) is added to that subsection, to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(q) An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.

Section 3. Subsection (4) of section 215.22, Florida

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62 Statutes, is amended to read:

63 215.22 Certain income and certain trust funds exempt.—

64 (4) Notwithstanding the exemptions granted in subsections
65 (1), (2), and (3), this section shall not exempt income of a
66 revenue nature or any trust fund which was subject to the
67 service charge pursuant to s. 215.20 on January 1, 1990. This
68 subsection does not apply to the Educational Certification and
69 Service Trust Fund.

70 Section 4. Subsection (4) of section 1012.05, Florida
71 Statutes, is amended to read:

72 1012.05 Teacher recruitment and retention.—

73 (4) The Department of Education, in cooperation with
74 district personnel offices, ~~may shall~~ sponsor a job fair in a
75 central part of the state to match in-state educators and
76 potential educators and out-of-state educators and potential
77 educators with teaching opportunities in this state. The
78 Department of Education is authorized to collect a job fair
79 registration fee not to exceed \$20 per person and a booth fee
80 not to exceed \$250 per school district or other interested
81 participating organization. The revenue from the fees shall be
82 used to promote and operate the job fair. Funds may be used to
83 purchase promotional items such as mementos, awards, and
84 plaques. The Department of Education shall also coordinate a
85 best practice community to ensure that school district personnel
86 responsible for teacher recruitment and other human resources
87 functions are operating with the most up-to-date knowledge.

88 Section 5. Paragraph (b) of subsection (2) of section
89 1012.2315, Florida Statutes, is amended to read:

90 1012.2315 Assignment of teachers.—

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91 (2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F".—

92 (b)1. Beginning July 1, 2014, a school district may assign
93 an individual newly hired as instructional personnel to a school
94 that has earned a grade of "F" in the previous year or any
95 combination of three consecutive grades of "D" or "F" in the
96 previous 3 years pursuant to s. 1008.34 if the individual:

97 a. Has received an effective rating or highly effective
98 rating in the immediate prior year's performance evaluation
99 pursuant s. 1012.34;

100 b. Has successfully completed or is enrolled in a teacher
101 preparation program pursuant to s. 1004.04, s. 1004.85, or s.
102 1012.56, or a teacher preparation program specified in State
103 Board of Education rule, is provided with high quality mentoring
104 during the first 2 years of employment, holds a certificate
105 issued pursuant to s. 1012.56, and holds a probationary contract
106 pursuant to s. 1012.335(2) (a); or

107 c. Holds a probationary contract pursuant to s.
108 1012.335(2) (a), holds a certificate issued pursuant to s.
109 1012.56, and has successful teaching experience, and if, in the
110 judgment of the school principal, students would benefit from
111 the placement of that individual.

112 2. As used in this paragraph, the term "mentoring" includes
113 the use of student achievement data combined with at least
114 monthly observations to improve the educator's effectiveness in
115 improving student outcomes. Mentoring may be provided by a
116 school district, a teacher preparation program approved pursuant
117 to s. 1004.04, s. 1004.85, or s. 1012.56, or a teacher
118 preparation program specified in State Board of Education rule.

119 ~~3. The State Board of Education shall adopt rules under ss.~~

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~~120.536(1) and 120.54 to implement this paragraph.~~

Each school district shall annually certify to the Commissioner of Education that the requirements in this subsection have been met. If the commissioner determines that a school district is not in compliance with this subsection, the State Board of Education shall be notified and shall take action pursuant to s. 1008.32 in the next regularly scheduled meeting to require compliance.

Section 6. Subsection (3) of section 1012.39, Florida Statutes, is amended to read:

1012.39 Employment of substitute teachers, teachers of adult education, nondegreed teachers of career education, and career specialists; students performing clinical field experience.—

(3) A student who is enrolled in a state-approved teacher preparation program in a postsecondary educational institution that is approved by rules of the State Board of Education and who is jointly assigned by the postsecondary educational institution and a district school board to perform a clinical field experience under the direction of a regularly employed and certified educator shall, while serving such supervised clinical field experience, be accorded the same protection of law as that accorded to the certified educator except for the right to bargain collectively as an employee of the district school board. The district school board providing the clinical field experience shall notify the student electronically or in writing of the availability of educator liability insurance under s. 1012.75. A postsecondary educational institution or district

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school board may not require a student enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation in any clinical field experience or related activity on the premises of an elementary or secondary school.

Section 7. Section 1012.562, Florida Statutes, is created to read:

1012.562 Public accountability and state approval of school leader preparation programs.—The Department of Education shall establish a process for the approval of Level I and Level II school leader preparation programs that will enable aspiring school leaders to obtain their certificate in educational leadership under s. 1012.56. School leader preparation programs must be competency-based, aligned to the principal leadership standards adopted by the state board, and open to individuals employed by public schools, including charter schools and virtual schools. Level I programs may be offered by school districts or postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators. Level II programs may be offered by school districts, build upon Level I training, and lead to renewal certification as a school principal.

(1) PURPOSE.—The purpose of school leader preparation programs is to:

(a) Increase the supply of effective school leaders in the public schools of this state.

(b) Produce school leaders who are prepared to lead the state's diverse student population in meeting high standards for

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178 academic achievement.
 179 (c) Enable school leaders to facilitate the development and
 180 retention of effective and highly effective classroom teachers.
 181 (d) Produce leaders with the competencies and skills
 182 necessary to achieve the state's education goals.
 183 (e) Sustain the state system of school improvement and
 184 education accountability.
 185 (2) LEVEL I PROGRAMS.—
 186 (a) Initial approval of a Level I program shall be for a
 187 period of 5 years. A postsecondary institution or school
 188 district may submit to the department in a format prescribed by
 189 the department an application to establish a Level I school
 190 leader preparation program. To be approved, a Level I program
 191 must:
 192 1. Provide competency-based training aligned to the
 193 principal leadership standards adopted by the State Board of
 194 Education.
 195 2. If the program is provided by a postsecondary
 196 institution, partner with at least one school district.
 197 3. Describe the qualifications that will be used to
 198 determine program admission standards, including a candidate's
 199 instructional expertise and leadership potential.
 200 4. Describe how the training provided through the program
 201 will be aligned to the personnel evaluation criteria under s.
 202 1012.34.
 203 (b) Renewal of a Level I program's approval shall be for a
 204 period of 5 years and shall be based upon evidence of the
 205 program's continued ability to meet the requirements of
 206 paragraph (a). A postsecondary institution or school district

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207 must submit an institutional program evaluation plan in a format
 208 prescribed by the department for a Level I program to be
 209 considered for renewal. The plan must include:
 210 1. The percentage of personnel who complete the program and
 211 are placed in school leadership positions in public schools
 212 within the state.
 213 2. Results from the personnel evaluations required under s.
 214 1012.34 for personnel who complete the program.
 215 3. The passage rate of personnel who complete the program
 216 on the Florida Education Leadership Examination.
 217 4. The impact personnel who complete the program have on
 218 student learning as measured by the formulas developed by the
 219 commissioner pursuant to s. 1012.34(7).
 220 5. Strategies for continuous improvement of the program.
 221 6. Strategies for involving personnel who complete the
 222 program, other school personnel, community agencies, business
 223 representatives, and other stakeholders in the program
 224 evaluation process.
 225 7. Additional data included at the discretion of the
 226 postsecondary institution or school district.
 227 (c) A Level I program must guarantee the high quality of
 228 personnel who complete the program for the first 2 years after
 229 program completion or the person's initial certification as a
 230 school leader, whichever occurs first. If a person who completed
 231 the program is evaluated at less than highly effective or
 232 effective under s. 1012.34 and the person's employer requests
 233 additional training, the Level I program must provide additional
 234 training at no cost to the person or his or her employer. The
 235 training must include the creation of an individualized plan

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236 agreed to by the employer that includes specific learning
 237 outcomes. The Level I program is not responsible for the
 238 person's employment contract with his or her employer.

239 (3) LEVEL II PROGRAMS.—Initial approval and subsequent
 240 renewal of a Level II program shall be for a period of 5 years.
 241 A school district may submit to the department in a format
 242 prescribed by the department an application to establish a Level
 243 II school leader preparation program or for program renewal. To
 244 be approved or renewed, a Level II program must:

245 (a) Demonstrate that personnel accepted into the Level II
 246 program have:

247 1. Obtained their certificate in educational leadership
 248 under s. 1012.56.

249 2. Earned a highly effective or effective designation under
 250 s. 1012.34.

251 3. Satisfactorily performed instructional leadership
 252 responsibilities as measured by the evaluation system in s.
 253 1012.34.

254 (b) Demonstrate that the Level II program:

255 1. Provides competency-based training aligned to the
 256 principal leadership standards adopted by the State Board of
 257 Education.

258 2. Provides training aligned to the personnel evaluation
 259 criteria under s. 1012.34 and professional development program
 260 in s. 1012.986.

261 3. Provides individualized instruction using a customized
 262 learning plan for each person enrolled in the program that is
 263 based on data from self-assessment, selection, and appraisal
 264 instruments.

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265 4. Conducts program evaluations and implements program
 266 improvements using input from personnel who completed the
 267 program and employers and data gathered pursuant to paragraph
 268 (2) (b).

269 (c) Gather and monitor the data specified in paragraph
 270 (2) (b).

271 (4) RULES.—The State Board of Education shall adopt rules
 272 to administer this section.

273 Section 8. Subsection (1) of section 1012.79, Florida
 274 Statutes, is amended to read:

275 1012.79 Education Practices Commission; organization.—

276 (1) The Education Practices Commission is composed ~~consists~~
 277 of the following 25 members: 10, including 8 teachers; 5
 278 administrators, at least one of whom represents ~~shall represent~~
 279 a private or virtual school; 4 7 lay citizens who are, ~~5 of whom~~
 280 ~~shall be~~ parents of public school students and who are unrelated
 281 to public school employees; and 2 of whom shall be former
 282 charter school governing board or district school board members
 283 or former superintendents, assistant superintendents, or deputy
 284 superintendents; and 4 5 sworn law enforcement officials,
 285 appointed by the State Board of Education from nominations by
 286 the Commissioner of Education and subject to Senate
 287 confirmation. ~~Before~~ ~~Prior~~ to making nominations, the
 288 commissioner shall consult with teaching associations, parent
 289 organizations, law enforcement agencies, and other involved
 290 associations in the state. In making nominations, the
 291 commissioner shall attempt to achieve equal geographical
 292 representation, as closely as possible.

293 (a) A teacher member, in order to be qualified for

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294 appointment:

295 1. Must be certified to teach in the state.

296 ~~2. Must be a resident of the state.~~297 ~~2.3.~~ Must have practiced the profession in this state for
298 at least 5 years immediately preceding the appointment.299 (b) A school administrator member, in order to be qualified
300 for appointment:301 1. Must have an endorsement on the educator certificate in
302 the area of school administration or supervision.303 ~~2. Must be a resident of the state.~~304 ~~2.3.~~ Must have practiced the profession as an administrator
305 for at least 5 years immediately preceding the appointment.306 ~~(c) The lay members must be residents of the state.~~307 ~~(c)(d)~~ The law enforcement official members must have
308 served in the profession for at least 5 years immediately
309 preceding appointment and have background expertise in child
310 safety.311 (d) The Commissioner of Education, upon request or
312 recommendation from the commission, may also appoint up to five
313 emeritus members from the commission's prior membership to serve
314 1-year terms. Notwithstanding any prior service on the
315 commission, an emeritus member may serve up to five 1-year
316 terms. An emeritus member serves as a voting member at a
317 discipline hearing and as a consulting but nonvoting member
318 during a business meeting.319 (e) All members must be residents of the state.320 Section 9. Subsection (3) of section 1012.796, Florida
321 Statutes, is amended to read:

322 1012.796 Complaints against teachers and administrators;

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323 procedure; penalties.-

324 (3) The department staff shall advise the commissioner
325 concerning the findings of the investigation. The department
326 general counsel or members of that staff shall review the
327 investigation and advise the commissioner concerning probable
328 cause or lack thereof. The determination of probable cause shall
329 be made by the commissioner. The commissioner shall provide an
330 opportunity for a conference, if requested, prior to determining
331 probable cause. The commissioner may enter into deferred
332 prosecution agreements in lieu of finding probable cause if, in
333 his or her judgment, such agreements are in the best interests
334 of the department, the certificateholder, and the public. Such
335 deferred prosecution agreements shall become effective when
336 filed with the clerk of the Education Practices Commission.
337 However, a deferred prosecution agreement may shall not be
338 entered into if there is probable cause to believe that a felony
339 or an act of moral turpitude, as defined by rule of the State
340 Board of Education, has occurred. Upon finding no probable
341 cause, the commissioner shall dismiss the complaint and may
342 issue a letter of guidance to the certificateholder.

343 Section 10. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #894**, relating to Education Personnel, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/18/2016

Meeting Date

CS/SB 894

Bill Number (if applicable)

Topic CS/SB 894: Education Personnel

Amendment Barcode (if applicable)

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines St.

Phone 850-245-0507

Street

Tallahassee

Fl

32399

Email Tanya.Cooper@fldoe.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Department of Education

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL: PCS/SB 922 (622386)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Montford

SUBJECT: Solid Waste Management

DATE: February 17, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The bill authorizes the DEP to use funds from the Solid Waste Management Trust Fund to pay for costs not covered by insurance policies or alternative forms of financial assurances. These costs could have a significant fiscal impact to the Solid Waste Management Trust Fund.

Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

II. Present Situation:

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;¹ waste tire fees;² and oil related fees, fines and penalties.³ The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.⁴

Landfill Closure

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida's solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Florida Administrative Code Rule 62-701.630.

¹ Section 403.413(6)(a), F.S.

² Section 403.718(2), F.S.

³ Section 403.759, F.S.

⁴ Section 403.709(1), F.S.

Section 403.7125, F.S., provides that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator of a federal, state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.⁵ To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.⁶ The owner must update the cost estimate annually.⁷ Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.⁸ Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.⁹

Operators of solid waste disposal units must receive a closure permit to close a landfill.¹⁰ Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.¹¹

These facilities must also perform long-term care for 30 years.¹² This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.¹³

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
 - The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
 - The facility is deemed to be abandoned or was ordered to close by the DEP;
 - Closure is accomplished in substantial accordance with a closure plan approved by the DEP;
- and

⁵ Fla. Admin. Code R. 62-701.630(2).

⁶ Fla. Admin. Code R. 62-701.630(3).

⁷ Fla. Admin. Code R. 62-701.630(4).

⁸ Fla. Admin. Code R. 62-701.630(2)(b)2.

⁹ Fla. Admin. Code R. 62-701.630(2)(b)1.

¹⁰ Fla. Admin. Code R. 62-701.600(2).

¹¹ Fla. Admin. Code R. 62-701.600(3)(f)2.

¹² Fla. Admin. Code R. 62-701.620(1)

¹³ *Id.*

- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.¹⁴

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.¹⁵ Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).¹⁶

Waste Tire Abatement

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:

- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.¹⁷

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.¹⁸ Grants may be used for activities such as:

- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;

¹⁴ Ch. 2015-222, s. 53, Laws of Fla.

¹⁵ DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁶ *Id.*

¹⁷ Section 403.7095(1), F.S.

¹⁸ Section 403.7095(2), F.S.

- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and
- Performing or contracting for enforcement activities.¹⁹

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.²⁰ Funding for DEP's waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,²¹ has not received funds since 2009.²² The DEP has identified more than 440,000 tires located at 26 sites in Florida.²³ The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from \$2,704 to \$570,900. The DEP's preliminary abatement cost estimate for all 26 sites is \$961,390.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP's authority by:

- Authorizing the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.
- Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

¹⁹ DEP, *Solid Waste Tire Grant Application*, (Dec. 17, 2013) available at http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-716/716_3.pdf, Incorporated by reference in Fla. Admin. Code R. 62-716.600.

²⁰ DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²¹ DEP, *Tires General Information* (Jul. 8, 2015) available at <http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm> (last visited Jan. 16, 2016).

²² DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²³ *Id.*

²⁴ *Id.*

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise unavailable to perform or complete the closing or long-term care of a facility, the DEP may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

Section 2 amends s. 403.7095, F.S., effective upon becoming law, to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award \$3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

Sections 3 and 4 reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

Section 5 provides an effective date of July 1, 2016, except as otherwise expressly provided in the bill.

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:

None.

C. Government Sector Impact:

PCS/SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.

The bill authorizes the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for facility closures or long-term care activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested \$1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes \$1 million for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

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

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

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS provides authority to the Department of Environmental Protection to use funds from the Solid Waste Management Trust Fund, instead of the solid waste landfill closure account, to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient.

The CS makes amendments to s. 403.7095, F.S., effective upon becoming law and amends the eligibility for grant funding to small counties with populations fewer than 110,000 instead of counties with populations fewer than 100,000.

The CS changes the effective date of the bill from July 1, 2016, to except as otherwise expressly provided in the act, the act takes effect on July 1, 2016.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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576-03415-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to solid waste management; amending s. 403.709, F.S.; providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund; specifying the purpose of the account; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; requiring the department to deposit certain funds into the solid waste landfill closure account; authorizing the department to use funds from the Solid Waste Management Trust Fund to pay for or reimburse specified expenses under certain circumstances; deleting a solid waste landfill closure account within the Solid Waste Management Trust Fund; amending s. 403.7095, F.S.; authorizing waste tire abatement programs under the small county consolidated grant program; removing the waste tire abatement program supported by the solid waste management grant program; removing distribution requirements; deleting an obsolete provision; reenacting ss. 403.413(6)(a) and 403.7032(5)(h), F.S., relating to the Florida Litter Law and recycling, respectively, to incorporate the

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amendments made to s. 403.7095, F.S., in references thereto; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (1) and subsection (5) of section 403.709, Florida Statutes, are amended, present subsections (2) through (4) of that section are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(e) Up to 37 percent shall be used for funding a waste tire abatement program and a solid waste management grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction, including waste tires requiring final disposal. Of the funding specified in this paragraph, no more than 5 percent of the total may be used for funding the waste tire abatement program.

(2) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

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57 1. The facility has, had, or was not required to obtain a
58 department permit to operate the facility;
59 2. The permittee, where required by permit or rule,
60 provided proof of financial assurance for closure in the form of
61 an insurance certificate or an alternative form of financial
62 assurance mechanism established pursuant to s. 403.7125;
63 3. The department has ordered the facility closed or has
64 deemed the facility abandoned;
65 4. The closure of the facility is accomplished in
66 substantial accordance with a closure plan approved by the
67 department; and
68 5. The department has sufficient documentation to confirm
69 that the issuer of the insurance policy or alternative form of
70 financial assurance will provide or reimburse the funds required
71 to complete the closing and long-term care of the facility.
72 (b) The department shall deposit all funds received from
73 the insurer or other parties for reimbursing the costs of
74 closing or long-term care of the facility under this subsection
75 into the solid waste landfill closure account.
76 (c) If the amount available under the insurance policy or
77 alternative form of financial assurance is insufficient, or is
78 otherwise unavailable, to perform or complete the facility
79 closing or long-term care under this subsection, and the
80 department has used all such funds from the insurance policy or
81 alternative form of financial assurance, the department may use
82 funds from the Solid Waste Management Trust Fund to pay for or
83 reimburse additional expenses needed for performing or
84 completing the approved facility closure or long-term care
85 activities.



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86 ~~(5)(a) Notwithstanding subsection (1), a solid waste~~
87 ~~landfill closure account is established within the Solid Waste~~
88 ~~Management Trust Fund to provide funding for the closing and~~
89 ~~long-term care of solid waste management facilities. The~~
90 ~~department may use funds from the account to contract with a~~
91 ~~third party for the closing and long-term care of a solid waste~~
92 ~~management facility if:~~
93 ~~1. The facility has or had a department permit to operate~~
94 ~~the facility;~~
95 ~~2. The permittee provided proof of financial assurance for~~
96 ~~closure in the form of an insurance certificate;~~
97 ~~3. The facility is deemed to be abandoned or was ordered to~~
98 ~~close by the department;~~
99 ~~4. Closure is accomplished in substantial accordance with a~~
100 ~~closure plan approved by the department; and~~
101 ~~5. The department has written documentation that the~~
102 ~~insurance company issuing the closure insurance policy will~~
103 ~~provide or reimburse the funds required to complete closing and~~
104 ~~long-term care of the facility.~~
105 ~~(b) The department shall deposit the funds received from~~
106 ~~the insurance company as reimbursement for the costs of closing~~
107 ~~or long-term care of the facility into the solid waste landfill~~
108 ~~closure account.~~
109 ~~(c) This subsection expires July 1, 2016.~~
110 Section 2. Effective upon becoming a law, section 403.7095,
111 Florida Statutes, is amended to read:
112 403.7095 Solid waste management grant program.—
113 (1) The department shall develop a consolidated grant
114 program for small counties having populations fewer than 110,000



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115 ~~100,000~~, with grants to be distributed equally among eligible
116 counties. Programs to be supported with the small-county
117 consolidated grants include those for the purpose of general
118 solid waste management, litter prevention and control, waste
119 tire abatement, and recycling and education programs.

120 ~~(2) The department shall develop a waste tire grant program~~
121 ~~making grants available to all counties. The department shall~~
122 ~~ensure that at least 25 percent of the funding available for~~
123 ~~waste tire grants is distributed equally to each county having a~~
124 ~~population fewer than 100,000. Of the remaining funds~~
125 ~~distributed to counties having a population of 100,000 or~~
126 ~~greater, the department shall distribute those funds on the~~
127 ~~basis of population.~~

128 ~~(3) From the funds made available pursuant to s.~~
129 ~~403.709(1)(c) for the grant program created by this section, the~~
130 ~~following distributions shall be made:~~

131 ~~(a) Up to 50 percent for the program described in~~
132 ~~subsection (1); and~~

133 ~~(b) Up to 50 percent for the program described in~~
134 ~~subsection (2).~~

135 ~~(2)(4)~~ The department may adopt rules necessary to
136 administer this section, including, but not limited to, rules
137 governing timeframes for submitting grant applications, criteria
138 for prioritizing, matching criteria, maximum grant amounts, and
139 allocation of appropriated funds based upon project and
140 applicant size.

141 ~~(5) Notwithstanding any other provision of this section,~~
142 ~~and for the 2014-2015 fiscal year only, the Department of~~
143 ~~Environmental Protection shall award the sum of \$3 million in~~



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144 ~~grants equally to counties having populations of fewer than~~
145 ~~100,000 for waste tire and litter prevention, recycling~~
146 ~~education, and general solid waste programs. This subsection~~
147 ~~expires July 1, 2015.~~

148 Section 3. For the purpose of incorporating the amendments
149 made by this act to section 403.7095, Florida Statutes, in a
150 reference thereto, paragraph (a) of subsection (6) of section
151 403.413, Florida Statutes, is reenacted to read:

152 403.413 Florida Litter Law.—

153 (6) PENALTIES; ENFORCEMENT.—

154 (a) Any person who dumps litter in violation of subsection
155 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
156 feet in volume and not for commercial purposes is guilty of a
157 noncriminal infraction, punishable by a civil penalty of \$100,
158 from which \$50 shall be deposited into the Solid Waste
159 Management Trust Fund to be used for the solid waste management
160 grant program pursuant to s. 403.7095. In addition, the court
161 may require the violator to pick up litter or perform other
162 labor commensurate with the offense committed.

163 Section 4. For the purpose of incorporating the amendments
164 made by this act to section 403.7095, Florida Statutes, in a
165 reference thereto, paragraph (h) of subsection (5) of section
166 403.7032, Florida Statutes, is reenacted to read:

167 403.7032 Recycling.—

168 (5) The Department of Environmental Protection shall create
169 the Recycling Business Assistance Center by December 1, 2010. In
170 carrying out its duties under this subsection, the department
171 shall consult with state agency personnel appointed to serve as
172 economic development liaisons under s. 288.021 and seek



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173 technical assistance from Enterprise Florida, Inc., to ensure
174 the Recycling Business Assistance Center is positioned to
175 succeed. The purpose of the center shall be to serve as the
176 mechanism for coordination among state agencies and the private
177 sector in order to coordinate policy and overall strategic
178 planning for developing new markets and expanding and enhancing
179 existing markets for recyclable materials in this state, other
180 states, and foreign countries. The duties of the center must
181 include, at a minimum:

182 (h) Providing evaluation of solid waste management grants,
183 pursuant to s. 403.7095, to reduce the flow of solid waste to
184 disposal facilities and encourage the sustainable recovery of
185 materials from Florida's waste stream.

186 Section 5. Except as otherwise expressly provided in this
187 act, this act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/SB 922

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Montford

SUBJECT: Solid Waste Management

DATE: February 22, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The bill authorizes the DEP to use funds from the Solid Waste Management Trust Fund to pay for costs not covered by insurance policies or alternative forms of financial assurances. These costs could have a significant fiscal impact to the Solid Waste Management Trust Fund.

Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

II. Present Situation:

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;¹ waste tire fees;² and oil related fees, fines and penalties.³ The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.⁴

Landfill Closure

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida's solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Florida Administrative Code Rule 62-701.630.

¹ Section 403.413(6)(a), F.S.

² Section 403.718(2), F.S.

³ Section 403.759, F.S.

⁴ Section 403.709(1), F.S.

Section 403.7125, F.S., provides that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator of a federal, state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.⁵ To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.⁶ The owner must update the cost estimate annually.⁷ Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.⁸ Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.⁹

Operators of solid waste disposal units must receive a closure permit to close a landfill.¹⁰ Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.¹¹

These facilities must also perform long-term care for 30 years.¹² This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.¹³

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
 - The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
 - The facility is deemed to be abandoned or was ordered to close by the DEP;
 - Closure is accomplished in substantial accordance with a closure plan approved by the DEP;
- and

⁵ Fla. Admin. Code R. 62-701.630(2).

⁶ Fla. Admin. Code R. 62-701.630(3).

⁷ Fla. Admin. Code R. 62-701.630(4).

⁸ Fla. Admin. Code R. 62-701.630(2)(b)2.

⁹ Fla. Admin. Code R. 62-701.630(2)(b)1.

¹⁰ Fla. Admin. Code R. 62-701.600(2).

¹¹ Fla. Admin. Code R. 62-701.600(3)(f)2.

¹² Fla. Admin. Code R. 62-701.620(1)

¹³ *Id.*

- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.¹⁴

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.¹⁵ Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).¹⁶

Waste Tire Abatement

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:

- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.¹⁷

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.¹⁸ Grants may be used for activities such as:

- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;

¹⁴ Ch. 2015-222, s. 53, Laws of Fla.

¹⁵ DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁶ *Id.*

¹⁷ Section 403.7095(1), F.S.

¹⁸ Section 403.7095(2), F.S.

- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and
- Performing or contracting for enforcement activities.¹⁹

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.²⁰ Funding for DEP's waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,²¹ has not received funds since 2009.²² The DEP has identified more than 440,000 tires located at 26 sites in Florida.²³ The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from \$2,704 to \$570,900. The DEP's preliminary abatement cost estimate for all 26 sites is \$961,390.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP's authority by:

- Authorizing the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.
- Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

¹⁹ DEP, *Solid Waste Tire Grant Application*, (Dec. 17, 2013) available at http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-716/716_3.pdf, Incorporated by reference in Fla. Admin. Code R. 62-716.600.

²⁰ DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²¹ DEP, *Tires General Information* (Jul. 8, 2015) available at <http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm> (last visited Jan. 16, 2016).

²² DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²³ *Id.*

²⁴ *Id.*

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise unavailable to perform or complete the closing or long-term care of a facility, the DEP may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

Section 2 amends s. 403.7095, F.S., effective upon becoming law, to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award \$3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

Sections 3 and 4 reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

Section 5 provides an effective date of July 1, 2016, except as otherwise expressly provided in the bill.

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:

None.

C. Government Sector Impact:

CS/SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.

The bill authorizes the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for facility closures or long-term care activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested \$1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes \$1 million for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

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

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

CS by Appropriations on February 18, 2016:

The CS provides authority to the Department of Environmental Protection to use funds from the Solid Waste Management Trust Fund, instead of the solid waste landfill closure account, to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient.

The CS makes amendments to s. 403.7095, F.S., effective upon becoming law and amends the eligibility for grant funding to small counties with populations fewer than 110,000 instead of counties with populations fewer than 100,000.

The CS changes the effective date of the bill from July 1, 2016, to except as otherwise expressly provided in the act, the act takes effect on July 1, 2016.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Montford

3-00576A-16

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1 A bill to be entitled
 2 An act relating to solid waste management; amending s.
 3 403.709, F.S.; providing for the funding of a waste
 4 tire abatement program from the Solid Waste Management
 5 Trust Fund up to a specified percentage of total
 6 funds; establishing a solid waste landfill closure
 7 account within the Solid Waste Management Trust Fund;
 8 specifying the purpose of the account; authorizing the
 9 Department of Environmental Protection to use account
 10 funds to contract with a third party for the closing
 11 and long-term care of solid waste management
 12 facilities under specified circumstances; requiring
 13 the department to deposit certain funds into the solid
 14 waste landfill closure account; authorizing the
 15 department to use funds from the account to pay for or
 16 reimburse specified expenses under certain
 17 circumstances; deleting a solid waste landfill closure
 18 account within the Solid Waste Management Trust Fund;
 19 amending s. 403.7095, F.S.; authorizing waste tire
 20 abatement programs under the small county consolidated
 21 grant program; removing the waste tire abatement
 22 program supported by the solid waste management grant
 23 program; removing distribution requirements; deleting
 24 an obsolete provision; reenacting ss. 403.413(6)(a)
 25 and 403.7032(5)(h), F.S., relating to the Florida
 26 Litter Law and recycling, respectively, to incorporate
 27 the amendments made to s. 403.7095, F.S., in
 28 references thereto; providing an effective date.
 29

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

3-00576A-16

2016922__

30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. Paragraph (e) of subsection (1) and subsection
 33 (5) of section 403.709, Florida Statutes, are amended, present
 34 subsections (2) through (4) of that section are redesignated as
 35 subsections (3) through (5), respectively, and a new subsection
 36 (2) is added to that section, to read:

37 403.709 Solid Waste Management Trust Fund; use of waste
 38 tire fees.—There is created the Solid Waste Management Trust
 39 Fund, to be administered by the department.

40 (1) From the annual revenues deposited in the trust fund,
 41 unless otherwise specified in the General Appropriations Act:

42 (e) Up to 37 percent shall be used for funding a waste tire
 43 abatement program and a solid waste management grant program
 44 pursuant to s. 403.7095 for activities relating to recycling and
 45 waste reduction, including waste tires requiring final disposal.
 46 Of the funding specified in this paragraph, no more than 5
 47 percent of the total may be used for funding the waste tire
 48 abatement program.

49 (2) Notwithstanding subsection (1), a solid waste landfill
 50 closure account is established within the Solid Waste Management
 51 Trust Fund to provide funding for the closing and long-term care
 52 of solid waste management facilities.

53 (a) The department may use funds from the account to
 54 contract with a third party for the closing and long-term care
 55 of a solid waste management facility if:

56 1. The facility has, had, or was not required to obtain a
 57 department permit to operate the facility;

58 2. The permittee, where required by permit or rule,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 provided proof of financial assurance for closure in the form of
 60 an insurance certificate or an alternative form of financial
 61 assurance mechanism established pursuant to s. 403.7125;

62 3. The department has ordered the facility closed or has
 63 deemed the facility abandoned;

64 4. The closure of the facility is accomplished in
 65 substantial accordance with a closure plan approved by the
 66 department; and

67 5. The department has sufficient documentation to confirm
 68 that the issuer of the insurance policy or alternative form of
 69 financial assurance will provide or reimburse the funds required
 70 to complete the closing and long-term care of the facility.

71 (b) The department shall deposit all funds received from
 72 the insurer or other parties for reimbursing the costs of
 73 closing or long-term care of the facility under this subsection
 74 into the solid waste landfill closure account.

75 (c) If the amount available under the insurance policy or
 76 alternative form of financial assurance is insufficient, or is
 77 otherwise inaccessible, to perform or complete the facility
 78 closing or long-term care under this subsection, and the
 79 department has used all such funds from the insurance policy or
 80 alternative form of financial assurance, the department may use
 81 funds from the solid waste landfill closure account to pay for
 82 or reimburse additional expenses needed for performing or
 83 completing the approved facility closure or long-term care
 84 activities.

85 ~~(5)(a) Notwithstanding subsection (1), a solid waste~~
 86 ~~landfill closure account is established within the Solid Waste~~
 87 ~~Management Trust Fund to provide funding for the closing and~~

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88 ~~long-term care of solid waste management facilities. The~~
 89 ~~department may use funds from the account to contract with a~~
 90 ~~third party for the closing and long-term care of a solid waste~~
 91 ~~management facility if:~~

92 ~~1. The facility has or had a department permit to operate~~
 93 ~~the facility;~~

94 ~~2. The permittee provided proof of financial assurance for~~
 95 ~~closure in the form of an insurance certificate;~~

96 ~~3. The facility is deemed to be abandoned or was ordered to~~
 97 ~~close by the department;~~

98 ~~4. Closure is accomplished in substantial accordance with a~~
 99 ~~closure plan approved by the department; and~~

100 ~~5. The department has written documentation that the~~
 101 ~~insurance company issuing the closure insurance policy will~~
 102 ~~provide or reimburse the funds required to complete closing and~~
 103 ~~long-term care of the facility.~~

104 ~~(b) The department shall deposit the funds received from~~
 105 ~~the insurance company as reimbursement for the costs of closing~~
 106 ~~or long-term care of the facility into the solid waste landfill~~
 107 ~~closure account.~~

108 ~~(c) This subsection expires July 1, 2016.~~

109 Section 2. Section 403.7095, Florida Statutes, is amended
 110 to read:

111 403.7095 Solid waste management grant program.—

112 (1) The department shall develop a consolidated grant
 113 program for small counties having populations fewer than
 114 100,000, with grants to be distributed equally among eligible
 115 counties. Programs to be supported with the small-county
 116 consolidated grants include those for the purpose of general

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117 solid waste management, litter prevention and control, waste
 118 tire abatement, and recycling and education programs.

119 ~~(2) The department shall develop a waste tire grant program~~
 120 ~~making grants available to all counties. The department shall~~
 121 ~~ensure that at least 25 percent of the funding available for~~
 122 ~~waste tire grants is distributed equally to each county having a~~
 123 ~~population fewer than 100,000. Of the remaining funds~~
 124 ~~distributed to counties having a population of 100,000 or~~
 125 ~~greater, the department shall distribute those funds on the~~
 126 ~~basis of population.~~

127 ~~(3) From the funds made available pursuant to s.~~
 128 ~~403.709(1)(e) for the grant program created by this section, the~~
 129 ~~following distributions shall be made:~~

130 ~~(a) Up to 50 percent for the program described in~~
 131 ~~subsection (1); and~~

132 ~~(b) Up to 50 percent for the program described in~~
 133 ~~subsection (2).~~

134 (2)(4) The department may adopt rules necessary to
 135 administer this section, including, but not limited to, rules
 136 governing timeframes for submitting grant applications, criteria
 137 for prioritizing, matching criteria, maximum grant amounts, and
 138 allocation of appropriated funds based upon project and
 139 applicant size.

140 ~~(5) Notwithstanding any other provision of this section,~~
 141 ~~and for the 2014-2015 fiscal year only, the Department of~~
 142 ~~Environmental Protection shall award the sum of \$3 million in~~
 143 ~~grants equally to counties having populations of fewer than~~
 144 ~~100,000 for waste tire and litter prevention, recycling~~
 145 ~~education, and general solid waste programs. This subsection~~

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146 ~~expires July 1, 2015.~~

147 Section 3. For the purpose of incorporating the amendments
 148 made by this act to section 403.7095, Florida Statutes, in a
 149 reference thereto, paragraph (a) of subsection (6) of section
 150 403.413, Florida Statutes, is reenacted to read:

151 403.413 Florida Litter Law.—

152 (6) PENALTIES; ENFORCEMENT.—

153 (a) Any person who dumps litter in violation of subsection
 154 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
 155 feet in volume and not for commercial purposes is guilty of a
 156 noncriminal infraction, punishable by a civil penalty of \$100,
 157 from which \$50 shall be deposited into the Solid Waste
 158 Management Trust Fund to be used for the solid waste management
 159 grant program pursuant to s. 403.7095. In addition, the court
 160 may require the violator to pick up litter or perform other
 161 labor commensurate with the offense committed.

162 Section 4. For the purpose of incorporating the amendments
 163 made by this act to section 403.7095, Florida Statutes, in a
 164 reference thereto, paragraph (h) of subsection (5) of section
 165 403.7032, Florida Statutes, is reenacted to read:

166 403.7032 Recycling.—

167 (5) The Department of Environmental Protection shall create
 168 the Recycling Business Assistance Center by December 1, 2010. In
 169 carrying out its duties under this subsection, the department
 170 shall consult with state agency personnel appointed to serve as
 171 economic development liaisons under s. 288.021 and seek
 172 technical assistance from Enterprise Florida, Inc., to ensure
 173 the Recycling Business Assistance Center is positioned to
 174 succeed. The purpose of the center shall be to serve as the

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175 mechanism for coordination among state agencies and the private
176 sector in order to coordinate policy and overall strategic
177 planning for developing new markets and expanding and enhancing
178 existing markets for recyclable materials in this state, other
179 states, and foreign countries. The duties of the center must
180 include, at a minimum:

181 (h) Providing evaluation of solid waste management grants,
182 pursuant to s. 403.7095, to reduce the flow of solid waste to
183 disposal facilities and encourage the sustainable recovery of
184 materials from Florida's waste stream.

185 Section 5. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 922
Bill Number (if applicable)

Topic Solid Waste

Amendment Barcode (if applicable)

Name Andrew Kitchel

Job Title Director of Legislative Affairs - FL DEP

Address 3900 Commonwealth Blvd

Phone _____

Tallahassee FL 32303
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/SB 966

INTRODUCER: Banking and Insurance Committee; and Senators Benacquisto and Gaetz

SUBJECT: Unclaimed Property

DATE: February 17, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 requires life insurers to determine whether their life or endowment insurance policyholders, annuitants, and retained asset account holders have died by annually comparing them against the United States Social Security Administration Death Master File (DMF). The requirement applies to all life or endowment insurance policies, annuity contracts, and retained asset accounts that were in force on or after January 1, 1992. If a death is indicated, the bill requires the insurer to verify the death, verify if the deceased had other products with the company, determine if benefits are due, and attempt to locate and contact beneficiaries. If the policy or contract proceeds remain unclaimed five years after the date of death of the insured, annuitant, or account holder, the property escheats to the state as unclaimed property. Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the Department of Financial Services (DFS) Bureau of Unclaimed Property no later than May 1, 2021.

The bill applies to all life insurers requirements agreed to by many of the largest life insurers in settlement agreements with the DFS, the Office of the Attorney General, and the Office of Insurance Regulation (OIR), often as part of multi-state settlement agreements. The settlement agreements are related to examinations that often find insurers use information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but do not use such information to search for beneficiaries of a life insurance policy. According to the OIR, these settlement agreements have resulted in the return of over \$5 billion to beneficiaries

directly by the companies nationwide and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The bill is effective upon becoming law.

The bill is estimated to have a positive fiscal impact to the state. According to the Office of Insurance Regulation, remittances “far exceeding \$100 million” are expected by May 1, 2021, as a result of this bill.

II. Present Situation:

Life Insurance

Life insurance is the insurance of human lives.¹ Life insurance is generally purchased to ensure the financial security of the beneficiaries of the policy in the event the insured dies. The two most common types of life insurance are whole life insurance and term life insurance. A whole life insurance policy provides coverage for the life of the policyholder and pays a death benefit when the policyholder dies, regardless of his or her age, or on the maturity date.² A term life insurance policy provides coverage for a specific time period and only pays a benefit if the policyholder dies during the term of the policy. There exist a wide array of life insurance policies that provide options to consumers to create flexible death benefits, flexible premium amounts, allow policyholders investment control of the cash value of the policy at variable rates of return, and more.

Endowment Insurance Policies

An endowment insurance policy provides for the payment of the face of the policy at the end a fixed term of years. As noted by the Department of Financial Services (DFS), a whole life policy is actually an endowment at a limiting age of 100.³ As with the whole life policy, endowment policies provide insurance protection against the economic loss of a premature death. Common endowment terms are five, ten, and twenty years, or to a stated age, such as 65. If the insured is living at the end of the endowment term, the insurance company will pay the face amount of the policy.

Annuities

An annuity is a form of life insurance contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant’s life or a specified period. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum

¹ Section 624.602, F.S.

² The maturity date for a life insurance policy often is when a policyholder turns 100 years old, but some policies have a later maturity date.

³ Florida Department of Financial Services Division of Consumer Services, Life Insurance Overview, <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm> (click on link for types of policies)(last visited January 8, 2015).

payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred. An annuity may or may not have a death benefit upon the death of the annuitant, based on the payment plan of the annuity. In a “life only” annuity, payments are only made until the death of the annuitant while in a fixed period annuity payments are made for a fixed number of years certain regardless of whether the annuitant dies during the years certain. Many life insurers regularly seek to verify whether an annuitant has died by searching the Social Security Administration Death Master File.

Retained Asset Accounts

A retained asset account is an account that may be used to settle a death claim.⁴ Generally, a beneficiary establishes a retained asset account to deposit the proceeds into an interest bearing account so that the beneficiary may consider investment options and other possible uses of the money. Generally, the beneficiary can choose to withdraw money from the account in a single “lump sum” payment or via installments, or may choose to only receive interest payments with any remaining money at the beneficiary’s death passing on to his or her beneficiaries.

Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).⁵ The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers’ checks, uncashed payroll or cashiers’ checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.⁶ The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder’s business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or

⁴ National Association of Insurance Commissioners, *Retained Asset Accounts and Life Insurance: What Consumers Need to Know About Life Insurance Benefit Payment Options*, http://www.naic.org/documents/consumer_alert_raa.htm (January 8, 2016).

⁵ Ch. 87-105, L.O.F. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (Last visited March 26, 2014)

⁶ ss. 717.104 – 717.116, F.S.

distributable, unless otherwise provided in the Act.⁷ Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the apparent owners within 180 days after an account becomes inactive.⁸ Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.⁹ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.¹⁰

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.¹¹ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.¹² The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.¹³

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.¹⁴ The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.¹⁵

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.¹⁶

Unclaimed Property Owing Under Life Insurance Policies

The Act provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more

⁷ s. 717.102(1), F.S.

⁸ s. 717.117(4), F.S.

⁹ s. 717.117, F.S.

¹⁰ s. 717.119, F.S.

¹¹ s. 717.1201, F.S.

¹² ss. 717.117 and 717.124, F.S.

¹³ s. 717.124, F.S.

¹⁴ s. 717.123, F.S.

¹⁵ Id.

¹⁶ Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

than five years¹⁷ after the funds became due and payable as established by records of the insurance company owing the funds.¹⁸

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon receipt of due proof of death and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

Regulatory Examination of Life Settlement Claim Practices

According to the Office of Insurance Regulation, a 2009 Florida market conduct investigation revealed that some life insurance companies were using information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but were not using such information to search for beneficiaries of a life insurance policy. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums.¹⁹

Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies.²⁰ Kevin McCarty, the Director of the Florida Office of Insurance Regulation, has served as the chair of the task force since its inception. Currently, 22 of the top 40 nationally significant groups writing policies have reached settlements or concluded an examination.²¹

¹⁷ If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed if unclaimed for 2 years.

¹⁸ s. 717.107(1), F.S.

¹⁹ Florida Department of Financial Services Division of Consumer Services, Life Insurance Settlement Information, <http://www.myfloridacfo.com/Division/Consumers/FAQ/FAQ.htm> (click on hyperlink for John Hancock Life Insurance)(last visited January 8, 2016).

²⁰ National Association of Insurance Commissioners, *News Release: Regulators to Review Life Insurance Payment Practices*, (May 17, 2011)(last visited January 8, 2016).

²¹ Florida Office of Insurance Regulation, *Top 40 Nationally Significant Groups Writing Direct Life, Annuity and Other Considerations*, <http://www.floir.com/siteDocuments/Top40LifeGroups.pdf> (last visited January 8, 2016).

Life Insurance Claim Settlement Practices

Florida has entered into a number of settlement agreements with 20 life insurers from 2011 to the present, often as part of multi-state settlement agreements.²² Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the Bureau of Unclaimed Property at the Department of Financial Services, Attorney General Pam Bondi through the Office of the Attorney General, and the Office of Insurance Regulation (OIR). According to the OIR, these life claim settlement agreements have resulted in the return of over \$5 billion to beneficiaries directly by the companies and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The settlements generally require the life insurer to compare all the life insureds listed in company records against the DMF.²³ For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within five years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Social Security Administration Death Master File

The Social Security Administration (SSA) collects death information to administer its programs.²⁴ The SSA receives death reports from many sources, including family members, funeral homes, financial institutions, postal authorities, States and other Federal agencies. The information is then compiled in the Death Master File (DMF). The DMF is actually a subset of the death information on the Numerical Identification System (Numident). Numident is the SSA electronic database that contains the records of Social Security Numbers assigned to individuals since 1936. The DMF includes the deceased individual's social security number, first name, middle name, last name, date of birth, and date of death.

There are two versions of the DMF. The full file contains all death records extracted from the Numident database, including death data received from the States and is shared only with certain Federal and State agencies pursuant to section 205(r) of the Social Security Act. The limited access public file contains death records extracted from the Numident database, but does not include death data received from the States. The public file is available through the Department of Commerce's National Technical Information Service, a clearinghouse for government information, which sells it to the public. Access to the DMF is restricted and requires users to

²² Office of Insurance Regulation, *Life Claim Settlement Practices*, http://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing05192011.aspx (last visited January 8, 2016).

²³ See Florida Office of Insurance Regulation, *Florida's Regulatory Life Claim Settlement Agreements*, <http://www.floir.com/siteDocuments/LifeClaimsSettlements.pdf> (follow hyperlinks to regulatory settlement agreements)(last visited January 8, 2016).

²⁴ Social Security Administration, *Requesting the Death Master File*, https://www.ssa.gov/dataexchange/request_dmf.html (last visited January 7, 2016).

have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. Further, any party accessing the DMF must certify it has systems, facilities, and procedures to safeguard the information in the DMF and has experience in maintaining the confidentiality, security, and appropriate use of such information.

Thrivent Financial for Lutherans v. State of Florida

The 2014 decision of the Florida District Court of Appeal for the First District resolved a dispute between the DFS and Thrivent Financial for Lutherans (Thrivent) as to when funds under a life insurance or endowment insurance policy or annuity contract become due and payable, thus triggering the start of the dormancy period that results in the funds being remitted to the DFS as unclaimed property after the dormancy period ends.²⁵ Thrivent had appealed a DFS declaratory statement finding that life insurance funds are “due and payable” under s. 717.107(1), F.S., upon the death of the insured, at which time the dormancy period is automatically triggered. The DFS declaratory statement interpreting the statute also opined that s. 717.107, F.S., created an affirmative duty on insurer to search databases, such as the DMF, to determine if any of its insureds has died.

The Court found the DFS declaratory statement interpreting s. 717.107(1), F.S., invalid because it incorrectly interpreted the statute. The Court noted that under s. 717.107(1), F.S., life insurance funds “become due and payable as established by the records of the insurance company.” Because s. 627.461, F.S., requires each life insurance contract to provide that payment “shall be made upon receipt of due proof of death and surrender of the policy” the records of the insurer do not establish funds as due and payable under s. 717.107(1), F.S., until the insurer receives proof of death and surrender of the policy. The Court noted subsection (3) of the statute provides that contracts “not matured by actual proof of the death of the insured or the annuitant” according to company records are deemed matured and the proceeds are due and payable if the company knows the insured or annuitant has died or the insured has attained the limiting age. The Court reasoned that to interpret subsection (1) to make policy proceeds due and payable once the insured dies would render meaningless subsection (3). The Court also refused to impose an affirmative duty on insurers to search death records in order to determine whether any insured has died. The Court noted that the plain language of s. 717.107, F.S., does not impose such a duty and refused to rewrite the statute based on policy consideration, instead noting that policy concerns “must be addressed by the Legislature.”

III. Effect of Proposed Changes:

Section 1 amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than five years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services*, (Thrivent decision) established that under current law, funds

²⁵ *Thrivent Financial for Lutherans v. State of Florida, Department of Financial Services*, 145 So.3d 178 (Fla. 1st DCA 2014).

are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract terms of the policy and s. 627.461, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer's policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The Thrivent decision found that currently the DFS lacks the authority to require such a search under s. 717.107, F.S. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. An insurer may perform the comparison using any database or service that the DFS determines is at least as comprehensive as the DMF for the purpose of indicating a person has died.

The bill establishes that an insured, annuitant, or retained asset account holder is presumed deceased if that person's date of death is indicated on the DMF, unless the insurer has in its records competent, substantial evidence that the person is living. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

The following are exempted from the bill's requirements:

- An annuity issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.
- A policy of credit life or accidental death insurance.
- A joint and survivor annuity contract, if an annuitant is still living.
- A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions that provide the insurer with access to, for each individual insured, the social security number or name and date of birth, beneficiary designation information, coverage eligibility, the benefit amount, and premium payment status.

The bill requires an insurer, no later than 120 days after learning of a death through a DMF match, to complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder. The insurer must review its records to determine if that person purchased other products from the insurer. The insurer must also determine whether benefits are due. Finally, the insurer must complete and document an effort to locate and contact the beneficiary or authorized representative unless such person communicates with the insurer before the expiration of the 120-day period. The effort to locate the beneficiary or authorized representative must include sending that person information concerning the insurer's claim process, including notice of any requirement in a policy, annuity, or retained asset account to provide a certified original or copy of the death certificate.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries' fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.

Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers five years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of CS/SB 966 are applied to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expresses clear intent to apply retroactively, thus constitutional concerns are raised if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁶ A vested right is more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.²⁷ If, however, the statute is remedial in nature and expresses clear intent to apply retroactively, it does not raise constitutional concerns. Remedial statutes are those that do not create new or take away vested rights.²⁸

Representatives of some life insurers argue that the application of the bill's requirements to life insurance policies with contractual terms that require proof of death in accordance with s. 627.461, F.S., could raise constitutional issues related to the impairment of contracts. Representatives from the Department of Financial Services counter such

²⁶ *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).

²⁷ *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

²⁸ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

concerns, pointing to the United States Supreme Court decision in *Connecticut Mutual Life Insurance Co. v. Moore*²⁹ (*Moore*).

In *Moore*, the Court addressed the validity of the New York unclaimed property statute as applied to life insurance policies, including “policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years.”³⁰ The Court addressed whether the unclaimed property statute impaired the obligation of contract within the meaning of Art. I, S. 10 of the United States Constitution.³¹ The insurers argued that the terms of the insurance policies provided the insurer has no obligation until proof of death is submitted and the policy is surrendered. The unclaimed property statute, the insurers further argued, transforms a conditional obligation under the life insurance policy into a liquidated obligation.³²

The Supreme Court held that the New York statute did not violate the constitution because of its enforced variations from the insurance policy provisions.³³ The Court reasoned that the state has the same power to seize abandoned life insurance moneys as abandoned bank deposits, despite the differences between the two. The Court concluded by saying it saw no constitutional reason why a state may not proceed administratively to take over the care of unclaimed property, noting that the right of appropriation by the state of abandoned property has existed for centuries in the common law.³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 966, many beneficiaries of life or endowment insurance policies and annuities contracts who are unaware of such policies will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the DFS, Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

Life insurers will incur indeterminate costs related to identifying policies and contracts subject to the provisions of the bill, conducting searches of the DMF to identify deceased policyholders, and attempting to locate beneficiaries.

²⁹ 333 U.S. 541 (1948).

³⁰ *Moore*, 333 U.S. 541 at 543.

³¹ *Moore*, 333 U.S. 541 at 545.

³² *Moore*, 333 U.S. 541 at 546.

³³ *Moore*, 333 U.S. 541 at 546.

³⁴ *Moore*, 333 U.S. 541 at 547.

C. Government Sector Impact:

The Department of Financial Services indicates that the Bureau of Unclaimed Property expects to receive reports and remittances “far exceeding \$100 million” as insurers are unable to pay beneficiaries after searching the DMF and performing due diligence searches for beneficiaries. The DFS did not project remittance amounts to the state for the coming fiscal years because the bill specifies that insurers will not be subject to fines, penalties or additional interest related to the remittance of unclaimed proceeds on policies and contracts where the insured had died prior to the dormancy trigger time period (generally five years) expiring.

The department further indicates a potential for unknown litigation expenses if insurance companies challenge the law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.107 of the Florida Statutes.

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

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

CS by Banking and Insurance on January 19, 2016:

The CS requires insurers, within 120 days after learning of the death of an insured, annuitant, or retained asset account holder, to complete an effort to confirm the death, review its records to determine if the person has other products from the insurer, determine, whether benefits are due, and complete an effort to locate and contract a beneficiary that has not contacted the insurer. The effort must include providing information regarding the claim process and the requirements for submitting a claim.

The CS also:

- Exempts from the bill credit life policies and joint and survivor annuities where an annuitant is still living.
- Allows insurers to disclose minimal personal information about an insured, annuitant, or account holder to outside parties in an effort to locate a beneficiary, to the extent allowed by law.
- Allows the insurer to use an alternate database or service that DFS determines is at least as comprehensive as the Death Master File for purposes of indicating a person has died.

- Clarifies that an insurer may use competent, substantial evidence to show that a person presumed dead by the Death Master File is actually alive.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senators
Benacquisto and Gaetz

597-02310-16

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A bill to be entitled

An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing requirements for the comparison; providing for a presumption of death for certain individuals; providing an exception; requiring an insurer to account for certain variations in data and partial information; providing the circumstances under which a policy, a contract, or an account is deemed to be in force; providing applicability; defining a term; requiring an insurer to follow certain procedures after learning of a death through a specified comparison; authorizing an insurer to disclose certain personal information to specified persons for certain purposes; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 717.107, Florida Statutes, is amended to read:

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder funds became due and payable as established from the records of the insurance company holding or ~~owing the funds~~, but property described in paragraph (3) (d) ~~(3) (b)~~ is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, ~~or~~ annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, ~~the or~~ annuitant, or the retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof

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61 of the death of the insured, the ~~or~~ annuitant, or the retained
 62 asset account holder according to the records of the company is
 63 deemed matured and the proceeds due and payable if any of the
 64 following applies:

65 (a) The company knows that the insured, the ~~or~~ annuitant,
 66 or the retained asset account holder has died. ~~or~~

67 (b) A presumption of death made in accordance with
 68 paragraph (8) (b) has not been rebutted.

69 (c) The policy or contract has reached its maturity date.

70 (d) ~~(b)~~1. The insured has attained, or would have attained
 71 if he or she were living, the limiting age under the mortality
 72 table on which the reserve is based;

73 2. The policy was in force at the time the insured
 74 attained, or would have attained, the limiting age specified in
 75 subparagraph 1.; and

76 3. Neither the insured nor any other person appearing to
 77 have an interest in the policy within the preceding 2 years,
 78 according to the records of the company, has assigned,
 79 readjusted, or paid premiums on the policy; subjected the policy
 80 to a loan; corresponded in writing with the company concerning
 81 the policy; or otherwise indicated an interest as evidenced by a
 82 memorandum or other record on file prepared by an employee of
 83 the company.

84 (4) For purposes of this chapter, the application of an
 85 automatic premium loan provision or other nonforfeiture
 86 provision contained in an insurance policy does not prevent the
 87 policy from being matured or terminated under subsection (1) if
 88 the insured has died or the insured or the beneficiaries of the
 89 policy otherwise have become entitled to the proceeds thereof

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90 before the depletion of the cash surrender value of a policy by
 91 the application of those provisions.

92 (5) If the laws of this state or the terms of the life
 93 insurance policy require the company to give notice to the
 94 insured or owner that an automatic premium loan provision or
 95 other nonforfeiture provision has been exercised and the notice,
 96 given to an insured or owner whose last known address according
 97 to the records of the company is in this state, is
 98 undeliverable, the company shall make a reasonable search to
 99 ascertain the policyholder's correct address to which the notice
 100 must be mailed.

101 (6) Notwithstanding any other provision of law, if the
 102 company learns of the death of the insured, the ~~or~~ annuitant, or
 103 the retained asset account holder and the beneficiary has not
 104 communicated with the insurer within 4 months after the death,
 105 the company shall take reasonable steps to pay the proceeds to
 106 the beneficiary.

107 (7) Commencing 2 years after July 1, 1987, every change of
 108 beneficiary form issued by an insurance company under any life
 109 or endowment insurance policy or annuity contract to an insured
 110 or owner who is a resident of this state must request the
 111 following information:

112 (a) The name of each beneficiary, or if a class of
 113 beneficiaries is named, the name of each current beneficiary in
 114 the class.

115 (b) The address of each beneficiary.

116 (c) The relationship of each beneficiary to the insured.

117 (8) (a) Notwithstanding any other provision of law, an
 118 insurer shall compare the records of its insureds' life or

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119 endowment insurance policies, annuity contracts that provide a
 120 death benefit, and retained asset accounts that were in force at
 121 any time on or after January 1, 1992, against the United States
 122 Social Security Administration Death Master File to determine if
 123 the death of an insured, an annuitant, or a retained asset
 124 account holder is indicated. The comparison must use the name
 125 and social security number or date of birth of the insured,
 126 annuitant, or retained asset account holder. The comparison must
 127 be made on at least an annual basis before August 31 of each
 128 year. If an insurer performs such a comparison regarding its
 129 annuities or other books of business more frequently than once a
 130 year, the insurer must also make a comparison regarding its life
 131 insurance policies, annuity contracts that provide a death
 132 benefit, and retained asset accounts at the same frequency as is
 133 made regarding its annuities or other books or lines of
 134 business. An insurer may perform the comparison required by this
 135 paragraph using any database or service that the department
 136 determines is at least as comprehensive as the United States
 137 Social Security Administration Death Master File for the purpose
 138 of indicating that a person has died.

139 (b) An insured, an annuitant, or a retained asset account
 140 holder is presumed deceased if the date of his or her death is
 141 indicated by the comparison required under paragraph (a), unless
 142 the insurer has in its records competent and substantial
 143 evidence that the person is living, including, but not limited
 144 to, a contact made by the insurer with such person or his or her
 145 legal representative. The insurer shall account for common
 146 variations in data and for any partial names, social security
 147 numbers, dates of birth, and addresses of the insured, the

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148 annuitant, or the retained asset account holder which would
 149 otherwise preclude an exact match.
 150 (c) For purposes of this section, a policy, an annuity
 151 contract, or a retained asset account is deemed to be in force
 152 if it has not lapsed, has not been cancelled, or has not been
 153 terminated at the time of death of the insured, the annuitant,
 154 or the retained asset account holder.
 155 (d) This subsection does not apply to an insurer with
 156 respect to benefits payable under:
 157 1. An annuity that is issued in connection with an
 158 employment-based plan subject to the Employee Retirement Income
 159 Security Act of 1974 or that is issued to fund an employment-
 160 based retirement plan, including any deferred compensation plan.
 161 2. A policy of credit life or accidental death insurance.
 162 3. A joint and survivor annuity contract, if an annuitant
 163 is still living.
 164 4. A policy issued to a group master policy owner for which
 165 the insurer does not perform recordkeeping functions. As used in
 166 this subparagraph, the term "recordkeeping" means those
 167 circumstances under which the insurer has agreed through a group
 168 policyholder to be responsible for obtaining, maintaining, and
 169 administering, in its own or its agents' systems, information
 170 about each individual insured under a group insurance policy or
 171 a line of coverage thereunder, including at least the following:
 172 a. The social security number, or name and date of birth;
 173 b. Beneficiary designation information;
 174 c. Coverage eligibility;
 175 d. The benefit amount; and
 176 e. Premium payment status.

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- 177 (9) No later than 120 days after learning of the death of
 178 an insured, an annuitant, or a retained asset account holder
 179 through a comparison under subsection (8), an insurer shall:
 180 (a) Complete and document an effort to confirm the death of
 181 the insured, annuitant, or retained asset account holder against
 182 other available records and information.
 183 (b) Review its records to determine whether the insured,
 184 annuitant, or retained asset account holder purchased other
 185 products from the insurer.
 186 (c) Determine whether benefits may be due under a policy,
 187 an annuity, or a retained asset account.
 188 (d) Complete and document an effort to locate and contact
 189 the beneficiary or authorized representative under a policy, an
 190 annuity, or a retained asset account, if such person has not
 191 communicated with the insurer before the expiration of the 120-
 192 day period. The effort must include:
 193 1. Sending to the beneficiary or authorized representative
 194 information concerning the claim process of the insurer.
 195 2. Notice of any requirement to provide a certified
 196 original or copy of the death certificate, if applicable under
 197 the policy, annuity, or retained asset account.
 198 (10) An insurer may, to the extent permitted by law,
 199 disclose the minimum necessary personal information about an
 200 insured, an annuitant, a retained asset account owner, or a
 201 beneficiary to an individual or entity reasonably believed by
 202 the insurer to possess the ability to assist the insurer in
 203 locating the beneficiary or another individual or entity that is
 204 entitled to payment of the claim proceeds.
 205 (11) An insurer, or any agent or third party that it

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- 206 engages or that works on its behalf, may not charge insureds,
 207 annuitants, retained asset account holders, beneficiaries, or
 208 the estates of insureds, annuitants, retained asset account
 209 holders, or the beneficiaries of an estate any fees or costs
 210 associated with any search, verification, claim, or delivery of
 211 funds conducted pursuant to this section.
 212 Section 2. The amendments made by this act are remedial in
 213 nature and apply retroactively. Fines, penalties, or additional
 214 interest may not be imposed due to the failure to report and
 215 remit an unclaimed life or an endowment insurance policy, a
 216 retained asset account, or an annuity contract with a death
 217 benefit if any unclaimed life or endowment insurance policy,
 218 retained asset account, or annuity contract proceeds are
 219 reported and remitted to the Department of Financial Services on
 220 or before May 1, 2021.
 221 Section 3. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 11, 2016

The Honorable Tom Lee
Appropriations, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 966- Unclaimed Property

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 966, Relating to Unclaimed Property, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Cindy Kynoch

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 966
Bill Number (if applicable)

Meeting Date _____

Topic Unclaimed property

Amendment Barcode (if applicable) _____

Name Belinda M. Miller

Job Title Chief of Staff

Address 200 E. Gaines Street

Phone 850 413 5000

Tallahassee FL 32399
City State Zip

Email belinda.miller@floir.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016

Meeting Date

SB 966

Bill Number (if applicable)

Topic Unclaimed Property

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N Monroe Street

Phone 850-413-2863

Street

Tallahassee

FL

32399

Email elizabeth.boyd@myfloridacfo.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL: PCS/CS/SB 992 (841824)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes

SUBJECT: Department of Financial Services

DATE: February 17, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and

enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS' Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be \$54,500, due to the changes in the service of process. The bill appropriates the recurring sum of \$500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

II. Present Situation:

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;

- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.¹

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a \$15 fee to the DFS for service.² The CFO cannot accept service via electronic mail.³

Once the DFS receives the documents, it forwards them to the insurer or entity.⁴ The CFO can use registered or certified mail to send the documents to authorized insurers.⁵ The CFO can use registered mail to send the documents to unauthorized insurers.⁶ Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.⁷

Alternative Retirement Benefits for OPS Employees

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.⁸ By creating the program for such employees, the state does not have to contribute to Social Security as an employer.⁹ The DFS reports that the program saved the state \$11 million in 2013 and 2014.¹⁰

¹ See s. 48.151(3), F.S.

² See s. 624.502, F.S.

³ See <http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm> (last visited January 13, 2016).

⁴ See ss. 624.307, 624.423, and 626.907, F.S.

⁵ See s. 624.423, F.S.

⁶ See s. 626.907, F.S.

⁷ Interview with DFS staff, January 13, 2016.

⁸ See s. 110.1315(1), F.S.

⁹ See *Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf (last visited January 14, 2016).

¹⁰ *Id.*

Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.¹¹

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of \$10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.¹²

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.¹³

Each nonstate entity that expends more than \$500,000 in state financial assistance¹⁴ in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.¹⁵

¹¹ See <https://www.myfloridaderferredcomp.com/SOFWeb/default.aspx> (last visited January 14, 2016).

¹² See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹³ See <https://apps.fldfs.com/fsaa/singleauditact.aspx> (last visited January 14, 2016).

¹⁴ State financial assistance is state resources provided to a nonstate entity to carry out a state project.

¹⁵ See s. 215.97(2)(m), F.S.

Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.¹⁶

Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.¹⁷

Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.¹⁸ The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.¹⁹

Public Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

¹⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹⁷ See s. 322.142(4), F.S.

¹⁸ The standard relating to carbon monoxide detectors. See <http://ulstandards.ul.com/standard/?id=2034> (last visited January 14, 2016).

¹⁹ See s. 509.211(4), F.S.

Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.²⁰ The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.²¹

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.²²

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over \$365,000 in rewards.²³

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing²⁴ to determine the cause of the loss if sinkhole loss is covered under the policy.²⁵ If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.²⁶

²⁰ See s. 626.921(1), F.S.

²¹ See s. 626.921(4), F.S.

²² See s. <http://www.myflsla.com/about/>

²³ See <http://www.myfloridacfo.com/sitePages/agency/dfs.aspx> (last accessed February 11, 2015).

²⁴ s. 627.7072, F.S., contains testing standards in sinkhole claims.

²⁵ s. 627.707(2), F.S.

²⁶ s. 627.707(4)(a), F.S.

Neutral evaluation is available to either party if a sinkhole report has been issued.²⁷ Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.²⁸ Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.²⁹

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.³⁰ A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.³¹ The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.³² The report is admissible in subsequent court proceedings.³³ Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

Provisions Related to the State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.³⁴ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

²⁷ s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

²⁸ s. 627.7074(2), F.S.

²⁹ s. 627.7074(3), F.S.

³⁰ s. 627.7074(4), F.S.

³¹ s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

³² ss. 627.7074(5), (12), F.S.

³³ s. 627.7074(13), F.S.

³⁴ s. 633.104, F.S.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code³⁵, which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the DFS to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the CFO can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

Alternative Retirement Benefits for OPS Employees

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

Florida Deferred Compensation Program

Section 3 amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.³⁶

Approval of Bonds (Sections 4 and 7)

Sections 4 and 7 amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

³⁵ See <http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm> (last visited January 14, 2016).

³⁶ See Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000. According to the DFS, the federal single audit threshold was recently raised from \$500,000 to \$750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.³⁷

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.³⁸ The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS' Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.³⁹

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a “nationally recognized testing laboratory.” It requires the carbon monoxide detector to be listed complying with ANSI/UL

³⁷ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

³⁸ The bill defines “higher education entity” as a Florida College System institution or a state university.

³⁹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration. The bill requires that the detectors either be integrated to the establishment's fire detection system or connected to the boiler safety circuit such that the boiler does not operate when carbon monoxide is detected.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk. It requires the carbon monoxide detectors to meet the statutory requirements.

Public Adjusters (Section 12)

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

Appointments to the Board of the FLSO (Section 14)

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

Anti-Fraud Reward Program (Section 15)

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a "hoax" bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Neutral Evaluators (Section 16)

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

Provisions Related to the State Fire Marshal (Sections 17-24, 26)

Criminal Records of Applicants for Certification

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost

of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant’s history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department’s decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.⁴⁰

Life Safety Code

Section 19 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to “newly constructed” one and two-family dwellings. One and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.⁴¹

Firefighter and Volunteer Firefighter Training and Certification

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal (“Division”).⁴² To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course⁴³ or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:⁴⁴
 - Be a high school graduate
 - Be at least 18 years old
 - Have no felony convictions

⁴⁰ The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).

⁴¹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

⁴² See s. 633.416, F.S.

⁴³ This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. See <http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited January 14, 2016).

⁴⁴ See s. 633.408(4), F.S.

- Have no misdemeanor convictions relating to the certification or for perjury or false statements
- Be of good moral character
- Be in good physical condition as determined by a division approved physical examination
- Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 21 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 21 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 22 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual's certificate.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.⁴⁵

Section 23 of the bill requires that the firefighter complete a "Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 23 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 24 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or

⁴⁵ See s. 633.414, F.S.

- A dishonorable discharge from the Armed Forces of the United States.

Firefighter Assistance Grant Program (Section 18)

Section 18 of this bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;
- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term “fire service provider” in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

Section 26 appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

Rulemaking (Section 25)

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date (Section 27)

This bill takes effect 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:

PCS/CS/SB 992 creates a system for electronic service of process at DFS. This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a \$54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.⁴⁶

⁴⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

The bill appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.854, 626.907, 626.921, 626.9892, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, 633.426, and 717.138.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The committee substitute:

- Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment's fire detection system or connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
- Removes a provision that increased certain fees for service of process.
- Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
- Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
- Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
- Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
- Appropriates the recurring sum of \$500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

CS by Banking and Insurance on January 19, 2016:

The committee substitute:

- Maintains current law regarding “for-profit organizations” and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association’s regular membership but does not provide for nominations.
- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.



432618

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 374 - 386

and insert:

Administration ~~bear the label of a nationally recognized testing laboratory and have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent,~~ unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the local fire official or his designee ~~the Division of State~~



432618

11 ~~Fire Marshal of the Department of Financial Services.~~ Such
12 devices shall be integrated with the public lodging
13 establishment's fire detection system. Any such installation ~~or~~
14 ~~determination~~ shall be made in accordance with rules adopted by
15 the Division of State Fire Marshal. In lieu of connecting the
16 carbon monoxide detector to the fire detection system, the
17 detector may be connected to a control unit until listed as
18 complying with UL 2017 or a combination system in accordance
19 with NFPA 720. Either the control unit or the combination system
20 shall be connected to the boiler safety circuit and wired so
21 that the boiler is prevented from operating when carbon monoxide
22 is detected until it is reset manually.

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete lines 37 - 39

27 and insert:

28 of public lodging establishments; revising an
29 exception to such standards; providing an



702190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Between lines 508 and 509

insert:

Section 15. Subsection (1) of section 626.931, Florida Statutes, is amended to read:

626.931 Agent affidavit and insurer reporting requirements.—

(1) Each surplus lines agent that has transacted business during a calendar quarter shall on or before the 45th day after



702190

11 the end of the ~~following each~~ calendar quarter file with the
12 Florida Surplus Lines Service Office an affidavit, on forms as
13 prescribed and furnished by the Florida Surplus Lines Service
14 Office, stating that all surplus lines insurance transacted by
15 him or her during such calendar quarter has been submitted to
16 the Florida Surplus Lines Service Office as required.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 59

21 and insert:

22 governors; amending s. 626.931, F.S.; limiting a
23 requirement for the quarterly filing of a certain
24 affidavit with the Florida Surplus Lines Service
25 Office to specified surplus lines agents; amending s.
26 626.9892, F.S.; providing that



576-03418-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 48.151, F.S.; authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; amending s. 110.1315, F.S.; removing a requirement that the Executive Office of the Governor review and approve a certain alternative retirement income security program provided by the department; amending s. 112.215, F.S.; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; conforming a provision to a change made by the act; amending s. 137.09, F.S.; removing a requirement that the department approve certain bonds of county officers; amending s. 215.97, F.S.; revising and providing definitions; increasing the amount of a certain audit threshold; exempting specified higher education entities from certain audit requirements; revising the requirements for state-funded contracts or agreements between a state awarding agency and a higher education entity; providing an exception; providing applicability; conforming provisions to changes made by the act; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to provide certain driver license images to



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the Department of Financial Services for the purpose of investigating allegations of violations of the insurance code; amending s. 374.983, F.S.; naming the Board of Commissioners of the Florida Inland Navigation District, rather than the Chief Financial Officer, as the entity that receives and approves certain surety bonds of commissioners; amending s. 509.211, F.S.; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; deleting a provision authorizing the State Fire Marshal of the department to exempt a device from such standards; providing an alternative method of installing such devices; amending s. 624.307, F.S.; conforming provisions to changes made by the act; specifying requirements for the Chief Financial Officer in providing notice of electronic transmission of process documents; amending s. 624.423, F.S.; authorizing service of process by specified means; reenacting and amending s. 624.502, F.S.; specifying fees to be paid by the requestor to the department or Office of Insurance Regulation for certain service of process on authorized and unauthorized insurers; amending s. 626.854, F.S.; revising applicability of the definition of the term "public adjuster"; amending s. 626.907, F.S.; requiring a service of process fee for certain service of process made by the Chief Financial Officer; specifying the determination of a defendant's last known principal place of business; amending s.



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57 626.921, F.S.; revising membership requirements of the
58 Florida Surplus Lines Service Office board of
59 governors; amending s. 626.9892, F.S.; providing that
60 the department, rather than the Division of Insurance
61 Fraud, investigates certain crimes; adding violations
62 of specified statutes to the Anti-Fraud Reward
63 Program; amending s. 627.7074, F.S.; providing an
64 additional ground for disqualifying a neutral
65 evaluator for disputed sinkhole insurance claims;
66 creating s. 633.107, F.S.; authorizing the department
67 to grant exemptions from disqualification for
68 licensure or certification by the Division of State
69 Fire Marshal under certain circumstances; specifying
70 the information an applicant must provide; providing
71 the manner in which the department must render its
72 decision to grant or deny an exemption; providing
73 procedures for an applicant to contest the decision;
74 providing an exception from certain requirements;
75 authorizing the division to adopt rules; creating s.
76 633.135, F.S.; establishing the Firefighter Assistance
77 Program for certain purposes; requiring the division
78 to administer the program and annually award grants to
79 qualifying fire departments; defining the term
80 "combination fire department"; requiring the division
81 to prioritize the annual award of grants to specified
82 fire departments; providing eligibility requirements;
83 requiring the State Fire Marshal to adopt rules and
84 procedures; providing program requirements; amending
85 s. 633.208, F.S.; revising applicability of the Life



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86 Safety Code to exclude one-family and two-family
87 dwellings, rather than only such dwellings that are
88 newly constructed; amending s. 633.216, F.S.;
89 conforming a cross-reference; amending s. 633.408,
90 F.S.; revising firefighter and volunteer firefighter
91 certification requirements; specifying the duration of
92 certain firefighter certifications; amending s.
93 633.412, F.S.; deleting a requirement that the
94 division suspend or revoke all issued certificates if
95 an individual's certificate is suspended or revoked;
96 amending s. 633.414, F.S.; conforming provisions to
97 changes made by the act; revising alternative
98 requirements for renewing specified certifications;
99 providing grounds for denial of, or disciplinary
100 action against, certifications for a firefighter or
101 volunteer firefighter; amending s. 633.426, F.S.;
102 revising a definition; providing a date after which an
103 individual is subject to revocation of certification
104 under specified circumstances; amending s. 717.138,
105 F.S.; providing applicability for the department's
106 rulemaking authority; providing an appropriation;
107 providing an effective date.
108
109 Be It Enacted by the Legislature of the State of Florida:
110
111 Section 1. Subsection (3) of section 48.151, Florida
112 Statutes, is amended to read:
113 48.151 Service on statutory agents for certain persons.—
114 (3) The Chief Financial Officer or his or her assistant or



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115 deputy or another person in charge of the office is the agent
116 for service of process on all insurers applying for authority to
117 transact insurance in this state, all licensed nonresident
118 insurance agents, all nonresident disability insurance agents
119 licensed pursuant to s. 626.835, any unauthorized insurer under
120 s. 626.906 or s. 626.937, domestic reciprocal insurers,
121 fraternal benefit societies under chapter 632, warranty
122 associations under chapter 634, prepaid limited health service
123 organizations under chapter 636, and persons required to file
124 statements under s. 628.461. As an alternative to service of
125 process made by mail or personal service on the Chief Financial
126 Officer, on his or her assistant or deputy, or on another person
127 in charge of the office, the Department of Financial Services
128 may create an Internet-based transmission system to accept
129 service of process by electronic transmission of documents.

130 Section 2. Subsection (1) of section 110.1315, Florida
131 Statutes, is amended to read:

132 110.1315 Alternative retirement benefits; other-personal-
133 services employees.-

134 (1) ~~Upon review and approval by the Executive Office of the~~
135 ~~Governor,~~ The Department of Financial Services shall provide an
136 alternative retirement income security program for eligible
137 temporary and seasonal employees of the state who are
138 compensated from appropriations for other personal services. The
139 Department of Financial Services may contract with a private
140 vendor or vendors to administer the program under a defined-
141 contribution plan under ss. 401(a) and 403(b) or s. 457 of the
142 Internal Revenue Code, and the program must provide retirement
143 benefits as required under s. 3121(b) (7) (F) of the Internal



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144 Revenue Code. The Department of Financial Services may develop a
145 request for proposals and solicit qualified vendors to compete
146 for the award of the contract. A vendor shall be selected on the
147 basis of the plan that best serves the interest of the
148 participating employees and the state. The proposal must comply
149 with all necessary federal and state laws and rules.

150 Section 3. Paragraph (a) of subsection (4) and subsection
151 (12) of section 112.215, Florida Statutes, are amended to read:
152 112.215 Government employees; deferred compensation
153 program.-

154 (4) (a) The Chief Financial Officer, with the approval of
155 the State Board of Administration, shall establish such plan or
156 plans of deferred compensation for state employees and may
157 include persons employed by a state university as defined in s.
158 1000.21, a special district as defined in s. 189.012, or a water
159 management district as defined in s. 189.012, including all such
160 investment vehicles or products incident thereto, as may be
161 available through, or offered by, qualified companies or
162 persons, and may approve one or more such plans for
163 implementation by and on behalf of the state and its agencies
164 and employees.

165 (12) The Chief Financial Officer may adopt any rule
166 necessary to administer and implement this act with respect to
167 deferred compensation plans for state employees and persons
168 employed by a state university as defined in s. 1000.21, a
169 special district as defined in s. 189.012, or a water management
170 district as defined in s. 189.012.

171 Section 4. Section 137.09, Florida Statutes, is amended to
172 read:



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173 137.09 Justification and approval of bonds.—Each surety
174 upon every bond of any county officer shall make affidavit that
175 he or she is a resident of the county for which the officer is
176 to be commissioned, and that he or she has sufficient visible
177 property therein unencumbered and not exempt from sale under
178 legal process to make good his or her bond. Every such bond
179 shall be approved by the board of county commissioners ~~and by~~
180 ~~the Department of Financial Services~~ when ~~the board is they and~~
181 ~~it are~~ satisfied in its ~~their~~ judgment that the bond same is
182 legal, sufficient, and proper to be approved.

183 Section 5. Present paragraphs (h) through (y) of subsection
184 (2) of section 215.97, Florida Statutes, are redesignated as
185 paragraphs (i) through (z), respectively, a new paragraph (h) is
186 added to that subsection, paragraph (a) and present paragraphs
187 (m) and (v) of that subsection and paragraph (o) of subsection
188 (8) are amended, present subsections (9), (10), and (11) of that
189 section are renumbered as subsections (10), (11), and (12),
190 respectively, and a new subsection (9) is added to that section,
191 to read:

192 215.97 Florida Single Audit Act.—

193 (2) ~~Definitions~~. As used in this section, the term:

194 (a) "Audit threshold" means the threshold amount used to
195 determine when a state single audit or project-specific audit of
196 a nonstate entity shall be conducted in accordance with this
197 section. Each nonstate entity that expends a total amount of
198 state financial assistance equal to or in excess of \$750,000
199 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
200 required to have a state single audit, or a project-specific
201 audit, for such fiscal year in accordance with the requirements



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202 of this section. Every 2 years the Auditor General, after
203 consulting with the Executive Office of the Governor, the
204 Department of Financial Services, and all state awarding
205 agencies, shall review the threshold amount for requiring audits
206 under this section and may adjust such threshold amount
207 consistent with the purposes of this section.

208 (h) "Higher education entity" means a Florida College
209 System institution or a state university, as those terms are
210 defined in s. 1000.21.

211 (n) ~~(m)~~ "Nonstate entity" means a local governmental entity,
212 higher education entity, nonprofit organization, or for-profit
213 organization that receives state financial assistance.

214 (w) ~~(v)~~ "State project-specific audit" means an audit of one
215 state project performed in accordance with the requirements of
216 subsection (11) ~~(10)~~.

217 (8) Each recipient or subrecipient of state financial
218 assistance shall comply with the following:

219 (o) A higher education entity is exempt from the
220 requirements of paragraph (2) (a) and this subsection ~~A contract~~
221 ~~involving the State University System or the Florida College~~
222 ~~System funded by state financial assistance may be in the form~~
223 ~~of:~~

224 ~~1. A fixed-price contract that entitles the provider to~~
225 ~~receive full compensation for the fixed contract amount upon~~
226 ~~completion of all contract deliverables;~~

227 ~~2. A fixed rate per unit contract that entitles the~~
228 ~~provider to receive compensation for each contract deliverable~~
229 ~~provided;~~

230 ~~3. A cost-reimbursable contract that entitles the provider~~



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231 ~~to receive compensation for actual allowable costs incurred in~~
232 ~~performing contract deliverables; or~~

233 ~~4. A combination of the contract forms described in~~
234 ~~subparagraphs 1., 2., and 3.~~

235 (9) This subsection applies to any contract or agreement
236 between a state awarding agency and a higher education entity
237 that is funded by state financial assistance.

238 (a) The contract or agreement must comply with ss.
239 215.971(1) and 216.3475 and must be in the form of one or a
240 combination of the following:

241 1. A fixed-price contract that entitles the provider to
242 receive compensation for the fixed contract amount upon
243 completion of all contract deliverables.

244 2. A fixed-rate-per-unit contract that entitles the
245 provider to receive compensation for each contract deliverable
246 provided.

247 3. A cost-reimbursable contract that entitles the provider
248 to receive compensation for actual allowable costs incurred in
249 performing contract deliverables.

250 (b) If a higher education entity has extremely limited or
251 no required activities related to the administration of a state
252 project and acts only as a conduit of state financial
253 assistance, none of the requirements of this section apply to
254 the conduit higher education entity. However, the subrecipient
255 that is provided state financial assistance by the conduit
256 higher education entity is subject to the requirements of this
257 subsection and subsection (8).

258 (c) Regardless of the amount of the state financial
259 assistance, this subsection does not exempt a higher education



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260 entity from compliance with provisions of law that relate to
261 maintaining records concerning state financial assistance to the
262 higher education entity or that allow access and examination of
263 those records by the state awarding agency, the higher education
264 entity, the Department of Financial Services, or the Auditor
265 General.

266 (d) This subsection does not prohibit the state awarding
267 agency from including terms and conditions in the contract or
268 agreement which require additional assurances that the state
269 financial assistance meets the applicable requirements of laws,
270 regulations, and other compliance rules.

271 Section 6. Subsection (4) of section 322.142, Florida
272 Statutes, is amended to read:

273 322.142 Color photographic or digital imaged licenses.—

274 (4) The department may maintain a film negative or print
275 file. The department shall maintain a record of the digital
276 image and signature of the licensees, together with other data
277 required by the department for identification and retrieval.
278 Reproductions from the file or digital record are exempt from
279 the provisions of s. 119.07(1) and may be made and issued only:

280 (a) For departmental administrative purposes;

281 (b) For the issuance of duplicate licenses;

282 (c) In response to law enforcement agency requests;

283 (d) To the Department of Business and Professional
284 Regulation and the Department of Health pursuant to an
285 interagency agreement for the purpose of accessing digital
286 images for reproduction of licenses issued by the Department of
287 Business and Professional Regulation or the Department of
288 Health;



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289 (e) To the Department of State pursuant to an interagency
290 agreement to facilitate determinations of eligibility of voter
291 registration applicants and registered voters in accordance with
292 ss. 98.045 and 98.075;

293 (f) To the Department of Revenue pursuant to an interagency
294 agreement for use in establishing paternity and establishing,
295 modifying, or enforcing support obligations in Title IV-D cases;

296 (g) To the Department of Children and Families pursuant to
297 an interagency agreement to conduct protective investigations
298 under part III of chapter 39 and chapter 415;

299 (h) To the Department of Children and Families pursuant to
300 an interagency agreement specifying the number of employees in
301 each of that department's regions to be granted access to the
302 records for use as verification of identity to expedite the
303 determination of eligibility for public assistance and for use
304 in public assistance fraud investigations;

305 (i) To the Agency for Health Care Administration pursuant
306 to an interagency agreement for the purpose of authorized
307 agencies verifying photographs in the Care Provider Background
308 Screening Clearinghouse authorized under s. 435.12;

309 (j) To the Department of Financial Services pursuant to an
310 interagency agreement to facilitate the location of owners of
311 unclaimed property, the validation of unclaimed property claims,
312 ~~and~~ the identification of fraudulent or false claims, and the
313 investigation of allegations of violations of the insurance code
314 by licensees and unlicensed persons;

315 (k) To district medical examiners pursuant to an
316 interagency agreement for the purpose of identifying a deceased
317 individual, determining cause of death, and notifying next of



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318 kin of any investigations, including autopsies and other
319 laboratory examinations, authorized in s. 406.11; or

320 (1) To the following persons for the purpose of identifying
321 a person as part of the official work of a court:

322 1. A justice or judge of this state;

323 2. An employee of the state courts system who works in a
324 position that is designated in writing for access by the Chief
325 Justice of the Supreme Court or a chief judge of a district or
326 circuit court, or by his or her designee; or

327 3. A government employee who performs functions on behalf
328 of the state courts system in a position that is designated in
329 writing for access by the Chief Justice or a chief judge, or by
330 his or her designee.

331 Section 7. Subsection (2) of section 374.983, Florida
332 Statutes, is amended to read:

333 374.983 Governing body.—

334 (2) The present board of commissioners of the district
335 shall continue to hold office until their respective terms shall
336 expire. Thereafter the members of the board shall continue to be
337 appointed by the Governor for a term of 4 years and until their
338 successors shall be duly appointed. Specifically, commencing on
339 January 10, 1997, the Governor shall appoint the commissioners
340 from Broward, Indian River, Martin, St. Johns, and Volusia
341 Counties and on January 10, 1999, the Governor shall appoint the
342 commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm
343 Beach, and St. Lucie Counties. The Governor shall appoint the
344 commissioner from Nassau County for an initial term that
345 coincides with the period remaining in the current terms of the
346 commissioners from Broward, Indian River, Martin, St. Johns, and



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347 Volusia Counties. Thereafter, the commissioner from Nassau
348 County shall be appointed to a 4-year term. Each new appointee
349 must be confirmed by the Senate. Whenever a vacancy occurs among
350 the commissioners, the person appointed to fill such vacancy
351 shall hold office for the unexpired portion of the term of the
352 commissioner whose place he or she is selected to fill. Each
353 commissioner under this act before he or she assumes office
354 shall be required to give a good and sufficient surety bond in
355 the sum of \$10,000 payable to the Governor and his or her
356 successors in office, conditioned upon the faithful performance
357 of the duties of his or her office, such bond to be approved by
358 and filed with the board of commissioners of the district Chief
359 Financial Officer. Any and all premiums upon such surety bonds
360 shall be paid by the board of commissioners of such district as
361 a necessary expense of the district.

362 Section 8. Subsection (4) of section 509.211, Florida
363 Statutes, is amended to read:

364 509.211 Safety regulations.—

365 (4) Every enclosed space or room that contains a boiler
366 regulated under chapter 554 which is fired by the direct
367 application of energy from the combustion of fuels and that is
368 located in any portion of a public lodging establishment that
369 also contains sleeping rooms shall be equipped with one or more
370 carbon monoxide detector sense devices that are listed as
371 complying with ANSI/UL 2075, Standard for Gas and Vapor
372 Detectors and Sensors, by a Nationally Recognized Testing
373 Laboratory accredited by the Occupational Safety and Health
374 Administration to list products to that standard bear the label
375 of a nationally recognized testing laboratory and have been



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376 ~~tested and listed as complying with the most recent Underwriters~~
377 ~~Laboratories, Inc., Standard 2034, or its equivalent, unless it~~
378 ~~is determined that carbon monoxide hazards have otherwise been~~
379 ~~adequately mitigated as determined by the Division of State Fire~~
380 ~~Marshal of the Department of Financial Services. Such devices~~
381 ~~must shall~~ be integrated with the public lodging establishment's
382 fire detection system, or connected to the boiler safety circuit
383 and wired so that the boiler is prevented from operating when
384 carbon monoxide is detected until it is reset manually. Any such
385 installation ~~or determination~~ shall be made in accordance with
386 rules adopted by the Division of State Fire Marshal.

387 Section 9. Subsection (9) of section 624.307, Florida
388 Statutes, is amended to read:

389 624.307 General powers; duties.—

390 (9) Upon receiving service of legal process issued in any
391 civil action or proceeding in this state against any regulated
392 person or any unauthorized insurer under s. 626.906 or s.
393 626.937 which is required to appoint the Chief Financial Officer
394 as its attorney to receive service of all legal process, the
395 Chief Financial Officer, as attorney, may, in lieu of sending
396 the process by registered or certified mail, send the process or
397 make it available by any other verifiable means, including, but
398 not limited to, making the documents available by electronic
399 transmission from a secure website established by the department
400 to the person last designated by the regulated person or the
401 unauthorized insurer to receive the process. When process
402 documents are made available electronically, the Chief Financial
403 Officer shall send a notice of receipt of service of process to
404 the person last designated by the regulated person or



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405 unauthorized insurer to receive legal process. The notice must
406 state the date and manner in which the copy of the process was
407 made available to the regulated person or unauthorized insurer
408 being served and contain the uniform resource locator (URL) for
409 a hyperlink to access files and information on the department's
410 website to obtain a copy of the process.

411 Section 10. Section 624.423, Florida Statutes, is amended
412 to read:

413 624.423 Serving process.-

414 (1) Service of process upon the Chief Financial Officer as
415 process agent of the insurer ~~(under ss. 624.422 and 626.937)~~
416 shall be made by serving a copy of the process upon the Chief
417 Financial Officer or upon her or his assistant, deputy, or other
418 person in charge of her or his office. Service may also be made
419 by mail or electronically as provided in s. 48.151. Upon
420 receiving such service, the Chief Financial Officer shall retain
421 a record copy and promptly forward one copy of the process by
422 registered or certified mail or by other verifiable means, as
423 provided under s. 624.307(9), to the person last designated by
424 the insurer to receive the same, as provided under s.
425 624.422(2). For purposes of this section, records may be
426 retained as paper or electronic copies.

427 (2) ~~If where~~ process is served upon the Chief Financial
428 Officer as an insurer's process agent, the insurer is shall not
429 ~~be~~ required to answer or plead except within 20 days after the
430 date upon which the Chief Financial Officer sends or makes
431 available by other verifiable means ~~mailed~~ a copy of the process
432 served upon her or him as required by subsection (1).

433 (3) Process served upon the Chief Financial Officer and



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434 sent or made available in accordance with this section and s.
435 624.307(9) copy thereof forwarded as in this section provided
436 shall for all purposes constitute valid and binding service
437 thereof upon the insurer.

438 Section 11. Notwithstanding the expiration date in section
439 41 of chapter 2015-222, Laws of Florida, section 624.502,
440 Florida Statutes, as amended by chapter 2013-41, Laws of
441 Florida, is reenacted and amended to read:

442 624.502 Service of process fee.-In all instances as
443 provided in any section of the insurance code and s. 48.151(3)
444 in which service of process is authorized to be made upon the
445 Chief Financial Officer or the director of the office, the party
446 requesting service plaintiff shall pay to the department or
447 office a fee of \$15 for such service of process on an authorized
448 insurer or on an unauthorized insurer, which fee shall be
449 deposited into the Administrative Trust Fund.

450 Section 12. Present paragraph (b) of subsection (2) of
451 section 626.854, Florida Statutes, is redesignated as paragraph
452 (c), and a new paragraph (b) is added to that subsection, to
453 read:

454 626.854 "Public adjuster" defined; prohibitions.-The
455 Legislature finds that it is necessary for the protection of the
456 public to regulate public insurance adjusters and to prevent the
457 unauthorized practice of law.

458 (2) This definition does not apply to:

459 (b) A licensed health insurance agent who assists an
460 insured with coverage questions, medical procedure coding
461 issues, balance billing issues, understanding the claims filing
462 process, or filing a claim, as such assistance relates to



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463 coverage under a health insurance policy.
464 Section 13. Subsection (1) of section 626.907, Florida
465 Statutes, is amended to read:
466 626.907 Service of process; judgment by default.—
467 (1) Service of process upon an insurer or person
468 representing or aiding such insurer pursuant to s. 626.906 shall
469 be made by delivering to and leaving with the Chief Financial
470 Officer, his or her assistant or deputy, or another person in
471 charge of the or some person in apparent charge of his or her
472 office two copies thereof and the service of process fee as
473 required in s. 624.502. The Chief Financial Officer shall
474 forthwith mail by registered mail, commercial carrier, or any
475 verifiable means, one of the copies of such process to the
476 defendant at the defendant's last known principal place of
477 business as provided by the party submitting the documents and
478 shall keep a record of all process so served upon him or her.
479 The service of process is sufficient, provided notice of such
480 service and a copy of the process are sent within 10 days
481 thereafter by registered mail by plaintiff or plaintiff's
482 attorney to the defendant at the defendant's last known
483 principal place of business, and the defendant's receipt, or
484 receipt issued by the post office with which the letter is
485 registered, showing the name of the sender of the letter and the
486 name and address of the person to whom the letter is addressed,
487 and the affidavit of the plaintiff or plaintiff's attorney
488 showing a compliance herewith are filed with the clerk of the
489 court in which the action is pending on or before the date the
490 defendant is required to appear, or within such further time as
491 the court may allow.



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492 Section 14. Paragraph (a) of subsection (4) of section
493 626.921, Florida Statutes, is amended to read:
494 626.921 Florida Surplus Lines Service Office.—
495 (4) The association shall operate under the supervision of
496 a board of governors consisting of:
497 (a) Five individuals nominated by the Florida Surplus Lines
498 Association and appointed by the department from the regular
499 membership of the Florida Surplus Lines Association.
500
501 Each board member shall be appointed to serve beginning on the
502 date designated by the plan of operation and shall serve at the
503 pleasure of the department for a 3-year term, such term
504 initially to be staggered by the plan of operation so that three
505 appointments expire in 1 year, three appointments expire in 2
506 years, and three appointments expire in 3 years. Members may be
507 reappointed for subsequent terms. The board of governors shall
508 elect such officers as may be provided in the plan of operation.
509 Section 15. Subsection (2) of section 626.9892, Florida
510 Statutes, is amended to read:
511 626.9892 Anti-Fraud Reward Program; reporting of insurance
512 fraud.—
513 (2) The department may pay rewards of up to \$25,000 to
514 persons providing information leading to the arrest and
515 conviction of persons committing crimes investigated by the
516 department ~~Division of Insurance Fraud~~ arising from violations
517 of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, s. 790.164,
518 s. 790.165, s. 790.166, s. 806.031, s. 806.10, s. 806.111, s.
519 817.233, or s. 817.234.
520 Section 16. Paragraph (a) of subsection (7) of section



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521 627.7074, Florida Statutes, is amended to read:

522 627.7074 Alternative procedure for resolution of disputed
523 sinkhole insurance claims.-

524 (7) Upon receipt of a request for neutral evaluation, the
525 department shall provide the parties a list of certified neutral
526 evaluators. The department shall allow the parties to submit
527 requests to disqualify evaluators on the list for cause.

528 (a) The department shall disqualify neutral evaluators for
529 cause based only on any of the following grounds:

530 1. A familial relationship within the third degree exists
531 between the neutral evaluator and either party or a
532 representative of either party.

533 2. The proposed neutral evaluator has, in a professional
534 capacity, previously represented either party or a
535 representative of either party in the same or a substantially
536 related matter.

537 3. The proposed neutral evaluator has, in a professional
538 capacity, represented another person in the same or a
539 substantially related matter and that person's interests are
540 materially adverse to the interests of the parties. The term
541 "substantially related matter" means participation by the
542 neutral evaluator on the same claim, property, or adjacent
543 property.

544 4. The proposed neutral evaluator has, within the preceding
545 5 years, worked as an employer or employee of any party to the
546 case.

547 5. The proposed neutral evaluator has, within the preceding
548 5 years, worked for any entity that performed any sinkhole loss
549 testing, review, or analysis for the property.



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550 Section 17. Section 633.107, Florida Statutes, is created
551 to read:

552 633.107 Exemption from disqualification from licensure or
553 certification.-

554 (1) The department may grant an exemption from
555 disqualification to any person disqualified from licensure or
556 certification by the Division of State Fire Marshal under this
557 chapter because of a criminal record or dishonorable discharge
558 from the United States Armed Forces if the applicant has paid in
559 full any fee, fine, fund, lien, civil judgment, restitution,
560 cost of prosecution, or trust contribution imposed by the court
561 as part of the judgment and sentence for any disqualifying
562 offense and:

563 (a) At least 5 years have elapsed since the applicant
564 completed or has been lawfully released from confinement,
565 supervision, or nonmonetary condition imposed by the court for a
566 disqualifying offense; or

567 (b) At least 5 years have elapsed since the applicant was
568 dishonorably discharged from the United States Armed Forces.

569 (2) For the department to grant an exemption, the applicant
570 must clearly and convincingly demonstrate that he or she would
571 not pose a risk to persons or property if permitted to be
572 licensed or certified under this chapter, evidence of which must
573 include, but need not be limited to, facts and circumstances
574 surrounding the disqualifying offense, the time that has elapsed
575 since the offense, the nature of the offense and harm caused to
576 the victim, the applicant's history before and after the
577 offense, and any other evidence or circumstances indicating that
578 the applicant will not present a danger if permitted to be



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579 licensed or certified.

580 (3) The department has discretion whether to grant or deny
581 an exemption. The department shall provide its decision in
582 writing which, if the exemption is denied, must state with
583 particularity the reasons for denial. The department's decision
584 is subject to proceedings under chapter 120, except that a
585 formal proceeding under s. 120.57(1) is available only if there
586 are disputed issues of material fact that the department relied
587 upon in reaching its decision.

588 (4) An applicant may request an exemption, notwithstanding
589 the time limitations of paragraphs (1)(a) and (b), if by
590 executive clemency his or her civil rights are restored, or he
591 or she receives a pardon, from the disqualifying offense. The
592 fact that the applicant receives executive clemency does not
593 alleviate his or her obligation to comply with subsection (2) or
594 in itself require the department to award the exemption.

595 (5) The division may adopt rules to administer this
596 section.

597 Section 18. Section 633.135, Florida Statutes, is created
598 to read:

599 633.135 Firefighter Assistance Grant Program.—

600 (1) The Firefighter Assistance Grant Program is created
601 within the division to improve the emergency response capability
602 of volunteer fire departments and combination fire departments.
603 The program shall provide financial assistance to improve
604 firefighter safety and enable such fire departments to provide
605 firefighting, emergency medical, and rescue services to their
606 communities. For purposes of this section, the term "combination
607 fire department" means a fire department composed of a



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608 combination of career and volunteer firefighters.

609 (2) The division shall administer the program and annually
610 award grants to volunteer fire departments and combination fire
611 departments using the annual Florida Fire Service Needs
612 Assessment Survey. The purpose of the grants is to assist such
613 fire departments in providing volunteer firefighter training and
614 procuring necessary firefighter personal protective equipment,
615 self-contained breathing apparatus equipment, and fire engine
616 pumper apparatus equipment. However, the division shall
617 prioritize the annual award of grants to such combination fire
618 departments and volunteer fire departments demonstrating need as
619 a result of participating in the annual Florida Fire Service
620 Needs Assessment Survey.

621 (3) The State Fire Marshal shall adopt rules and procedures
622 for the program that require grant recipients to:

623 (a) Report their activity to the division for submission in
624 the Fire and Emergency Incident Information Reporting System
625 created pursuant to s. 633.136;

626 (b) Annually complete and submit the Florida Fire Service
627 Needs Assessment Survey to the division;

628 (c) Comply with the Florida Firefighters Occupational
629 Safety and Health Act, ss. 633.502-633.536;

630 (d) Comply with any other rule determined by the State Fire
631 Marshal to effectively and efficiently implement, administer,
632 and manage the program; and

633 (e) Meet the definition of the term "fire service provider"
634 in s. 633.102.

635 (4) Funds shall be used to:

636 (a) Provide firefighter training to individuals to obtain a



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637 Volunteer Firefighter Certificate of Completion pursuant to s.
638 633.408. Training must be provided at no cost to the fire
639 department or student by a division-approved instructor and must
640 be documented in the division's electronic database.

641 (b) Purchase firefighter personal protective equipment,
642 including structural firefighting protective ensembles and
643 individual ensemble elements such as garments, helmets, gloves,
644 and footwear, that complies with NFPA No. 1851, "Standard on
645 Selection, Care, and Maintenance of Protective Ensembles for
646 Structural Fire Fighting and Proximity Fire Fighting," by the
647 National Fire Protection Association.

648 (c) Purchase self-contained breathing apparatus equipment
649 that complies with NFPA No. 1852, "Standard on Selection, Care,
650 and Maintenance of Open-Circuit Self-Contained Breathing
651 Apparatus."

652 (d) Purchase fire engine pumper apparatus equipment. Funds
653 provided under this paragraph may be used to purchase the
654 equipment or subsidize a federal grant from the Federal
655 Emergency Management Agency to purchase the equipment.

656 Section 19. Subsection (8) of section 633.208, Florida
657 Statutes, is amended to read:

658 633.208 Minimum firesafety standards.—

659 (8) The provisions of the Life Safety Code, as contained in
660 the Florida Fire Prevention Code, do not apply to ~~newly~~
661 ~~constructed~~ one-family and two-family dwellings. However, fire
662 sprinkler protection may be permitted by local government in
663 lieu of other fire protection-related development requirements
664 for such structures. While local governments may adopt fire
665 sprinkler requirements for one- and two-family dwellings under



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666 this subsection, it is the intent of the Legislature that the
667 economic consequences of the fire sprinkler mandate on home
668 owners be studied before the enactment of such a requirement.
669 After the effective date of this act, any local government that
670 desires to adopt a fire sprinkler requirement on one- or two-
671 family dwellings must prepare an economic cost and benefit
672 report that analyzes the application of fire sprinklers to one-
673 or two-family dwellings or any proposed residential subdivision.
674 The report must consider the tradeoffs and specific cost savings
675 and benefits of fire sprinklers for future owners of property.
676 The report must include an assessment of the cost savings from
677 any reduced or eliminated impact fees if applicable, the
678 reduction in special fire district tax, insurance fees, and
679 other taxes or fees imposed, and the waiver of certain
680 infrastructure requirements including the reduction of roadway
681 widths, the reduction of water line sizes, increased fire
682 hydrant spacing, increased dead-end roadway length, and a
683 reduction in cul-de-sac sizes relative to the costs from fire
684 sprinkling. A failure to prepare an economic report shall result
685 in the invalidation of the fire sprinkler requirement to any
686 one- or two-family dwelling or any proposed subdivision. In
687 addition, a local jurisdiction or utility may not charge any
688 additional fee, above what is charged to a non-fire sprinklered
689 dwelling, on the basis that a one- or two-family dwelling unit
690 is protected by a fire sprinkler system.

691 Section 20. Subsection (2) of section 633.216, Florida
692 Statutes, is amended to read:

693 633.216 Inspection of buildings and equipment; orders;
694 firesafety inspection training requirements; certification;



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695 disciplinary action.—The State Fire Marshal and her or his
696 agents or persons authorized to enforce laws and rules of the
697 State Fire Marshal shall, at any reasonable hour, when the State
698 Fire Marshal has reasonable cause to believe that a violation of
699 this chapter or s. 509.215, or a rule adopted thereunder, or a
700 minimum firesafety code adopted by the State Fire Marshal or a
701 local authority, may exist, inspect any and all buildings and
702 structures which are subject to the requirements of this chapter
703 or s. 509.215 and rules adopted thereunder. The authority to
704 inspect shall extend to all equipment, vehicles, and chemicals
705 which are located on or within the premises of any such building
706 or structure.

707 (2) Except as provided in s. 633.312(2), every firesafety
708 inspection conducted pursuant to state or local firesafety
709 requirements shall be by a person certified as having met the
710 inspection training requirements set by the State Fire Marshal.
711 Such person shall meet the requirements of s. 633.412(1)-(4) ~~or~~
712 ~~633.412(1)(a)-(d)~~, and:

713 (a) Have satisfactorily completed the firesafety inspector
714 certification examination as prescribed by division rule; and

715 (b)1. Have satisfactorily completed, as determined by
716 division rule, a firesafety inspector training program of at
717 least 200 hours established by the department and administered
718 by education or training providers approved by the department
719 for the purpose of providing basic certification training for
720 firesafety inspectors; or

721 2. Have received training in another state which is
722 determined by the division to be at least equivalent to that
723 required by the department for approved firesafety inspector



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724 education and training programs in this state.

725 Section 21. Paragraph (b) of subsection (4) and subsection
726 (8) of section 633.408, Florida Statutes, are amended, and
727 subsection (9) is added to that section, to read:

728 633.408 Firefighter and volunteer firefighter training and
729 certification.—

730 (4) The division shall issue a firefighter certificate of
731 compliance to an individual who does all of the following:

732 (b) Passes the Minimum Standards Course examination within
733 12 months after completing the required courses.

734 (8) (a) Pursuant to s. 590.02(1)(e), the division shall
735 establish a structural fire training program of not less than
736 206 hours. The division shall issue to a person satisfactorily
737 complying with this training program and who has successfully
738 passed an examination as prescribed by the division and who has
739 met the requirements of s. 590.02(1)(e), a Forestry Certificate
740 of Compliance.

741 (b) An individual who holds a current and valid Forestry
742 Certificate of Compliance is entitled to the same rights,
743 privileges, and benefits provided for by law as a firefighter.

744 (9) A Firefighter Certificate of Compliance or a Volunteer
745 Firefighter Certificate of Completion issued under this section
746 expires 4 years after the date of issuance unless renewed as
747 provided in s. 633.414.

748 Section 22. Section 633.412, Florida Statutes, is amended
749 to read:

750 633.412 Firefighters; qualifications for certification.—

751 ~~(1)~~ A person applying for certification as a firefighter
752 must:



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753 ~~(1)(a)~~ Be a high school graduate or the equivalent, as the
754 term may be determined by the division, and at least 18 years of
755 age.

756 ~~(2)(b)~~ Not have been convicted of a misdemeanor relating to
757 the certification or to perjury or false statements, or a felony
758 or a crime punishable by imprisonment of 1 year or more under
759 the law of the United States or of any state thereof or under
760 the law of any other country, or dishonorably discharged from
761 any of the Armed Forces of the United States. "Convicted" means
762 a finding of guilt or the acceptance of a plea of guilty or nolo
763 contendere, in any federal or state court or a court in any
764 other country, without regard to whether a judgment of
765 conviction has been entered by the court having jurisdiction of
766 the case.

767 ~~(3)(e)~~ Submit a set of fingerprints to the division with a
768 current processing fee. The fingerprints will be forwarded to
769 the Department of Law Enforcement for state processing and
770 forwarded by the Department of Law Enforcement to the Federal
771 Bureau of Investigation for national processing.

772 ~~(4)(d)~~ Have a good moral character as determined by
773 investigation under procedure established by the division.

774 ~~(5)(e)~~ Be in good physical condition as determined by a
775 medical examination given by a physician, surgeon, or physician
776 assistant licensed to practice in the state pursuant to chapter
777 458; an osteopathic physician, surgeon, or physician assistant
778 licensed to practice in the state pursuant to chapter 459; or an
779 advanced registered nurse practitioner licensed to practice in
780 the state pursuant to chapter 464. Such examination may include,
781 but need not be limited to, the National Fire Protection



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782 Association Standard 1582. A medical examination evidencing good
783 physical condition shall be submitted to the division, on a form
784 as provided by rule, before an individual is eligible for
785 admission into a course under s. 633.408.

786 ~~(6)(f)~~ Be a nonuser of tobacco or tobacco products for at
787 least 1 year immediately preceding application, as evidenced by
788 the sworn affidavit of the applicant.

789 ~~(2) If the division suspends or revokes an individual's~~
790 ~~certificate, the division must suspend or revoke all other~~
791 ~~certificates issued to the individual by the division pursuant~~
792 ~~to this part.~~

793 Section 23. Section 633.414, Florida Statutes, is amended
794 to read:

795 633.414 Retention of firefighter, volunteer firefighter,
796 and fire investigator certifications ~~certification.~~

797 (1) In order for a firefighter to retain her or his
798 Firefighter Certificate of Compliance, every 4 years he or she
799 must meet the requirements for renewal provided in this chapter
800 and by rule, which must include at least one of the following:

801 (a) Be active as a firefighter. ~~†~~

802 (b) Maintain a current and valid fire service instructor
803 certificate, instruct at least 40 hours during the 4-year
804 period, and provide proof of such instruction to the division,
805 which proof must be registered in an electronic database
806 designated by the division. ~~†~~

807 (c) Within 6 months before the 4-year period expires,
808 successfully complete a Firefighter Retention Refresher Course
809 consisting of a minimum of 40 hours of training to be prescribed
810 by rule. ~~† †~~



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811 (d) Within 6 months before the 4-year period expires,
812 successfully retake and pass the Minimum Standards Course
813 examination pursuant to s. 633.408.
814 (2) In order for a volunteer firefighter to retain her or
815 his Volunteer Firefighter Certificate of Completion, every 4
816 years he or she must:
817 (a) Be active as a volunteer firefighter; or
818 (b) Successfully complete a refresher course consisting of
819 a minimum of 40 hours of training to be prescribed by rule.
820 (3) Subsection (1) does not apply to state-certified
821 firefighters who are certified and employed full-time, as
822 determined by the fire service provider, as firesafety
823 inspectors or fire investigators, regardless of ~~their her or his~~
824 employment status as firefighters or volunteer firefighters a
825 firefighter.
826 (4) For the purposes of this section, the term "active"
827 means being employed as a firefighter or providing service as a
828 volunteer firefighter for a cumulative period of 6 months within
829 a 4-year period.
830 (5) The 4-year period begins upon issuance of the
831 certificate or separation from employment;
832 ~~(a) If the individual is certified on or after July 1,~~
833 ~~2013, on the date the certificate is issued or upon termination~~
834 ~~of employment or service with a fire department.~~
835 ~~(b) If the individual is certified before July 1, 2013, on~~
836 ~~July 1, 2014, or upon termination of employment or service~~
837 ~~thereafter.~~
838 (6) A certificate for a firefighter or volunteer
839 firefighter expires if he or she fails to meet the requirements



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840 of this section.
841 (7) The State Fire Marshal may deny, refuse to renew,
842 suspend, or revoke the certificate of a firefighter or volunteer
843 firefighter if the State Fire Marshal finds that any of the
844 following grounds exists:
845 (a) Any cause for which issuance of a certificate could
846 have been denied if it had then existed and had been known to
847 the division.
848 (b) A violation of any provision of this chapter or any
849 rule or order of the State Fire Marshal.
850 (c) Falsification of a record relating to any certificate
851 issued by the division.
852 Section 24. Subsections (1) and (2) of section 633.426,
853 Florida Statutes, are amended to read:
854 633.426 Disciplinary action; standards for revocation of
855 certification.-
856 (1) For purposes of this section, the term:
857 (a) "Certificate" means any of the certificates issued
858 under s. 633.406.
859 (b) "Certification" or "certified" means ~~the act of~~ holding
860 a certificate that is current and valid and that meets the
861 requirements for renewal of certification pursuant to this
862 chapter and the rules adopted under this chapter certificate.
863 (c) "Convicted" means a finding of guilt, or the acceptance
864 of a plea of guilty or nolo contendere, in any federal or state
865 court or a court in any other country, without regard to whether
866 a judgment of conviction has been entered by the court having
867 jurisdiction of the case.
868 (2) Effective July 1, 2013, an individual who holds a



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869 certificate is subject to revocation for any of the following ~~An~~
870 individual is ineligible to apply for certification if the
871 individual has, at any time, been:

872 (a) Conviction ~~Convicted~~ of a misdemeanor relating to the
873 certification or to perjury or false statements.

874 (b) Conviction ~~Convicted~~ of a felony or a crime punishable
875 by imprisonment of 1 year or more under the law of the United
876 States or of any state thereof, or under the law of any other
877 country.

878 (c) Dishonorable discharge ~~Dishonorably discharged~~ from any
879 of the Armed Forces of the United States.

880 Section 25. Section 717.138, Florida Statutes, is amended
881 to read:

882 717.138 Rulemaking authority.—The department shall
883 administer and provide for the enforcement of this chapter. The
884 department has authority to adopt rules pursuant to ss.
885 120.536(1) and 120.54 to implement the provisions of this
886 chapter. The department may adopt rules to allow for electronic
887 filing of fees, forms, and reports required by this chapter. The
888 authority to adopt rules pursuant to this chapter applies to all
889 unclaimed property reported and remitted to the Chief Financial
890 Officer, including, but not limited to, property reported and
891 remitted pursuant to ss. 43.19, 45.032, 732.107, 733.816, and
892 744.534.

893 Section 26. For the 2016-2017 fiscal year, the sum of
894 \$500,000 in recurring funds from the Insurance Regulatory Trust
895 Fund is appropriated to the Department of Financial Services,
896 and one full-time equivalent position with associated salary
897 rate of 50,000 is authorized, for the purpose of implementing



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898 this act.

899 Section 27. This act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/CS/SB 992

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes

SUBJECT: Department of Financial Services

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and

enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS' Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be \$54,500, due to the changes in the service of process. The bill appropriates the recurring sum of \$500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

II. Present Situation:

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;

- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.¹

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a \$15 fee to the DFS for service.² The CFO cannot accept service via electronic mail.³

Once the DFS receives the documents, it forwards them to the insurer or entity.⁴ The CFO can use registered or certified mail to send the documents to authorized insurers.⁵ The CFO can use registered mail to send the documents to unauthorized insurers.⁶ Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.⁷

Alternative Retirement Benefits for OPS Employees

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.⁸ By creating the program for such employees, the state does not have to contribute to Social Security as an employer.⁹ The DFS reports that the program saved the state \$11 million in 2013 and 2014.¹⁰

¹ See s. 48.151(3), F.S.

² See s. 624.502, F.S.

³ See <http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm> (last visited January 13, 2016).

⁴ See ss. 624.307, 624.423, and 626.907, F.S.

⁵ See s. 624.423, F.S.

⁶ See s. 626.907, F.S.

⁷ Interview with DFS staff, January 13, 2016.

⁸ See s. 110.1315(1), F.S.

⁹ See *Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf (last visited January 14, 2016).

¹⁰ *Id.*

Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.¹¹

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of \$10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.¹²

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.¹³

Each nonstate entity that expends more than \$500,000 in state financial assistance¹⁴ in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.¹⁵

¹¹ See <https://www.myfloridadeferredcomp.com/SOFWeb/default.aspx> (last visited January 14, 2016).

¹² See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹³ See <https://apps.fldfs.com/fsaa/singleauditact.aspx> (last visited January 14, 2016).

¹⁴ State financial assistance is state resources provided to a nonstate entity to carry out a state project.

¹⁵ See s. 215.97(2)(m), F.S.

Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.¹⁶

Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.¹⁷

Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.¹⁸ The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.¹⁹

Public Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

¹⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹⁷ See s. 322.142(4), F.S.

¹⁸ The standard relating to carbon monoxide detectors. See <http://ulstandards.ul.com/standard/?id=2034> (last visited January 14, 2016).

¹⁹ See s. 509.211(4), F.S.

Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.²⁰ The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.²¹

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.²²

Surplus Lines Agent Reporting

Section 626.931 F.S., requires each surplus lines agent to quarterly file an affidavit, on forms prescribed and furnished by the FSLSO, stating that all surplus lines insurance transacted by the agent during the calendar quarter has been submitted to the FSLSO.

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over \$365,000 in rewards.²³

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional

²⁰ See s. 626.921(1), F.S.

²¹ See s. 626.921(4), F.S.

²² See s. <http://www.myflsla.com/about/>

²³ See <http://www.myfloridacfo.com/sitePages/agency/dfs.aspx> (last accessed February 11, 2015).

geologist to conduct testing²⁴ to determine the cause of the loss if sinkhole loss is covered under the policy.²⁵ If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.²⁶

Neutral evaluation is available to either party if a sinkhole report has been issued.²⁷ Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.²⁸ Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.²⁹

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.³⁰ A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.³¹ The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.³² The report is admissible in subsequent court proceedings.³³ Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

Provisions Related to the State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to

²⁴ s. 627.7072, F.S., contains testing standards in sinkhole claims.

²⁵ s. 627.707(2), F.S.

²⁶ s. 627.707(4)(a), F.S.

²⁷ s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

²⁸ s. 627.7074(2), F.S.

²⁹ s. 627.7074(3), F.S.

³⁰ s. 627.7074(4), F.S.

³¹ s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

³² ss. 627.7074(5), (12), F.S.

³³ s. 627.7074(13), F.S.

fire.³⁴ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code³⁵, which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the Department of Financial Services (DFS) to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the Chief Financial Officer (CFO) can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

Alternative Retirement Benefits for OPS Employees

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

Florida Deferred Compensation Program

Section 3 amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.³⁶

³⁴ s. 633.104, F.S.

³⁵ See <http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm> (last visited January 14, 2016).

³⁶ See Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

Approval of Bonds (Sections 4 and 7)

Sections 4 and 7 amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000. According to the DFS, the federal single audit threshold was recently raised from \$500,000 to \$750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.³⁷

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.³⁸ The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS'

³⁷ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

³⁸ The bill defines "higher education entity" as a Florida College System institution or a state university.

Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.³⁹

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a “nationally recognized testing laboratory.” It requires the carbon monoxide detector to be listed complying with ANSI/UL 2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration unless local fire officials determine the carbon monoxide hazard has been adequately mitigated. The bill requires that the detectors either be integrated to the establishment’s fire detection system or connected to a control unit until listed as complying with UL 2017 or a combination system in accordance with NFPA 720. If the detector is connected to the control unit or combination system, they must be connected to the boiler safety circuit and wired such that the boiler does not operate when carbon monoxide is detected until it is manually reset.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk and provides that ability to the local fire official or his designee. It requires the carbon monoxide detectors to meet the statutory requirements.

Public Adjusters (Section 12)

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

Appointments to the Board of the FLSO (Section 14)

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

Florida Surplus Lines Agent Reporting

The bill provides that only surplus lines agents that have transacted business during the calendar quarter are required to submit the quarterly affidavit to the FLSO.

Anti-Fraud Reward Program (Section 16)

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a “hoax” bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.),

³⁹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Neutral Evaluators (Section 17)

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

Provisions Related to the State Fire Marshal (Sections 18-25, 27)

Criminal Records of Applicants for Certification

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant's history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.⁴⁰

Life Safety Code

Section 20 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to "newly constructed" one and two-family dwellings. One

⁴⁰ The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).

and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.⁴¹

Firefighter and Volunteer Firefighter Training and Certification

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal (“Division”).⁴² To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course⁴³ or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:⁴⁴
 - Be a high school graduate
 - Be at least 18 years old
 - Have no felony convictions
 - Have no misdemeanor convictions relating to the certification or for perjury or false statements
 - Be of good moral character
 - Be in good physical condition as determined by a division approved physical examination
 - Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 22 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 22 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 23 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual’s certificate.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;

⁴¹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

⁴² See s. 633.416, F.S.

⁴³ This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. See <http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited January 14, 2016).

⁴⁴ See s. 633.408(4), F.S.

- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.⁴⁵

Section 24 of the bill requires that the firefighter complete a “Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 24 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 25 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or
- A dishonorable discharge from the Armed Forces of the United States.

Firefighter Assistance Grant Program (Section 19)

Section 19 of this bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;

⁴⁵ See s. 633.414, F.S.

- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term “fire service provider” in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

Section 27 appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

Rulemaking (Section 26)

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date (Section 28)

This bill takes effect 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:

CS/CS/SB 992 creates a system for electronic service of process at the Department of Financial Services (DFS). This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a \$54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.⁴⁶

The bill appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.854, 626.907, 626.921, 626.931, 626.9892, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, 633.426, and 717.138.

⁴⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:

The committee substitute:

- Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment's fire detection system or connected to the a control unit until listed as complying with UL 2017 or a combination system in accordance with NFPA 720. If the detector is connected to the control unit or combination system, they must be connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
- Removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk and provides that ability to the local fire official or his designee.
- Removes a provision that increased certain fees for service of process.
- Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
- Clarifies that only surplus lines agents that have transacted business during the calendar quarter are required to submit the quarterly affidavit with the FLSO.
- Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
- Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
- Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
- Appropriates the recurring sum of \$500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

CS by Banking and Insurance on January 19, 2016:

The committee substitute:

- Maintains current law regarding “for-profit organizations” and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senator Brandes

597-02308-16

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1 A bill to be entitled
 2 An act relating to the Department of Financial
 3 Services; amending s. 48.151, F.S.; authorizing the
 4 Department of Financial Services to create an
 5 Internet-based transmission system to accept service
 6 of process; amending s. 110.1315, F.S.; removing a
 7 requirement that the Executive Office of the Governor
 8 review and approve a certain alternative retirement
 9 income security program provided by the department;
 10 amending s. 112.215, F.S.; authorizing the Chief
 11 Financial Officer, with the approval of the State
 12 Board of Administration, to include specified
 13 employees other than state employees in a deferred
 14 compensation plan; conforming a provision to a change
 15 made by the act; amending s. 137.09, F.S.; removing a
 16 requirement that the department approve certain bonds
 17 of county officers; amending s. 215.97, F.S.; revising
 18 and providing definitions; increasing the amount of a
 19 certain audit threshold; exempting specified higher
 20 education entities from certain audit requirements;
 21 revising the requirements for state-funded contracts
 22 or agreements between a state awarding agency and a
 23 higher education entity; providing an exception;
 24 providing applicability; conforming provisions to
 25 changes made by the act; amending s. 322.142, F.S.;
 26 authorizing the Department of Highway Safety and Motor
 27 Vehicles to provide certain driver license images to
 28 the Department of Financial Services for the purpose
 29 of investigating allegations of violations of the
 30 insurance code; amending s. 374.983, F.S.; naming the
 31 Board of Commissioners of the Florida Inland
 32 Navigation District, rather than the Chief Financial

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33 Officer, as the entity that receives and approves
 34 certain surety bonds of commissioners; amending s.
 35 509.211, F.S.; revising certain standards for carbon
 36 monoxide detector devices in specified spaces or rooms
 37 of public lodging establishments; deleting a provision
 38 authorizing the State Fire Marshal of the department
 39 to exempt a device from such standards; amending s.
 40 624.307, F.S.; conforming provisions to changes made
 41 by the act; specifying requirements for the Chief
 42 Financial Officer in providing notice of electronic
 43 transmission of process documents; amending s.
 44 624.423, F.S.; authorizing service of process by
 45 specified means; reenacting and amending s. 624.502,
 46 F.S.; specifying fees to be paid by the requestor to
 47 the department or Office of Insurance Regulation for
 48 certain service of process on authorized and
 49 unauthorized insurers; amending s. 626.907, F.S.;
 50 requiring a service of process fee for certain service
 51 of process made by the Chief Financial Officer;
 52 specifying the determination of a defendant's last
 53 known principal place of business; amending s.
 54 626.921, F.S.; revising membership requirements of the
 55 Florida Surplus Lines Service Office board of
 56 governors; amending s. 627.7074, F.S.; providing an
 57 additional ground for disqualifying a neutral
 58 evaluator for disputed sinkhole insurance claims;
 59 creating s. 633.107, F.S.; authorizing the department
 60 to grant exemptions from disqualification for
 61 licensure or certification by the Division of State

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62 Fire Marshal under certain circumstances; specifying
 63 the information an applicant must provide; providing
 64 the manner in which the department must render its
 65 decision to grant or deny an exemption; providing
 66 procedures for an applicant to contest the decision;
 67 providing an exception from certain requirements;
 68 authorizing the division to adopt rules; creating s.
 69 633.135, F.S.; establishing the Firefighter Assistance
 70 Program for certain purposes; requiring the division
 71 to administer the program and annually award grants to
 72 qualifying fire departments; defining the term
 73 "combination fire department"; providing eligibility
 74 requirements; requiring the State Fire Marshal to
 75 adopt rules and procedures; providing program
 76 requirements; amending s. 633.208, F.S.; revising
 77 applicability of the Life Safety Code to exclude one-
 78 family and two-family dwellings, rather than only such
 79 dwellings that are newly constructed; amending s.
 80 633.216, F.S.; conforming a cross-reference; amending
 81 s. 633.408, F.S.; revising firefighter and volunteer
 82 firefighter certification requirements; specifying the
 83 duration of certain firefighter certifications;
 84 amending s. 633.412, F.S.; deleting a requirement that
 85 the division suspend or revoke all issued certificates
 86 if an individual's certificate is suspended or
 87 revoked; amending s. 633.414, F.S.; conforming
 88 provisions to changes made by the act; revising
 89 alternative requirements for renewing specified
 90 certifications; providing grounds for denial of, or

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91 disciplinary action against, certifications for a
 92 firefighter or volunteer firefighter; amending s.
 93 633.426, F.S.; revising a definition; providing a date
 94 after which an individual is subject to revocation of
 95 certification under specified circumstances; providing
 96 an effective date.

98 Be It Enacted by the Legislature of the State of Florida:

99
 100 Section 1. Subsection (3) of section 48.151, Florida
 101 Statutes, is amended to read:

102 48.151 Service on statutory agents for certain persons.—

103 (3) The Chief Financial Officer or his or her assistant or
 104 deputy or another person in charge of the office is the agent
 105 for service of process on all insurers applying for authority to
 106 transact insurance in this state, all licensed nonresident
 107 insurance agents, all nonresident disability insurance agents
 108 licensed pursuant to s. 626.835, any unauthorized insurer under
 109 s. 626.906 or s. 626.937, domestic reciprocal insurers,
 110 fraternal benefit societies under chapter 632, warranty
 111 associations under chapter 634, prepaid limited health service
 112 organizations under chapter 636, and persons required to file
 113 statements under s. 628.461. As an alternative to service of
 114 process made by mail or personal service on the Chief Financial
 115 Officer, on his or her assistant or deputy, or on another person
 116 in charge of the office, the Department of Financial Services
 117 may create an Internet-based transmission system to accept
 118 service of process by electronic transmission of documents.

119 Section 2. Subsection (1) of section 110.1315, Florida

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120 Statutes, is amended to read:

121 110.1315 Alternative retirement benefits; other-personal-
122 services employees.-

123 (1) ~~Upon review and approval by the Executive Office of the~~
124 ~~Governor,~~ The Department of Financial Services shall provide an
125 alternative retirement income security program for eligible
126 temporary and seasonal employees of the state who are
127 compensated from appropriations for other personal services. The
128 Department of Financial Services may contract with a private
129 vendor or vendors to administer the program under a defined-
130 contribution plan under ss. 401(a) and 403(b) or s. 457 of the
131 Internal Revenue Code, and the program must provide retirement
132 benefits as required under s. 3121(b)(7)(F) of the Internal
133 Revenue Code. The Department of Financial Services may develop a
134 request for proposals and solicit qualified vendors to compete
135 for the award of the contract. A vendor shall be selected on the
136 basis of the plan that best serves the interest of the
137 participating employees and the state. The proposal must comply
138 with all necessary federal and state laws and rules.

139 Section 3. Paragraph (a) of subsection (4) and subsection
140 (12) of section 112.215, Florida Statutes, are amended to read:

141 112.215 Government employees; deferred compensation
142 program.-

143 (4)(a) The Chief Financial Officer, with the approval of
144 the State Board of Administration, shall establish such plan or
145 plans of deferred compensation for state employees and may
146 include persons employed by a state university as defined in s.
147 1000.21, a special district as defined in s. 189.012, or a water
148 management district as defined in s. 189.012, including all such

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149 investment vehicles or products incident thereto, as may be
150 available through, or offered by, qualified companies or
151 persons, and may approve one or more such plans for
152 implementation by and on behalf of the state and its agencies
153 and employees.

154 (12) The Chief Financial Officer may adopt any rule
155 necessary to administer and implement this act with respect to
156 deferred compensation plans for state employees and persons
157 employed by a state university as defined in s. 1000.21, a
158 special district as defined in s. 189.012, or a water management
159 district as defined in s. 189.012.

160 Section 4. Section 137.09, Florida Statutes, is amended to
161 read:

162 137.09 Justification and approval of bonds.-Each surety
163 upon every bond of any county officer shall make affidavit that
164 he or she is a resident of the county for which the officer is
165 to be commissioned, and that he or she has sufficient visible
166 property therein unencumbered and not exempt from sale under
167 legal process to make good his or her bond. Every such bond
168 shall be approved by the board of county commissioners ~~and by~~
169 ~~the Department of Financial Services~~ when the board is ~~they and~~
170 ~~it~~ are satisfied in ~~its~~ ~~their~~ judgment that the bond ~~same~~ is
171 legal, sufficient, and proper to be approved.

172 Section 5. Present paragraphs (h) through (y) of subsection
173 (2) of section 215.97, Florida Statutes, are redesignated as
174 paragraphs (i) through (z), respectively, a new paragraph (h) is
175 added to that subsection, paragraph (a) and present paragraphs
176 (m) and (v) of that subsection and paragraph (o) of subsection
177 (8) are amended, present subsections (9), (10), and (11) of that

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178 section are renumbered as subsections (10), (11), and (12),
179 respectively, and a new subsection (9) is added to that section,
180 to read:

181 215.97 Florida Single Audit Act.—

182 (2) ~~Definitions~~. As used in this section, the term:

183 (a) "Audit threshold" means the threshold amount used to
184 determine when a state single audit or project-specific audit of
185 a nonstate entity shall be conducted in accordance with this
186 section. Each nonstate entity that expends a total amount of
187 state financial assistance equal to or in excess of \$750,000
188 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
189 required to have a state single audit, or a project-specific
190 audit, for such fiscal year in accordance with the requirements
191 of this section. Every 2 years the Auditor General, after
192 consulting with the Executive Office of the Governor, the
193 Department of Financial Services, and all state awarding
194 agencies, shall review the threshold amount for requiring audits
195 under this section and may adjust such threshold amount
196 consistent with the purposes of this section.

197 (h) "Higher education entity" means a Florida College
198 System institution or a state university, as those terms are
199 defined in s. 1000.21.

200 (n) ~~(m)~~ "Nonstate entity" means a local governmental entity,
201 higher education entity, nonprofit organization, or for-profit
202 organization that receives state financial assistance.

203 (w) ~~(v)~~ "State project-specific audit" means an audit of one
204 state project performed in accordance with the requirements of
205 subsection (11) ~~(10)~~.

206 (8) Each recipient or subrecipient of state financial

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207 assistance shall comply with the following:

208 (c) A higher education entity is exempt from the
209 requirements of paragraph (2) (a) and this subsection A contract
210 involving the State University System or the Florida College
211 System funded by state financial assistance may be in the form
212 of:

213 1. A fixed-price contract that entitles the provider to
214 receive full compensation for the fixed contract amount upon
215 completion of all contract deliverables;

216 2. A fixed-rate-per-unit contract that entitles the
217 provider to receive compensation for each contract deliverable
218 provided;

219 3. A cost reimbursable contract that entitles the provider
220 to receive compensation for actual allowable costs incurred in
221 performing contract deliverables; or

222 4. A combination of the contract forms described in
223 subparagraphs 1., 2., and 3.

224 (9) This subsection applies to any contract or agreement
225 between a state awarding agency and a higher education entity
226 that is funded by state financial assistance.

227 (a) The contract or agreement must comply with ss.
228 215.971(1) and 216.3475 and must be in the form of one or a
229 combination of the following:

230 1. A fixed-price contract that entitles the provider to
231 receive compensation for the fixed contract amount upon
232 completion of all contract deliverables.

233 2. A fixed-rate-per-unit contract that entitles the
234 provider to receive compensation for each contract deliverable
235 provided.

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236 3. A cost-reimbursable contract that entitles the provider
 237 to receive compensation for actual allowable costs incurred in
 238 performing contract deliverables.

239 (b) If a higher education entity has extremely limited or
 240 no required activities related to the administration of a state
 241 project and acts only as a conduit of state financial
 242 assistance, none of the requirements of this section apply to
 243 the conduit higher education entity. However, the subrecipient
 244 that is provided state financial assistance by the conduit
 245 higher education entity is subject to the requirements of this
 246 subsection and subsection (8).

247 (c) Regardless of the amount of the state financial
 248 assistance, this subsection does not exempt a higher education
 249 entity from compliance with provisions of law that relate to
 250 maintaining records concerning state financial assistance to the
 251 higher education entity or that allow access and examination of
 252 those records by the state awarding agency, the higher education
 253 entity, the Department of Financial Services, or the Auditor
 254 General.

255 (d) This subsection does not prohibit the state awarding
 256 agency from including terms and conditions in the contract or
 257 agreement which require additional assurances that the state
 258 financial assistance meets the applicable requirements of laws,
 259 regulations, and other compliance rules.

260 Section 6. Subsection (4) of section 322.142, Florida
 261 Statutes, is amended to read:

262 322.142 Color photographic or digital imaged licenses.—

263 (4) The department may maintain a film negative or print
 264 file. The department shall maintain a record of the digital

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265 image and signature of the licensees, together with other data
 266 required by the department for identification and retrieval.
 267 Reproductions from the file or digital record are exempt from
 268 the provisions of s. 119.07(1) and may be made and issued only:

269 (a) For departmental administrative purposes;

270 (b) For the issuance of duplicate licenses;

271 (c) In response to law enforcement agency requests;

272 (d) To the Department of Business and Professional

273 Regulation and the Department of Health pursuant to an
 274 interagency agreement for the purpose of accessing digital
 275 images for reproduction of licenses issued by the Department of
 276 Business and Professional Regulation or the Department of
 277 Health;

278 (e) To the Department of State pursuant to an interagency
 279 agreement to facilitate determinations of eligibility of voter
 280 registration applicants and registered voters in accordance with
 281 ss. 98.045 and 98.075;

282 (f) To the Department of Revenue pursuant to an interagency
 283 agreement for use in establishing paternity and establishing,
 284 modifying, or enforcing support obligations in Title IV-D cases;

285 (g) To the Department of Children and Families pursuant to
 286 an interagency agreement to conduct protective investigations
 287 under part III of chapter 39 and chapter 415;

288 (h) To the Department of Children and Families pursuant to
 289 an interagency agreement specifying the number of employees in
 290 each of that department's regions to be granted access to the
 291 records for use as verification of identity to expedite the
 292 determination of eligibility for public assistance and for use
 293 in public assistance fraud investigations;

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294 (i) To the Agency for Health Care Administration pursuant
 295 to an interagency agreement for the purpose of authorized
 296 agencies verifying photographs in the Care Provider Background
 297 Screening Clearinghouse authorized under s. 435.12;

298 (j) To the Department of Financial Services pursuant to an
 299 interagency agreement to facilitate the location of owners of
 300 unclaimed property, the validation of unclaimed property claims,
 301 ~~and~~ the identification of fraudulent or false claims, and the
 302 investigation of allegations of violations of the insurance code
 303 by licensees and unlicensed persons;

304 (k) To district medical examiners pursuant to an
 305 interagency agreement for the purpose of identifying a deceased
 306 individual, determining cause of death, and notifying next of
 307 kin of any investigations, including autopsies and other
 308 laboratory examinations, authorized in s. 406.11; or

309 (l) To the following persons for the purpose of identifying
 310 a person as part of the official work of a court:

311 1. A justice or judge of this state;

312 2. An employee of the state courts system who works in a
 313 position that is designated in writing for access by the Chief
 314 Justice of the Supreme Court or a chief judge of a district or
 315 circuit court, or by his or her designee; or

316 3. A government employee who performs functions on behalf
 317 of the state courts system in a position that is designated in
 318 writing for access by the Chief Justice or a chief judge, or by
 319 his or her designee.

320 Section 7. Subsection (2) of section 374.983, Florida
 321 Statutes, is amended to read:

322 374.983 Governing body.—

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323 (2) The present board of commissioners of the district
 324 shall continue to hold office until their respective terms shall
 325 expire. Thereafter the members of the board shall continue to be
 326 appointed by the Governor for a term of 4 years and until their
 327 successors shall be duly appointed. Specifically, commencing on
 328 January 10, 1997, the Governor shall appoint the commissioners
 329 from Broward, Indian River, Martin, St. Johns, and Volusia
 330 Counties and on January 10, 1999, the Governor shall appoint the
 331 commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm
 332 Beach, and St. Lucie Counties. The Governor shall appoint the
 333 commissioner from Nassau County for an initial term that
 334 coincides with the period remaining in the current terms of the
 335 commissioners from Broward, Indian River, Martin, St. Johns, and
 336 Volusia Counties. Thereafter, the commissioner from Nassau
 337 County shall be appointed to a 4-year term. Each new appointee
 338 must be confirmed by the Senate. Whenever a vacancy occurs among
 339 the commissioners, the person appointed to fill such vacancy
 340 shall hold office for the unexpired portion of the term of the
 341 commissioner whose place he or she is selected to fill. Each
 342 commissioner under this act before he or she assumes office
 343 shall be required to give a good and sufficient surety bond in
 344 the sum of \$10,000 payable to the Governor and his or her
 345 successors in office, conditioned upon the faithful performance
 346 of the duties of his or her office, such bond to be approved by
 347 and filed with the board of commissioners of the district ~~Chief~~
 348 ~~Financial Officer~~. Any and all premiums upon such surety bonds
 349 shall be paid by the board of commissioners of such district as
 350 a necessary expense of the district.

351 Section 8. Subsection (4) of section 509.211, Florida

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352 Statutes, is amended to read:

353 509.211 Safety regulations.—

354 (4) Every enclosed space or room that contains a boiler
 355 regulated under chapter 554 which is fired by the direct
 356 application of energy from the combustion of fuels and that is
 357 located in any portion of a public lodging establishment that
 358 also contains sleeping rooms shall be equipped with one or more
 359 carbon monoxide ~~detector sensor~~ devices that bear the
 360 certification mark from a testing and certification organization
 361 accredited in accordance with ISO/IEC Guide 65, General
 362 Requirements for Bodies Operating Product Certification Systems,
 363 label of a nationally recognized testing laboratory and that
 364 have been tested and listed as complying with the most recent
 365 Underwriters Laboratories, Inc., Standard 2075 2034, or its
 366 equivalent, unless it is determined that carbon monoxide hazards
 367 have otherwise been adequately mitigated as determined by the
 368 Division of State Fire Marshal of the Department of Financial
 369 Services. Such devices shall be integrated with the public
 370 lodging establishment's fire detection system. Any such
 371 installation or determination shall be made in accordance with
 372 rules adopted by the Division of State Fire Marshal.

373 Section 9. Subsection (9) of section 624.307, Florida
 374 Statutes, is amended to read:

375 624.307 General powers; duties.—

376 (9) Upon receiving service of legal process issued in any
 377 civil action or proceeding in this state against any regulated
 378 person or any unauthorized insurer under s. 626.906 or s.
 379 626.937 which is required to appoint the Chief Financial Officer
 380 as its attorney to receive service of all legal process, the

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381 Chief Financial Officer, as attorney, may, in lieu of sending
 382 the process by registered or certified mail, send the process or
 383 make it available by any other verifiable means, including, but
 384 not limited to, making the documents available by electronic
 385 transmission from a secure website established by the department
 386 to the person last designated by the regulated person or the
 387 unauthorized insurer to receive the process. When process
 388 documents are made available electronically, the Chief Financial
 389 Officer shall send a notice of receipt of service of process to
 390 the person last designated by the regulated person or
 391 unauthorized insurer to receive legal process. The notice must
 392 state the date and manner in which the copy of the process was
 393 made available to the regulated person or unauthorized insurer
 394 being served and contain the uniform resource locator (URL) for
 395 a hyperlink to access files and information on the department's
 396 website to obtain a copy of the process.

397 Section 10. Section 624.423, Florida Statutes, is amended
 398 to read:

399 624.423 Serving process.—

400 (1) Service of process upon the Chief Financial Officer as
 401 process agent of the insurer ~~under ss. 624.422 and 626.937~~
 402 shall be made by serving a copy of the process upon the Chief
 403 Financial Officer or upon her or his assistant, deputy, or other
 404 person in charge of her or his office. Service may also be made
 405 by mail or electronically as provided in s. 48.151. Upon
 406 receiving such service, the Chief Financial Officer shall retain
 407 a record copy and promptly forward one copy of the process by
 408 registered or certified mail or by other verifiable means, as
 409 provided under s. 624.307(9), to the person last designated by

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410 the insurer to receive the same, as provided under s.

411 624.422(2). For purposes of this section, records may be
412 retained as paper or electronic copies.

413 (2) ~~If where~~ process is served upon the Chief Financial
414 Officer as an insurer's process agent, the insurer ~~is shall~~ not
415 ~~be~~ required to answer or plead except within 20 days after the
416 date upon which the Chief Financial Officer sends or makes
417 available by other verifiable means ~~mailed~~ a copy of the process
418 served upon her or him as required by subsection (1).

419 (3) Process served upon the Chief Financial Officer and
420 sent or made available in accordance with this section and s.
421 624.307(9) copy thereof forwarded as in this section provided
422 shall for all purposes constitute valid and binding service
423 thereof upon the insurer.

424 Section 11. Notwithstanding the expiration date in section
425 41 of chapter 2015-222, Laws of Florida, section 624.502,
426 Florida Statutes, as amended by chapter 2013-41, Laws of
427 Florida, is reenacted and amended to read:

428 624.502 Service of process fee.—In all instances as
429 provided in any section of the insurance code and s. 48.151(3)
430 in which service of process is authorized to be made upon the
431 Chief Financial Officer or the director of the office, the party
432 requesting service ~~plaintiff~~ shall pay to the department or
433 office a fee of \$15 for such service of process on an authorized
434 insurer or \$25 for such service of process on an unauthorized
435 insurer, which fee shall be deposited into the Administrative
436 Trust Fund.

437 Section 12. Subsection (1) of section 626.907, Florida
438 Statutes, is amended to read:

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439 626.907 Service of process; judgment by default.—

440 (1) Service of process upon an insurer or person
441 representing or aiding such insurer pursuant to s. 626.906 shall
442 be made by delivering to and leaving with the Chief Financial
443 Officer, his or her assistant or deputy, or another person in
444 charge of the ~~or some person in apparent charge of his or her~~
445 office two copies thereof and the service of process fee as
446 required in s. 624.502. The Chief Financial Officer shall
447 forthwith mail by registered mail, commercial carrier, or any
448 verifiable means, one of the copies of such process to the
449 defendant at the defendant's last known principal place of
450 business as provided by the party submitting the documents and
451 shall keep a record of all process so served upon him or her.
452 The service of process is sufficient, provided notice of such
453 service and a copy of the process are sent within 10 days
454 thereafter by registered mail by plaintiff or plaintiff's
455 attorney to the defendant at the defendant's last known
456 principal place of business, and the defendant's receipt, or
457 receipt issued by the post office with which the letter is
458 registered, showing the name of the sender of the letter and the
459 name and address of the person to whom the letter is addressed,
460 and the affidavit of the plaintiff or plaintiff's attorney
461 showing a compliance herewith are filed with the clerk of the
462 court in which the action is pending on or before the date the
463 defendant is required to appear, or within such further time as
464 the court may allow.

465 Section 13. Paragraph (a) of subsection (4) of section
466 626.921, Florida Statutes, is amended to read:

467 626.921 Florida Surplus Lines Service Office.—

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468 (4) The association shall operate under the supervision of
469 a board of governors consisting of:

470 (a) Five individuals nominated by the Florida Surplus Lines
471 Association and appointed by the department from the regular
472 membership of the Florida Surplus Lines Association.

473
474 Each board member shall be appointed to serve beginning on the
475 date designated by the plan of operation and shall serve at the
476 pleasure of the department for a 3-year term, such term
477 initially to be staggered by the plan of operation so that three
478 appointments expire in 1 year, three appointments expire in 2
479 years, and three appointments expire in 3 years. Members may be
480 reappointed for subsequent terms. The board of governors shall
481 elect such officers as may be provided in the plan of operation.

482 Section 14. Paragraph (a) of subsection (7) of section
483 627.7074, Florida Statutes, is amended to read:

484 627.7074 Alternative procedure for resolution of disputed
485 sinkhole insurance claims.—

486 (7) Upon receipt of a request for neutral evaluation, the
487 department shall provide the parties a list of certified neutral
488 evaluators. The department shall allow the parties to submit
489 requests to disqualify evaluators on the list for cause.

490 (a) The department shall disqualify neutral evaluators for
491 cause based only on any of the following grounds:

492 1. A familial relationship within the third degree exists
493 between the neutral evaluator and either party or a
494 representative of either party.

495 2. The proposed neutral evaluator has, in a professional
496 capacity, previously represented either party or a

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497 representative of either party in the same or a substantially
498 related matter.

499 3. The proposed neutral evaluator has, in a professional
500 capacity, represented another person in the same or a
501 substantially related matter and that person's interests are
502 materially adverse to the interests of the parties. The term
503 "substantially related matter" means participation by the
504 neutral evaluator on the same claim, property, or adjacent
505 property.

506 4. The proposed neutral evaluator has, within the preceding
507 5 years, worked as an employer or employee of any party to the
508 case.

509 5. The proposed neutral evaluator has, within the preceding
510 5 years, worked for any entity that performed any sinkhole loss
511 testing, review, or analysis for the property.

512 Section 15. Section 633.107, Florida Statutes, is created
513 to read:

514 633.107 Exemption from disqualification from licensure or
515 certification.—

516 (1) The department may grant an exemption from
517 disqualification to any person disqualified from licensure or
518 certification by the Division of State Fire Marshal under this
519 chapter because of a criminal record or dishonorable discharge
520 from the United States Armed Forces if the applicant has paid in
521 full any fee, fine, fund, lien, civil judgment, restitution,
522 cost of prosecution, or trust contribution imposed by the court
523 as part of the judgment and sentence for any disqualifying
524 offense and:

525 (a) At least 5 years have elapsed since the applicant

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526 completed or has been lawfully released from confinement,
 527 supervision, or nonmonetary condition imposed by the court for a
 528 disqualifying offense; or

529 (b) At least 5 years have elapsed since the applicant was
 530 dishonorably discharged from the United States Armed Forces.

531 (2) For the department to grant an exemption, the applicant
 532 must clearly and convincingly demonstrate that he or she would
 533 not pose a risk to persons or property if permitted to be
 534 licensed or certified under this chapter, evidence of which must
 535 include, but need not be limited to, facts and circumstances
 536 surrounding the disqualifying offense, the time that has elapsed
 537 since the offense, the nature of the offense and harm caused to
 538 the victim, the applicant's history before and after the
 539 offense, and any other evidence or circumstances indicating that
 540 the applicant will not present a danger if permitted to be
 541 licensed or certified.

542 (3) The department has discretion whether to grant or deny
 543 an exemption. The department shall provide its decision in
 544 writing which, if the exemption is denied, must state with
 545 particularity the reasons for denial. The department's decision
 546 is subject to proceedings under chapter 120, except that a
 547 formal proceeding under s. 120.57(1) is available only if there
 548 are disputed issues of material fact that the department relied
 549 upon in reaching its decision.

550 (4) An applicant may request an exemption, notwithstanding
 551 the time limitations of paragraphs (1)(a) and (b), if by
 552 executive clemency his or her civil rights are restored, or he
 553 or she receives a pardon, from the disqualifying offense. The
 554 fact that the applicant receives executive clemency does not

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555 alleviate his or her obligation to comply with subsection (2) or
 556 in itself require the department to award the exemption.

557 (5) The division may adopt rules to administer this
 558 section.

559 Section 16. Section 633.135, Florida Statutes, is created
 560 to read:

561 633.135 Firefighter Assistance Grant Program.—

562 (1) The Firefighter Assistance Grant Program is created
 563 within the division to improve the emergency response capability
 564 of volunteer fire departments and combination fire departments.
 565 The program shall provide financial assistance to improve
 566 firefighter safety and enable such fire departments to provide
 567 firefighting, emergency medical, and rescue services to their
 568 communities. For purposes of this section, the term "combination
 569 fire department" means a fire department composed of a
 570 combination of career and volunteer firefighters.

571 (2) The division shall administer the program and annually
 572 award grants to volunteer fire departments and combination fire
 573 departments using the annual Florida Fire Service Needs
 574 Assessment Survey. The purpose of the grants is to assist such
 575 fire departments in providing volunteer firefighter training and
 576 procuring necessary firefighter personal protective equipment,
 577 self-contained breathing apparatus equipment, and fire engine
 578 pumper apparatus equipment. However, the division shall
 579 prioritize the annual award of grants to such fire departments
 580 in a county having a population of 75,000 or less.

581 (3) The State Fire Marshal shall adopt rules and procedures
 582 for the program that require grant recipients to:

583 (a) Report their activity to the division for submission in

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584 the Fire and Emergency Incident Information Reporting System
 585 created pursuant to s. 633.136;
 586 (b) Annually complete and submit the Florida Fire Service
 587 Needs Assessment Survey to the division;
 588 (c) Comply with the Florida Firefighters Occupational
 589 Safety and Health Act, ss. 633.502-633.536;
 590 (d) Comply with any other rule determined by the State Fire
 591 Marshal to effectively and efficiently implement, administer,
 592 and manage the program; and
 593 (e) Meet the definition of the term "fire service provider"
 594 in s. 633.102.
 595 (4) Funds shall be used to:
 596 (a) Provide firefighter training to individuals to obtain a
 597 Volunteer Firefighter Certificate of Completion pursuant to s.
 598 633.408. Training must be provided at no cost to the fire
 599 department or student by a division-approved instructor and must
 600 be documented in the division's electronic database.
 601 (b) Purchase firefighter personal protective equipment,
 602 including structural firefighting protective ensembles and
 603 individual ensemble elements such as garments, helmets, gloves,
 604 and footwear, that complies with NFPA No. 1851, "Standard on
 605 Selection, Care, and Maintenance of Protective Ensembles for
 606 Structural Fire Fighting and Proximity Fire Fighting," by the
 607 National Fire Protection Association.
 608 (c) Purchase self-contained breathing apparatus equipment
 609 that complies with NFPA No. 1852, "Standard on Selection, Care,
 610 and Maintenance of Open-Circuit Self-Contained Breathing
 611 Apparatus."
 612 (d) Purchase fire engine pumper apparatus equipment. Funds

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613 provided under this paragraph may be used to purchase the
 614 equipment or subsidize a federal grant from the Federal
 615 Emergency Management Agency to purchase the equipment.
 616 Section 17. Subsection (8) of section 633.208, Florida
 617 Statutes, is amended to read:
 618 633.208 Minimum firesafety standards.—
 619 (8) The provisions of the Life Safety Code, as contained in
 620 the Florida Fire Prevention Code, do not apply to ~~newly~~
 621 ~~constructed~~ one-family and two-family dwellings. However, fire
 622 sprinkler protection may be permitted by local government in
 623 lieu of other fire protection-related development requirements
 624 for such structures. While local governments may adopt fire
 625 sprinkler requirements for one- and two-family dwellings under
 626 this subsection, it is the intent of the Legislature that the
 627 economic consequences of the fire sprinkler mandate on home
 628 owners be studied before the enactment of such a requirement.
 629 After the effective date of this act, any local government that
 630 desires to adopt a fire sprinkler requirement on one- or two-
 631 family dwellings must prepare an economic cost and benefit
 632 report that analyzes the application of fire sprinklers to one-
 633 or two-family dwellings or any proposed residential subdivision.
 634 The report must consider the tradeoffs and specific cost savings
 635 and benefits of fire sprinklers for future owners of property.
 636 The report must include an assessment of the cost savings from
 637 any reduced or eliminated impact fees if applicable, the
 638 reduction in special fire district tax, insurance fees, and
 639 other taxes or fees imposed, and the waiver of certain
 640 infrastructure requirements including the reduction of roadway
 641 widths, the reduction of water line sizes, increased fire

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642 hydrant spacing, increased dead-end roadway length, and a
 643 reduction in cul-de-sac sizes relative to the costs from fire
 644 sprinkling. A failure to prepare an economic report shall result
 645 in the invalidation of the fire sprinkler requirement to any
 646 one- or two-family dwelling or any proposed subdivision. In
 647 addition, a local jurisdiction or utility may not charge any
 648 additional fee, above what is charged to a non-fire sprinklered
 649 dwelling, on the basis that a one- or two-family dwelling unit
 650 is protected by a fire sprinkler system.

651 Section 18. Subsection (2) of section 633.216, Florida
 652 Statutes, is amended to read:

653 633.216 Inspection of buildings and equipment; orders;
 654 firesafety inspection training requirements; certification;
 655 disciplinary action.—The State Fire Marshal and her or his
 656 agents or persons authorized to enforce laws and rules of the
 657 State Fire Marshal shall, at any reasonable hour, when the State
 658 Fire Marshal has reasonable cause to believe that a violation of
 659 this chapter or s. 509.215, or a rule adopted thereunder, or a
 660 minimum firesafety code adopted by the State Fire Marshal or a
 661 local authority, may exist, inspect any and all buildings and
 662 structures which are subject to the requirements of this chapter
 663 or s. 509.215 and rules adopted thereunder. The authority to
 664 inspect shall extend to all equipment, vehicles, and chemicals
 665 which are located on or within the premises of any such building
 666 or structure.

667 (2) Except as provided in s. 633.312(2), every firesafety
 668 inspection conducted pursuant to state or local firesafety
 669 requirements shall be by a person certified as having met the
 670 inspection training requirements set by the State Fire Marshal.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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671 Such person shall meet the requirements of s. 633.412(1)-(4) ~~or~~
 672 ~~633.412(1)(a)-(d)~~, and:

673 (a) Have satisfactorily completed the firesafety inspector
 674 certification examination as prescribed by division rule; and

675 (b)1. Have satisfactorily completed, as determined by
 676 division rule, a firesafety inspector training program of at
 677 least 200 hours established by the department and administered
 678 by education or training providers approved by the department
 679 for the purpose of providing basic certification training for
 680 firesafety inspectors; or

681 2. Have received training in another state which is
 682 determined by the division to be at least equivalent to that
 683 required by the department for approved firesafety inspector
 684 education and training programs in this state.

685 Section 19. Paragraph (b) of subsection (4) and subsection
 686 (8) of section 633.408, Florida Statutes, are amended, and
 687 subsection (9) is added to that section, to read:

688 633.408 Firefighter and volunteer firefighter training and
 689 certification.—

690 (4) The division shall issue a firefighter certificate of
 691 compliance to an individual who does all of the following:

692 (b) Passes the Minimum Standards Course examination within
 693 12 months after completing the required courses.

694 (8) (a) Pursuant to s. 590.02(1)(e), the division shall
 695 establish a structural fire training program of not less than
 696 206 hours. The division shall issue to a person satisfactorily
 697 complying with this training program and who has successfully
 698 passed an examination as prescribed by the division and who has
 699 met the requirements of s. 590.02(1)(e), a Forestry Certificate

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700 of Compliance.

701 (b) An individual who holds a current and valid Forestry
702 Certificate of Compliance is entitled to the same rights,
703 privileges, and benefits provided for by law as a firefighter.

704 (9) A Firefighter Certificate of Compliance or a Volunteer
705 Firefighter Certificate of Completion issued under this section
706 expires 4 years after the date of issuance unless renewed as
707 provided in s. 633.414.

708 Section 20. Section 633.412, Florida Statutes, is amended
709 to read:

710 633.412 Firefighters; qualifications for certification.—

711 ~~(1)~~ A person applying for certification as a firefighter
712 must:

713 (1)(a) Be a high school graduate or the equivalent, as the
714 term may be determined by the division, and at least 18 years of
715 age.

716 (2)(b) Not have been convicted of a misdemeanor relating to
717 the certification or to perjury or false statements, or a felony
718 or a crime punishable by imprisonment of 1 year or more under
719 the law of the United States or of any state thereof or under
720 the law of any other country, or dishonorably discharged from
721 any of the Armed Forces of the United States. "Convicted" means
722 a finding of guilt or the acceptance of a plea of guilty or nolo
723 contendere, in any federal or state court or a court in any
724 other country, without regard to whether a judgment of
725 conviction has been entered by the court having jurisdiction of
726 the case.

727 (3)(e) Submit a set of fingerprints to the division with a
728 current processing fee. The fingerprints will be forwarded to

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729 the Department of Law Enforcement for state processing and
730 forwarded by the Department of Law Enforcement to the Federal
731 Bureau of Investigation for national processing.

732 ~~(4)(d)~~ Have a good moral character as determined by
733 investigation under procedure established by the division.

734 (5)(e) Be in good physical condition as determined by a
735 medical examination given by a physician, surgeon, or physician
736 assistant licensed to practice in the state pursuant to chapter
737 458; an osteopathic physician, surgeon, or physician assistant
738 licensed to practice in the state pursuant to chapter 459; or an
739 advanced registered nurse practitioner licensed to practice in
740 the state pursuant to chapter 464. Such examination may include,
741 but need not be limited to, the National Fire Protection
742 Association Standard 1582. A medical examination evidencing good
743 physical condition shall be submitted to the division, on a form
744 as provided by rule, before an individual is eligible for
745 admission into a course under s. 633.408.

746 (6)(f) Be a nonuser of tobacco or tobacco products for at
747 least 1 year immediately preceding application, as evidenced by
748 the sworn affidavit of the applicant.

749 ~~(2) If the division suspends or revokes an individual's~~
750 ~~certificate, the division must suspend or revoke all other~~
751 ~~certificates issued to the individual by the division pursuant~~
752 ~~to this part.~~

753 Section 21. Section 633.414, Florida Statutes, is amended
754 to read:

755 633.414 Retention of firefighter, volunteer firefighter,
756 and fire investigator certifications ~~certification.~~—

757 (1) In order for a firefighter to retain her or his

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758 Firefighter Certificate of Compliance, every 4 years he or she
 759 must meet the requirements for renewal provided in this chapter
 760 and by rule, which must include at least one of the following:

761 (a) Be active as a firefighter.~~+~~

762 (b) Maintain a current and valid fire service instructor
 763 certificate, instruct at least 40 hours during the 4-year
 764 period, and provide proof of such instruction to the division,
 765 which proof must be registered in an electronic database
 766 designated by the division.~~+~~

767 (c) Within 6 months before the 4-year period expires,
 768 successfully complete a Firefighter Retention Refresher Course
 769 consisting of a minimum of 40 hours of training to be prescribed
 770 by rule.~~+~~

771 (d) Within 6 months before the 4-year period expires,
 772 successfully retake and pass the Minimum Standards Course
 773 examination pursuant to s. 633.408.

774 (2) In order for a volunteer firefighter to retain her or
 775 his Volunteer Firefighter Certificate of Completion, every 4
 776 years he or she must:

777 (a) Be active as a volunteer firefighter; or

778 (b) Successfully complete a refresher course consisting of
 779 a minimum of 40 hours of training to be prescribed by rule.

780 (3) Subsection (1) does not apply to state-certified
 781 firefighters who are certified and employed full-time, as
 782 determined by the fire service provider, as firesafety
 783 inspectors or fire investigators, regardless of ~~their her or his~~
 784 employment status as firefighters or volunteer firefighters a
 785 firefighter.

786 (4) For the purposes of this section, the term "active"

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787 means being employed as a firefighter or providing service as a
 788 volunteer firefighter for a cumulative period of 6 months within
 789 a 4-year period.

790 (5) The 4-year period begins upon issuance of the
 791 certificate or separation from employment.~~+~~

792 ~~(a) If the individual is certified on or after July 1,~~
 793 ~~2013, on the date the certificate is issued or upon termination~~
 794 ~~of employment or service with a fire department.~~

795 ~~(b) If the individual is certified before July 1, 2013, on~~
 796 ~~July 1, 2014, or upon termination of employment or service~~
 797 ~~thereafter.~~

798 (6) A certificate for a firefighter or volunteer
 799 firefighter expires if he or she fails to meet the requirements
 800 of this section.

801 (7) The State Fire Marshal may deny, refuse to renew,
 802 suspend, or revoke the certificate of a firefighter or volunteer
 803 firefighter if the State Fire Marshal finds that any of the
 804 following grounds exists:

805 (a) Any cause for which issuance of a certificate could
 806 have been denied if it had then existed and had been known to
 807 the division.

808 (b) A violation of any provision of this chapter or any
 809 rule or order of the State Fire Marshal.

810 (c) Falsification of a record relating to any certificate
 811 issued by the division.

812 Section 22. Subsections (1) and (2) of section 633.426,
 813 Florida Statutes, are amended to read:
 814 633.426 Disciplinary action; standards for revocation of
 815 certification.-

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816 (1) For purposes of this section, the term:

817 (a) "Certificate" means any of the certificates issued
818 under s. 633.406.

819 (b) "Certification" or "certified" means ~~the act of holding~~
820 a certificate that is current and valid and that meets the
821 requirements for renewal of certification pursuant to this
822 chapter and the rules adopted under this chapter ~~certificate~~.

823 (c) "Convicted" means a finding of guilt, or the acceptance
824 of a plea of guilty or nolo contendere, in any federal or state
825 court or a court in any other country, without regard to whether
826 a judgment of conviction has been entered by the court having
827 jurisdiction of the case.

828 (2) Effective July 1, 2013, an individual who holds a
829 certificate is subject to revocation for any of the following ~~An~~
830 ~~individual is ineligible to apply for certification if the~~
831 ~~individual has, at any time, been:~~

832 (a) Conviction ~~Convicted~~ of a misdemeanor relating to the
833 certification or to perjury or false statements.

834 (b) Conviction ~~Convicted~~ of a felony or a crime punishable
835 by imprisonment of 1 year or more under the law of the United
836 States or of any state thereof, or under the law of any other
837 country.

838 (c) Dishonorable discharge ~~Dishonorably discharged~~ from any
839 of the Armed Forces of the United States.

840 Section 23. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #992**, relating to **Department of Financial Services**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016

Meeting Date

SB 992

Bill Number (if applicable)

Topic DFS

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N Monroe Street

Phone 850-413-2863

Street

Tallahassee

FL

32399

Email elizabeth.boyd@myfloridacfo.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL: SB 994

INTRODUCER: Senator Negron and others

SUBJECT: Sunset Review of Medicaid Dental Services

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Favorable
2.	Brown	Pigott	AHS	Recommend: Favorable
3.	Brown	Kynoch	AP	Favorable

I. Summary:

SB 994 removes dental services as a required benefit from the Medicaid Managed Assistance (MMA) component of the Statewide Medicaid Managed Care (SMMC) program, effective March 1, 2019. The bill requires the Agency for Health Care Administration (AHCA) to provide the Governor, President of the Senate, and Speaker of the House of Representatives by December 1, 2016, a comprehensive report that examines how effective managed care plans within MMA have been in improving access, satisfaction, delivery, and value in dental services. The report must also examine historical trends in costs, utilization, and rates by plan and in the aggregate.

The Legislature may use the report to determine the scope of dental benefits in the Medicaid program in future managed care procurements and whether to provide dental benefits separate from medical benefits. If the Legislature takes no action before July 1, 2017, the AHCA is directed to implement a statewide competitive procurement for a separate dental program for children and adults with a choice of at least two vendors. Such dental care contracts must be for five years, be non-renewable, and include a medical loss ratio provision consistent with the requirement for health plans in the SMMC program.

The AHCA estimates the bill has a negative fiscal impact in general revenue of \$225,000 in Fiscal Year 2016-2017, \$261,428 in Fiscal Year 2017-2018, and \$235,720 in Fiscal Year 2018-2019.

The bill is effective July 1, 2016.

II. Present Situation:

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal

Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in Medicaid, and the program's estimated expenditures for the 2015-2016 fiscal year are over \$23.4 billion.¹

Statewide Medicaid Managed Care

In 2011, the Legislature established the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S.² The SMMC has two components: Long Term Care Managed Care (LTCMC) and Managed Medical Assistance (MMA). SMMC is an integrated, comprehensive, managed care program that provides for the delivery of primary and acute care in 11 regions through recipient enrollment in managed care plans.

To implement the two components and receive federal Medicaid funding, the AHCA received federal authorization through Medicaid waivers from CMS. The LTCMC waiver authority was approved on February 1, 2013, and is effective through June 30, 2016.³

The MMA component operates as a statewide expansion of the Medicaid Reform demonstration waiver that was originally approved in 2005 as a managed care pilot program in five counties. Waiver authority for MMA is effective through June 30, 2017.⁴

Managed care plan contracts for LTCMC and MMA include a provision requiring the managed care plans to report quarterly and annually on their respective medical loss ratios for the time period.⁵ The medical loss ratio is based on data collected from all plans on a statewide basis and then classified consistent with 45 C.F.R., part 158. Under the applicable federal regulations, plans must achieve a medical loss ratio of 85 percent or provide a rebate to the state. Achieving an 85 percent medical loss ratio means that a managed care plan must spend at least 85 percent of the premiums received on health care services and activities to improve health care quality.⁶

Managed Medical Assistance (MMA)

For the MMA component of SMMC, health care services were bid competitively using the 11 specified regions. Thirteen non-specialty managed care plans contract with AHCA across the different regions. Specialty plans are also available to serve distinct populations or conditions, such as children with special health care needs, children in the child welfare system, HIV/AIDS,

¹ Office of Economic and Demographic Research, *Social Services Estimating Conference of August 4, 2015*, <http://edr.state.fl.us/Content/conferences/medicaid/medltexp.pdf> (last visited Dec. 11, 2015).

² See Chapter Laws, 2011-134 and 2011-135.

³ Department of Health and Human Services, Disabled & Elderly Health Programs Group, *Approval Letter to Agency for Health Care Administration* (February 1, 2013), http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Signed_approval_FL0962_new_1915c_02-01-2013.pdf (last visited Dec. 17, 2015).

⁴ Department of Health and Human Services, Centers for Medicare & Medicaid Services, *Medicaid 1115 Demonstration Fact Sheet* (July 31, 2014), <http://www.medicare.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-medicare-reform-fs.pdf> (last visited Dec. 21, 2015).

⁵ See s. 409.967(4), F.S.

⁶ 45 C.F.R. §158.251 (2012).

serious mental illness, chronic obstructive pulmonary disease, congestive heart failure, or cardiovascular disease.

Statewide implementation of MMA started May 1, 2014, and was completed by August 1, 2014. MMA contracts were executed for a five-year period, and the current contracts are valid through August 31, 2019.

States determine the level of benefits offered in their own Medicaid program, provided that certain mandatory federal benefits are covered. Florida details its minimum benefits under s. 409.973, F.S., for those enrollees in MMA plans. A comparison of those mandatory minimum benefits are shown in the table below.

Comparison of Mandatory Medicaid Benefits	
Federal Mandatory Benefits⁷	Florida Managed Medical Assistance (s. 409.973, F.S.)
Inpatient hospital services	Inpatient hospital services
Outpatient hospital services	Outpatient hospital services
Early and periodic screening, diagnostic and treatment services (EPSDT)	Early and periodic screening, diagnostic and treatment services (EPSDT)
Nursing facility services	Nursing care
Home health services	Home health agency services
Physician services	Physician services, including physician assistant services
Rural health clinic services	Rural health clinic services
Federally qualified health center services	Federally qualified health center services, to the extent required under s. 409.975, F.S.
Laboratory and X-ray services	Laboratory and X-ray services
Family planning services	Family planning services
Nurse midwife services	Healthy start services
Certified pediatric and family nurse practitioner services	Advanced registered nurse practitioner services
Freestanding birth center services (when licensed or otherwise recognized)	Birthing center services
Transportation to medical care	Transportation to access covered services
Tobacco cessation counseling for pregnant women	Substance abuse treatment services
	Chiropractic services
	Ambulatory surgical treatment centers
	Dental services
	Emergency services
	Hospice services
	Medical supplies, equipment, prostheses, orthoses

⁷ Medicaid.gov, *Benefits*, <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/medicaid-benefits.html> (last visited Dec. 17, 2015).

Comparison of Mandatory Medicaid Benefits	
Federal Mandatory Benefits⁷	Florida Managed Medical Assistance (s. 409.973, F.S.)
	Mental health services
	Optical services and supplies
	Optometrist services
	Physical, occupational, respiratory, and speech therapy services
	Podiatric services
	Prescription drugs
	Renal dialysis services
	Respiratory equipment and supplies

A contracted MMA health plan, including specialty plans, must provide all state minimum benefits for an enrollee when medically necessary. Many MMA plans chose to supplement the state required minimum benefits by offering enhanced options, such as expanded adult dental, hearing and vision coverage, outpatient hospital coverage, and physician services.

Most Medicaid recipients must be enrolled in the MMA program. Those individuals who are not required to enroll, but may choose to do so, are:

- Recipients who have other creditable coverage, excluding Medicare;
- Recipients who reside in residential commitment facilities through the Department of Juvenile Justice or mental health treatment facilities under s. 394.455(32), F.S.;
- Persons eligible for refugee assistance;
- Residents of a developmental disability center;
- Enrollees in the developmental disabilities home and community based waiver or those waiting for waiver services; and
- Children in a prescribed pediatric extended care center.⁸

Other Medicaid enrollees are exempt from the MMA program and receive Medicaid services on a fee-for-service basis. Exempt enrollees are:

- Women who are eligible for family planning services only;
- Women who are eligible only for breast and cervical cancer services; and
- Persons eligible for emergency Medicaid for aliens.

Non-MMA enrollees receiving services through fee-for-service have the same mandatory minimum benefits. These benefits are described under s. 409.905, F.S.

History of Prepaid Dental Plans

Comprehensive dental benefits are required for children at both the federal and state level, and coverage includes diagnostic, preventive, or corrective procedures, including orthodontia.^{9,10} MMA plans are required to provide adult dental coverage to the extent of covering medically

⁸ Section 409.972, F.S.
⁹ 42 U.S.C. 1396d(a)(i)
¹⁰ See Section 409.906(6), F.S.

necessary emergency procedures to eliminate pain or infection. Adult dental care may be restricted to emergency oral examinations, necessary radiographs, extractions, and incisions and drainage of abscesses. Full or partial dentures may also be provided under certain circumstances.¹¹

Prior to SMMC, dental coverage was delivered either through pre-paid dental health plans (PDHP) or individual providers using fee-for-service arrangements. PDHPs were first initiated in the Medicaid program in the 2001-2002 state fiscal year when proviso language in the 2001-2002 General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.¹² The following chart provides a brief overview of the history of Medicaid prepaid dental health. Further elaboration is provided in subsequent paragraphs.

Brief Overview of Medicaid Prepaid Dental Plan History	
Year	Dental Delivery Systems
2001-2002 SFY	Legislature authorized AHCA to initiate PDHP pilot in Miami-Dade County.
2003-2004 SFY	Legislature authorized AHCA to contract on competitive basis using PDHPs; AHCA executed the first PDHP contract in 2004 in Miami-Dade for children.
2010-2011 SFY	Legislature authorized time-limited statewide PDHP competitive procurement, excluding the existing service programs in Miami-Dade and Medicaid Reform counties.
2012-2013 SFY	Legislature provided that Medicaid dental services should not be limited to PDHPs and also authorized fee-for-service dental services as well; Statewide PDHP program implemented in December 2012 for children.
July 1, 2013	Fee-for-service dental care option ended.
May 1, 2014	MMA roll-out began; PDHP contracts were terminated by region as MMA was implemented.
August 1, 2014	Completion of MMA roll-out; end of PDHP contracts.

The 2003 Legislature again authorized the AHCA to contract on a prepaid or fixed sum basis for dental services for Medicaid-eligible recipients specifically using PDHPs.¹³ Through a competitive bid process, the AHCA executed its first PDHP contract in 2004 to serve children under age 21 in Miami-Dade County.¹⁴

The Legislature added proviso in the 2010-2011 GAA authorizing the AHCA to contract by competitive procurement with one or more prepaid dental plans on a regional or statewide basis for a period not to exceed two years, in all counties except those participating in Miami-Dade County and Medicaid Reform, under a fee-for-service or managed care delivery system.¹⁵

¹¹ See Section 409.906(1), F.S.

¹² See Specific Proviso 135A, General Appropriations Act 2001-2002 (Conference Report on CS/SB 2C).

¹³ Chapter 2003-405, Laws of Fla.

¹⁴ Agency for Health Care Administration, *House Bill 27 Analysis*, p. 2, (Nov. 11, 2013) (on file with the Senate Committee on Health Policy).

¹⁵ See Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).

The Legislature included proviso in the 2012-2013 GAA requiring that for all counties other than Miami-Dade, the AHCA could not limit Medicaid dental services to prepaid plans and must allow qualified dental providers to provide services on a fee-for-service basis.¹⁶ Similar language was also passed in the 2012-2013 appropriations implementing bill, which included additional directives to the AHCA to terminate existing contracts, as needed. The 2012-2013 implementing bill provisions became obsolete on July 1, 2013.

Two vendors were selected for a statewide program starting in 2012-2013 and contracts were implemented effective December 1, 2012.¹⁷ Under the program, Medicaid recipients selected one of the two PDHPs in their county for dental services. The existing dental plan contracts covered Medicaid recipients under age 21. Dental care through Medicaid fee-for-service providers ended July 1, 2013.

The Invitation to Negotiate (ITN) for PDHP limited renewal for the contracts to no more than a three-year period; however, with the final implementation of SMMC and the integration of dental coverage within MMA managed care plans, these PDHP contracts were non-renewed as each region under MMA was implemented.¹⁸ MMA began its regional roll-out on May 1, 2014, and completed the final regions on August 1, 2014.

While the MMA plans are required to collect data, including data related to access to care and quality, no formalized data is available yet which compares the different dental care delivery systems. However, the AHCA's health care information website, www.floridahealthfinder.gov, includes member satisfaction in Medicaid and quality of care indicators for health plans. The most recent member satisfaction surveys are from 2015.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 409.973, F.S., to remove dental services from the list of minimum benefits that managed care plans must cover under MMA, effective March 1, 2019.

Section 2 amends s. 409.973, F.S., to require the AHCA to provide the Governor, the President of the Senate, and Speaker of the House of Representatives, a report on the provision of dental services in MMA by December 1, 2016. The AHCA may contract with an independent third party to assist with the report. The bill requires several components that must be included in the report:

- The effectiveness of the managed care plans in:
 - Increasing access to dental care;
 - Improving dental health;
 - Achieving satisfactory outcomes for recipients and providers; and

¹⁶See Specific Proviso 186, General Appropriations Act 2012-2013 (Conference Report on HB 5001).

¹⁷Six counties were excluded from the statewide roll-out. Miami-Dade was excluded because of the prepaid dental program that has been in existence since 2004. Baker, Broward, Clay, Duval and Nassau counties were excluded because they were part of the Medicaid Reform Pilot Project, which requires most Medicaid recipients to enroll in managed care plans that provide dental care as a covered service.

¹⁸ Agency for Health Care Administration, *supra* note 8 at 5.

¹⁹ See Agency for Health Care Administration, *FloridaHealthFinder.gov*, <http://www.floridahealthfinder.gov/HealthPlans/Default.aspx> (last visited Jan. 4, 2016).

- Delivering value and transparency to the state's taxpayers;
- The historical trends of rates paid to dental providers and dental plan subcontractors;
- Participation rates in plan networks; and
- Provider willingness to treat Medicaid recipients.

The bill also requires the report to review rate and participation trends by plan and in the aggregate. A comparison of current and historical efforts and trends and the experiences of other states in delivering dental services, increasing patient access, and improving dental care, must also be included.

The bill provides that findings of the report may be used:

- By the Legislature to set future minimum benefits for MMA; and
- For future procurement of dental services, including whether to include dental services as a minimum benefit via comprehensive MMA plans or to provide dental services as a separate benefit.

Under the bill, if the Legislature takes no action before July 1, 2017, with regard to the report's findings:

- The AHCA must implement a statewide Medicaid prepaid dental health program for children and adults with a choice of at least two licensed dental managed care providers who have substantial experience in providing care to Medicaid enrollees and children eligible for medical assistance under Title XXI of the Social Security Act and who meet all AHCA standards and requirements;
- Prepaid dental contracts must be awarded through a competitive procurement for a five-year period and may not be renewed; however, the AHCA may extend the term of a plan contract to cover any transition delays to a new plan provider;
- All prepaid dental contracts must include a medical loss ratio provision consistent with s. 409.967(4), F.S., which is applicable to comprehensive health plans in SMMC; and
- The AHCA is granted authority to seek any necessary state plan amendments or federal waivers in order to begin enrollment in prepaid dental plans no later than March 1, 2019.

Section 3 provides an effective date of 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:

Today, most of the Medicaid managed care plans subcontract with private sector dental managed care plans or prepaid dental health plans to deliver dental services to Medicaid enrollees. All MMA plans currently include some form of enhanced adult dental services.²⁰ A smaller portion of Medicaid dental services are also still delivered directly via fee-for-service.

Between the managed care plans and other private providers, the private vendors serve almost 4 million enrollees through the Medicaid program.²¹ If the Legislature determines that dental services should remain a minimum benefit in the MMA program but be procured separately, the dental plans that have contracts now may or may not retain those contracts through the competitive procurement process. The bill does not provide the incumbent providers any preference in the procurement process.

A new procurement process may also mean additional economic opportunities for other companies to provide services. Additionally, the MMA and LTCMC contracts are scheduled for rebid with implementation by 2019; therefore, if a decision is made to keep dental benefits as a minimum benefit, the managed care plans would seek dental care partners as part of that procurement process.

C. Government Sector Impact:

According to the AHCA, SB 994 requires budget authority of \$450,000 in state fiscal year (SFY) 2016-2017; \$522,856 in SFY 2017-18, and \$471,440 in SFY 18-19. General revenue would be required for 50 percent while the remainder would be paid by federal funds.²² The costs are detailed below:

- The AHCA must complete the report by December 1, 2016, and has authority under the bill to seek a third party's assistance with the report. The AHCA indicates that if the resources and expertise to perform the study do not exist internally, the agency will need approximately \$250,000 to contract with a third-party consultant to conduct such an evaluation.²³

²⁰ Agency for Health Care Administration, *A Snapshot of the Florida Medicaid Managed Assistance Program* (December 2015), http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/SMMC_MMA_Snapshot.pdf (last visited Dec. 22, 2015).

²¹ Agency for Health Care Administration, *Eligibles Report As of 10/31/2015*, http://ahca.myflorida.com/medicaid/Finance/data_analytics/eligibles_report/docs/age_assistance_category_2015-10-31.pdf (last visited Dec. 22, 2015).

²² Agency for Health Care Administration, *Senate Bill 994 Analysis*, p. 10 (Jan. 6, 2016) (on file with the Senate Committee on Health Policy).

²³ *Id.* at. 2.

- Included in the AHCA’s fiscal note is a request for five full-time-equivalent (FTE) positions to implement the bill, hired over two fiscal years, plus funding for the agency’s current actuarial firm. The AHCA also contemplates the need for additional resources for outside legal counsel for challenges to the competitive dental procurement awards.²⁴

Fiscal Impact Estimated by the AHCA			
	FY 2016-2017	FY 2017-2018	FY 2018-2019
General Revenue			
Consultant for report	\$125,000		
Actuarial services	\$100,000	\$100,000	\$100,000
Legal services		\$50,000	
New agency FTE		\$111,428 (\$6,791 NR*)	\$135,720 (\$4,527 NR*)
Total General Revenue	\$225,000	\$261,428	\$235,720
Federal matching funds	\$225,000	\$261,428	\$235,720
Total Fiscal Impact	\$450,000	\$522,856	\$471,440

* Non-recurring funds

VI. Technical Deficiencies:

None.

VII. Related Issues:

Operationally, the AHCA notes it would need to seek waiver authority from the Centers for Medicare & Medicaid Services before the pre-paid dental program could be implemented and that waiver approval can take six to nine months to obtain.²⁵

VIII. Statutes Affected:

This bill substantially amends section 409.973 of the Florida Statutes.

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

²⁴ Id at 3.

²⁵ Id.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Negrón

32-00900A-16

2016994__

1 A bill to be entitled
 2 An act relating to the sunset review of Medicaid
 3 Dental Services; amending s. 409.973, F.S.; providing
 4 for the future removal of dental services as a minimum
 5 benefit of managed care plans; requiring the Agency
 6 for Health Care Administration to provide a report to
 7 the Governor and the Legislature; specifying
 8 requirements for the report; providing for the use of
 9 the report's findings; requiring the agency to
 10 implement a statewide Medicaid prepaid dental health
 11 program upon the occurrence of certain conditions;
 12 specifying requirements for the program and the
 13 selection of providers; providing effective dates.

14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Effective March 1, 2019, subsection (1) of
 17 section 409.973, Florida Statutes, is amended to read:

18 409.973 Benefits.—

19 (1) MINIMUM BENEFITS.—Managed care plans shall cover, at a
 20 minimum, the following services:

21 (a) Advanced registered nurse practitioner services.

22 (b) Ambulatory surgical treatment center services.

23 (c) Birthing center services.

24 (d) Chiropractic services.

25 ~~(e) Dental services.~~

26 (e)(f) Early periodic screening diagnosis and treatment
 27 services for recipients under age 21.

28 (f)(g) Emergency services.

29 Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00900A-16

2016994__

30 (g)(h) Family planning services and supplies. Pursuant to
 31 42 C.F.R. s. 438.102, plans may elect to not provide these
 32 services due to an objection on moral or religious grounds, and
 33 must notify the agency of that election when submitting a reply
 34 to an invitation to negotiate.

35 (h)(i) Healthy start services, except as provided in s.
 36 409.975(4).

37 (i)(j) Hearing services.

38 (j)(k) Home health agency services.

39 (k)(l) Hospice services.

40 (l)(m) Hospital inpatient services.

41 (m)(n) Hospital outpatient services.

42 (n)(o) Laboratory and imaging services.

43 (o)(p) Medical supplies, equipment, prostheses, and
 44 orthoses.

45 (p)(q) Mental health services.

46 (q)(r) Nursing care.

47 (r)(s) Optical services and supplies.

48 (s)(t) Optometrist services.

49 (t)(u) Physical, occupational, respiratory, and speech
 50 therapy services.

51 (u)(v) Physician services, including physician assistant
 52 services.

53 (v)(w) Podiatric services.

54 (w)(x) Prescription drugs.

55 (x)(y) Renal dialysis services.

56 (y)(z) Respiratory equipment and supplies.

57 (z)(aa) Rural health clinic services.

58 (aa)(bb) Substance abuse treatment services.

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00900A-16

2016994__

59 ~~(bb)(ee)~~ Transportation to access covered services.
 60 Section 2. Subsection (5) is added to section 409.973,
 61 Florida Statutes, to read:
 62 409.973 Benefits.—
 63 (5) PROVISION OF DENTAL SERVICES.—
 64 (a) The agency shall provide a comprehensive report on the
 65 provision of dental services under part IV of this chapter to
 66 the Governor, the President of the Senate, and the Speaker of
 67 the House of Representatives by December 1, 2016. The agency is
 68 authorized to contract with an independent third party to assist
 69 in the preparation of the report required by this paragraph.
 70 1. The report must examine the effectiveness of medical
 71 managed care plans in increasing patient access to dental care,
 72 improving dental health, achieving satisfactory outcomes for
 73 Medicaid recipients and the dental provider community, providing
 74 outreach to Medicaid recipients, and delivering value and
 75 transparency to the state’s taxpayers regarding the dollars
 76 intended for, and spent on, actual dental services.
 77 Additionally, the report must examine, by plan and in the
 78 aggregate, the historical trends of rates paid to dental
 79 providers and to dental plan subcontractors, dental provider
 80 participation in plan networks, and provider willingness to
 81 treat Medicaid recipients. The report must also compare current
 82 and historical efforts and trends and the experiences of other
 83 states in delivering dental services, increasing patient access
 84 to dental care, and improving dental health.
 85 2. The Legislature may use the findings of this report in
 86 setting the scope of minimum benefits set forth in this section
 87 for future procurements of eligible plans as described in s.

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00900A-16

2016994__

88 409.966. Specifically, the decision to include dental services
 89 as a minimum benefit under this section, or to provide Medicaid
 90 recipients with dental benefits separate from the Medicaid
 91 managed medical assistance program described in part IV of this
 92 chapter, may take into consideration the data and findings of
 93 the report.
 94 (b) In the event the Legislature takes no action before
 95 July 1, 2017, with respect to the report findings required under
 96 subparagraph (a)2., the agency shall implement a statewide
 97 Medicaid prepaid dental health program for children and adults
 98 with a choice of at least two licensed dental managed care
 99 providers who must have substantial experience in providing
 100 dental care to Medicaid enrollees and children eligible for
 101 medical assistance under Title XXI of the Social Security Act
 102 and who meet all agency standards and requirements. The
 103 contracts for program providers shall be awarded through a
 104 competitive procurement process. The contracts must be for 5
 105 years and may not be renewed; however, the agency may extend the
 106 term of a plan contract to cover delays during a transition to a
 107 new plan provider. The agency shall include in the contracts a
 108 medical loss ratio provision consistent with s. 409.967(4). The
 109 agency is authorized to seek any necessary state plan amendment
 110 or federal waiver to commence enrollment in the Medicaid prepaid
 111 dental health program no later than March 1, 2019.
 112 Section 3. Except as otherwise expressly provided in this
 113 act, this act shall take effect July 1, 2016.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Chair*
Appropriations
Banking and Insurance
Ethics and Elections
Higher Education
Regulated Industries
Rules

SENATOR JOE NEGRON
32nd District

January 26, 2016

Tom Lee, Chair
Appropriations Committee
201 The Capitol
404 S Monroe Street
Tallahassee, FL 32399-1100

SENATE APPROPRIATIONS
RECEIVED
16 JAN 27 AM 8:15
LET OR STAFF

Re: Senate Bill 994

Dear Chairman Lee:

I would like to request Senate Bill 994 relating to sunset review of Medicaid dental services be placed on the agenda for the next scheduled committee meeting.

Thank you for your consideration of this request.

Sincerely yours,

Joe Negron
State Senator
District 32

JN/hd

c: Cindy Kynoch, Staff Director

REPLY TO:

- 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

994
Bill Number (if applicable)

Topic SUNSET OF DENTAL CARE

Amendment Barcode (if applicable)

Name LENA JUAREZ

Job Title _____

Address P.O. Box 10390

Phone 850 212 8330

Street

TALLAHASSEE FL 32302

Email lenaj@ejassoc.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing MOLINA HEALTHCARE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

994

Bill Number (if applicable)

Topic Sunset Review of Medicaid Dental Services

Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Dir. of Governmental Affairs

Address 118 E. Jefferson St

Phone (850) 224-1089

Street

Tall, FL 32301

City

State

Zip

Email jahart@floridadental.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Dental Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

~~9/24~~ 2/18/16
Meeting Date

994
Bill Number (if applicable)

Topic Sunset Review of Medicaid Dental Services Amendment Barcode (if applicable)

Name Audrey Brown

Job Title President + C.E.O.

Address 200 W. College Ave Phone _____

Street

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Association of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: PCS/CS/SB 1026 (356798)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senator Simmons

SUBJECT: High School Athletics

DATE: February 17, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bailey</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1026 modifies the membership, oversight, and related fees required by the Florida High School Athletic Association (FHSAA), the governing nonprofit organization for athletics in Florida public schools. Specifically, the bill:

- Allows private schools to join the FHSAA on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

The bill has no impact on state funds.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.¹ The FHSAA is not a state agency, but is assigned quasi-governmental functions.²

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,³ may become a member of the FHSAA and participate in the activities of the FHSAA.⁴ A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.⁵ Membership in the FHSAA is not mandatory for any school.⁶ The FHSAA is a membership-driven organization, encompassing 702 member combination schools⁷ and senior high schools,⁸ and 102 middle schools.⁹

The FHSAA may not deny or discourage interscholastic¹⁰ competition between its member schools and non-FHSAA member schools, including members of another athletic governing organization, and is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.¹¹

¹ Section 1006.20, F.S.

² *Id.*

³ A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

⁴ Section 1006.20, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ A combination school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades under the direction of a single principal and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site. A combination school must hold membership as a middle school if its terminal grade is grade 6 through 8, as a junior high school if its terminal grade is grade 9, or as a senior high school if its terminal grade is grade 10 through 12. Bylaw 3.2.2.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

⁸ A senior high school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12. Bylaw 3.2.2.1, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

⁹ Florida High School Athletic Association, *Who we are* (2015), available at <http://www.fhsaa.org/about>.

¹⁰ Bylaw 8.1.1, FHSAA defines an interscholastic contest as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA and is subject to all regulations pertaining to such contests. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

¹¹ Section 1006.20, F.S.

Membership in the National Federation of State High School Associations

The National Federation of State High School Associations (NFSH) is the national leadership organization for high school athletic and performing arts activities.¹² The voting members must be state high school athletic associations.¹³ The FHSAA is the voting member of the NFHS for Florida.¹⁴ The FHSAA has been a member of the NFHS since 1926.¹⁵ Affiliate membership, with rights of participation in meetings and activities, but without voting privileges, or eligibility for elected or appointed offices or assignments, may be granted to various organizations.¹⁶ Affiliate members do not have sanctioning authority, as that lies with the voting member.¹⁷

A state high school athletic association may not become an affiliate member without the state's voting member approving of such affiliate membership.¹⁸ Likewise, Florida statute provides that the FHSAA may not unreasonably withhold approval of an application to become an affiliate member of the NFHS that is submitted by an organization that governs interscholastic athletic competition in Florida.¹⁹

Appeals Process

The FHSAA procedures provide each student the opportunity to appeal an unfavorable ruling with regard to his or her eligibility to compete.²⁰

The initial appeal is made to a committee on appeals within the administrative region where the student lives.²¹ The FHSAA bylaws establish the number, size, and composition of each committee on appeals.²² The bylaws specify the process and standards for eligibility determinations.²³

The appeals process for eligibility violations are as follows:

- An appeal must be filed with the executive director to make the initial determination of ineligibility.²⁴

¹² NFHS membership includes, but is not limited to state high school athletic associations. Membership is divided into voting members and affiliate members National Federation of State High School Associations, *NFHS Brochure*, available at <http://www.nfhs.org/media/885655/nfhs-company-brochure.pdf>. See, ss. 2.1-2.2, NFHS Handbook.

¹³ See s. 2.1, NFSH Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁴ National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>. Bylaw 1.1.4, FHSAA.

¹⁵ National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁶ See s. 2.2, NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁷ See s. 2.21(c), NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁸ See ss. 2.2(e), 2.21(b) NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁹ Section 1006.20(1), F.S.

²⁰ Section 1006.20(7), F.S.

²¹ *Id.*

²² *Id.*

²³ Bylaw 10.4.1, FHSAA.

²⁴ Bylaw 10.6.1, FHSAA.

- An initial appeal is heard by the Sectional Appeals Committee.²⁵
- Unfavorable decisions found on the initial appeal rendered by the Sectional Appeals Committee can be heard by the committee again, if new information is provided, or by the board of directors.²⁶
- A request for mediation must be made in writing to the executive director, within 5 business days of the Sectional Appeals Committee hearing.²⁷
- If the matter is unresolved, the notice of appeal must be in writing and received by the board of directors within 5 business days following the mediation session.²⁸
- The decision of the board of directors in each case is by a majority vote and is final.²⁹

III. Effect of Proposed Changes:

Florida High School Athletics

This bill modifies the membership provisions, oversight, and appeals process of the governing nonprofit organization of athletics in Florida. Specifically, the bill:

- Allows private schools to join the Florida High School Athletic Association (FHSAA) on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

Membership in the FHSAA

The bill:

- Allows a private school to join FHSAA as a full-time member or on a per-sport basis and authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis. This offers a school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports; and
- Prohibits the FHSAA from taking retributory or discriminatory actions against members seeking membership in other associations for a sport for which they are not a member of the FHSAA.

Membership in the National Federation of State High School Associations

The bill limits the means by which the FHSAA may withhold approval of an association applying for a National Federation of State High School Associations affiliate membership by

²⁵ Bylaw 10.5.5, FHSAA.

²⁶ Bylaw 10.5.6, FHSAA.

²⁷ Bylaw 10.6.5.1, FHSAA.

²⁸ Bylaw 10.6.5.6, FHSAA.

²⁹ Bylaw 10.7.3.1, FHSAA.

providing that the Commissioner of Education, not the FHSAA, may determine whether the applicant that governs interscholastic athletic competition does so in compliance with law.

Appeals Process

The bill requires the FHSAA to provide an opportunity to resolve ineligibility determinations through an informal and formal appeal process.

The bill creates a new informal conference procedure to be held within 10 days of the initial ineligibility determination. The new informal process allows for a more timely resolution of student eligibility disputes. The bill allows for the informal conference to be held by telephone or by video conference, removing the requirement for a student to appear in person.

The bill specifies that the FHSAA must provide for a formal appeals process for the timely and cost-effective resolution of an eligibility dispute by a mutually agreed upon neutral third party. In effect, this could eliminate the cost of mediation which is currently shared equally by both parties.³⁰

The bill requires the final determination to be issued no later than 30 days after the informal conference, unless there is an agreed upon extension.

The bill takes effect on 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.

³⁰ Bylaw 10.6.5.7, FHSAA.

B. Private Sector Impact:

Under PCS/CS/SB 1026, the Florida High School Athletics Association (FHSAA) may experience additional costs in adopting and implementing the eligibility appeals process required in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.20 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**Recommended CS/CS by Appropriations Subcommittee on Education on February 11, 2015:**

The committee substitute:

- Removes the provision requiring any special event fees, sanctioning fees, or contest receipts collected annually by the FHSAA to not exceed the actual cost of performing the function that is the basis of the fee.
- Clarifies that the FHSAA must allow a private school to join the Florida High School Athletic Association (FHSAA) on a per-sport basis while authorizing the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis.

CS by Education Pre-K – 12 on January 14, 2016

The committee substitute revises the current process and standards for FHSAA determinations of eligibility and specifies for an informal and formal appealing process for resolving student eligibility disputes.

B. Amendments:

None.



576-03414-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to high school athletics; amending s. 1006.20, F.S.; requiring the Florida High School Athletic Association (FHSAA) to allow a private school to join the association as a full-time member or to join by sport; prohibiting the FHSAA from discouraging a private school from maintaining membership in the FHSAA and another athletic association; authorizing the FHSAA to allow a public school to apply for consideration to join another athletic association; prohibiting the FHSAA from taking any retributory or discriminatory action against specified schools; authorizing the Commissioner of Education to identify other associations in compliance with specified provisions; providing a process for resolving student eligibility disputes; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and present paragraph (h) of subsection (2) of section 1006.20, Florida Statutes, are amended, present paragraphs (g) through (m) of that subsection are redesignated as paragraphs (h) through (n), respectively, and a new paragraph (g) is added to that subsection, to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High



576-03414-16

School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined in s. 120.52 but is. ~~The FHSAA shall be subject to ss. 1006.15-1006.19 the provisions of s. 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.~~ Any high school in the state, including private schools, traditional public schools, charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. ~~However,~~ Membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private school the option of joining the association as a full-time member or on a per-sport basis and may not prohibit or discourage a private school from simultaneously maintaining membership in the FHSAA and another athletic association. The FHSAA may allow a public school the option to apply for consideration to join another athletic association on a per-sport basis. The FHSAA may not deny or discourage interscholastic competition between its member schools and ~~nonmember non-FHSAA member Florida schools,~~ including members of another athletic association governing organization, and may not take any retributory or discriminatory action against any of its member schools that seek to participate in interscholastic competition with ~~nonmember non-FHSAA member Florida schools~~ or any of its member schools that seek membership in other



576-03414-16

57 associations for a sport for which they are not a member of the
58 FHSAA. The FHSAA may not unreasonably withhold its approval of
59 an application to become an affiliate member of the National
60 Federation of State High School Associations submitted by any
61 other association organization that governs interscholastic
62 athletic competition in this state which meets the requirements
63 of this section. The commissioner may identify other
64 associations that govern interscholastic athletic competition in
65 compliance with this section. The bylaws of the FHSAA are the
66 rules by which high school athletic programs in its member
67 schools, and the students who participate in them, are governed,
68 unless otherwise specifically provided by statute. For the
69 purposes of this section, "high school" includes grades 6
70 through 12.

71 (2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.-

72 (g) The FHSAA shall provide a process for the resolution of
73 student eligibility disputes which includes the opportunity to
74 use an informal conference procedure.

75 1. The FHSAA must provide written notice to the student
76 athlete, parent, and member school stating specific findings of
77 fact that support a determination of ineligibility. The student
78 athlete, parent, or member school must request an informal
79 conference within 10 days after receipt of such notice if
80 intending to contest the determination. The informal conference
81 must be held within 10 days after receipt of the request. The
82 informal conference may be held by telephone or by video
83 conference and, if video conference equipment is available, may
84 be conducted at the student's school.

85 2. If the eligibility dispute is not resolved at the



576-03414-16

86 informal conference and if requested by the student athlete,
87 parent, or member school, the FHSAA must provide a formal
88 process for the timely and cost-effective resolution of an
89 eligibility dispute by a neutral third party whose decision is
90 binding on the parties to the dispute. The neutral third party
91 must be mutually agreed to by the parties and may be a retired
92 or former judge, a dispute resolution professional approved by
93 The Florida Bar or by the court in the circuit in which the
94 dispute arose, or a certified mediator or arbitrator in the
95 jurisdiction in which the dispute arose. If the parties cannot
96 mutually agree on a neutral third party, the FHSAA must select a
97 neutral third party at random from a list of dispute resolution
98 professionals maintained by The Florida Bar.

99 3. A final determination regarding the eligibility dispute
100 must be issued no later than 30 days after the informal
101 conference, unless an extension is agreed upon by both parties.

102 (i) ~~(h)~~ In lieu of bylaws adopted under paragraph (h) ~~(g)~~,
103 the FHSAA may adopt bylaws providing as a minimum the procedural
104 safeguards of ss. 120.569 and 120.57, making appropriate
105 provision for appointment of unbiased and qualified hearing
106 officers.

107 Section 2. This act shall take effect July 1, 2016.

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 Appropriations

BILL: CS/CS/SB 1026

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senator Simmons

SUBJECT: High School Athletics

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bailey</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1026 modifies the membership, oversight, and related fees required by the Florida High School Athletic Association (FHSAA), the governing nonprofit organization for athletics in Florida public schools. Specifically, the bill:

- Allows private schools to join the FHSAA on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

The bill has no impact on state funds.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.¹ The FHSAA is not a state agency, but is assigned quasi-governmental functions.²

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,³ may become a member of the FHSAA and participate in the activities of the FHSAA.⁴ A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.⁵ Membership in the FHSAA is not mandatory for any school.⁶ The FHSAA is a membership-driven organization, encompassing 702 member combination schools⁷ and senior high schools,⁸ and 102 middle schools.⁹

The FHSAA may not deny or discourage interscholastic¹⁰ competition between its member schools and non-FHSAA member schools, including members of another athletic governing organization, and is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.¹¹

¹ Section 1006.20, F.S.

² *Id.*

³ A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

⁴ Section 1006.20, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ A combination school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades under the direction of a single principal and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site. A combination school must hold membership as a middle school if its terminal grade is grade 6 through 8, as a junior high school if its terminal grade is grade 9, or as a senior high school if its terminal grade is grade 10 through 12. Bylaw 3.2.2.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

⁸ A senior high school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12. Bylaw 3.2.2.1, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

⁹ Florida High School Athletic Association, *Who we are* (2015), available at <http://www.fhsaa.org/about>.

¹⁰ Bylaw 8.1.1, FHSAA defines an interscholastic contest as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA and is subject to all regulations pertaining to such contests. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

¹¹ Section 1006.20, F.S.

Membership in the National Federation of State High School Associations

The National Federation of State High School Associations (NFSH) is the national leadership organization for high school athletic and performing arts activities.¹² The voting members must be state high school athletic associations.¹³ The FHSAA is the voting member of the NFHS for Florida.¹⁴ The FHSAA has been a member of the NFHS since 1926.¹⁵ Affiliate membership, with rights of participation in meetings and activities, but without voting privileges, or eligibility for elected or appointed offices or assignments, may be granted to various organizations.¹⁶ Affiliate members do not have sanctioning authority, as that lies with the voting member.¹⁷

A state high school athletic association may not become an affiliate member without the state's voting member approving of such affiliate membership.¹⁸ Likewise, Florida statute provides that the FHSAA may not unreasonably withhold approval of an application to become an affiliate member of the NFHS that is submitted by an organization that governs interscholastic athletic competition in Florida.¹⁹

Appeals Process

The FHSAA procedures provide each student the opportunity to appeal an unfavorable ruling with regard to his or her eligibility to compete.²⁰

The initial appeal is made to a committee on appeals within the administrative region where the student lives.²¹ The FHSAA bylaws establish the number, size, and composition of each committee on appeals.²² The bylaws specify the process and standards for eligibility determinations.²³

The appeals process for eligibility violations are as follows:

- An appeal must be filed with the executive director to make the initial determination of ineligibility.²⁴

¹² NFHS membership includes, but is not limited to state high school athletic associations. Membership is divided into voting members and affiliate members National Federation of State High School Associations, *NFHS Brochure*, available at <http://www.nfhs.org/media/885655/nfhs-company-brochure.pdf>. See, ss. 2.1-2.2, NFHS Handbook.

¹³ See s. 2.1, NFSH Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁴ National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>. Bylaw 1.1.4, FHSAA.

¹⁵ National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁶ See s. 2.2, NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁷ See s. 2.21(c), NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁸ See ss. 2.2(e), 2.21(b) NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

¹⁹ Section 1006.20(1), F.S.

²⁰ Section 1006.20(7), F.S.

²¹ *Id.*

²² *Id.*

²³ Bylaw 10.4.1, FHSAA.

²⁴ Bylaw 10.6.1, FHSAA.

- An initial appeal is heard by the Sectional Appeals Committee.²⁵
- Unfavorable decisions found on the initial appeal rendered by the Sectional Appeals Committee can be heard by the committee again, if new information is provided, or by the board of directors.²⁶
- A request for mediation must be made in writing to the executive director, within 5 business days of the Sectional Appeals Committee hearing.²⁷
- If the matter is unresolved, the notice of appeal must be in writing and received by the board of directors within 5 business days following the mediation session.²⁸
- The decision of the board of directors in each case is by a majority vote and is final.²⁹

III. Effect of Proposed Changes:

Florida High School Athletics

This bill modifies the membership provisions, oversight, and appeals process of the governing nonprofit organization of athletics in Florida. Specifically, the bill:

- Allows private schools to join the Florida High School Athletic Association (FHSAA) on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

Membership in the FHSAA

The bill:

- Allows a private school to join FHSAA as a full-time member or on a per-sport basis and authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis. This offers a school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports; and
- Prohibits the FHSAA from taking retributory or discriminatory actions against members seeking membership in other associations for a sport for which they are not a member of the FHSAA.

Membership in the National Federation of State High School Associations

The bill limits the means by which the FHSAA may withhold approval of an association applying for a National Federation of State High School Associations affiliate membership by

²⁵ Bylaw 10.5.5, FHSAA.

²⁶ Bylaw 10.5.6, FHSAA.

²⁷ Bylaw 10.6.5.1, FHSAA.

²⁸ Bylaw 10.6.5.6, FHSAA.

²⁹ Bylaw 10.7.3.1, FHSAA.

providing that the Commissioner of Education, not the FHSAA, may determine whether the applicant that governs interscholastic athletic competition does so in compliance with law.

Appeals Process

The bill requires the FHSAA to provide an opportunity to resolve ineligibility determinations through an informal and formal appeal process.

The bill creates a new informal conference procedure to be held within 10 days of the initial ineligibility determination. The new informal process allows for a more timely resolution of student eligibility disputes. The bill allows for the informal conference to be held by telephone or by video conference, removing the requirement for a student to appear in person.

The bill specifies that the FHSAA must provide for a formal appeals process for the timely and cost-effective resolution of an eligibility dispute by a mutually agreed upon neutral third party. In effect, this could eliminate the cost of mediation which is currently shared equally by both parties.³⁰

The bill requires the final determination to be issued no later than 30 days after the informal conference, unless there is an agreed upon extension.

The bill takes effect on 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.

³⁰ Bylaw 10.6.5.7, FHSAA.

B. Private Sector Impact:

Under CS/CS/SB 1026, the Florida High School Athletics Association (FHSAA) may experience additional costs in adopting and implementing the eligibility appeals process required in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.20 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations on February 18, 2015:**

The committee substitute:

- Removes the provision requiring any special event fees, sanctioning fees, or contest receipts collected annually by the FHSAA to not exceed the actual cost of performing the function that is the basis of the fee.
- Clarifies that the FHSAA must allow a private school to join the Florida High School Athletic Association (FHSAA) on a per-sport basis while authorizing the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis.

CS by Education Pre-K – 12 on January 14, 2016

The committee substitute revises the current process and standards for FHSAA determinations of eligibility and specifies for an informal and formal appealing process for resolving student eligibility disputes.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senator Simmons

581-02156-16

20161026c1

A bill to be entitled

An act relating to high school athletics; amending s. 1006.20, F.S.; providing requirements regarding fees and contest receipts collected by the Florida High School Athletic Association (FHSAA); requiring the FHSAA to allow a school to join the FHSAA as a full-time member or on a per-sport basis; prohibiting the FHSAA from taking any retributory or discriminatory action against specified schools; authorizing the Commissioner of Education to identify other associations in compliance with specified provisions; providing a process for resolving student eligibility disputes; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and present paragraph (h) of subsection (2) of section 1006.20, Florida Statutes, are amended, present paragraphs (g) through (m) of that subsection are redesignated as paragraphs (h) through (n), respectively, and a new paragraph (g) is added to that subsection, to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined in s. 120.52 ~~but is~~. ~~The FHSAA shall be subject to ss. 1006.15-~~ 1006.19. Any special event fees; sanctioning fees, including

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

581-02156-16

20161026c1

third-party sanctioning fees; or contest receipts collected
annually by the FHSAA may not exceed its actual costs to perform
the function or duty that is the subject of or justification for
~~the fee the provisions of s. 1006.19. A private school that~~
~~wishes to engage in high school athletic competition with a~~
~~public high school may become a member of the FHSAA.~~ Any high
school in the state, including private schools, traditional
public schools, charter schools, virtual schools, and home
education cooperatives, may become a member of the FHSAA and
participate in the activities of the FHSAA. ~~However,~~ Membership
in the FHSAA is not mandatory for any school. The FHSAA shall
allow a school the option of joining the association as a full-
time member or on a per-sport basis and may not prohibit or
discourage any school from simultaneously maintaining membership
in the FHSAA and another athletic association. The FHSAA may not
deny or discourage interscholastic competition between its
member schools and nonmember ~~non-FHSAA member~~ Florida schools,
including members of another athletic association ~~governing~~
~~organization,~~ and may not take any retributory or discriminatory
action against any of its member schools that seek to
participate in interscholastic competition with nonmember ~~non-~~
~~FHSAA member~~ Florida schools or any of its member schools that
seek membership in other associations for a sport for which they
are not a member of the FHSAA. The FHSAA may not unreasonably
withhold its approval of an application to become an affiliate
member of the National Federation of State High School
Associations submitted by any other association ~~organization~~
that governs interscholastic athletic competition in this state
which meets the requirements of this section. The commissioner

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62 may identify other associations that govern interscholastic
 63 athletic competition in compliance with this section ~~The bylaws~~
 64 ~~of the FHSAA are the rules by which high school athletic~~
 65 ~~programs in its member schools, and the students who participate~~
 66 ~~in them, are governed, unless otherwise specifically provided by~~
 67 ~~statute.~~ For the purposes of this section, "high school"
 68 includes grades 6 through 12.

69 (2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

70 (g) The FHSAA shall provide a process for the resolution of
 71 student eligibility disputes which includes the opportunity to
 72 use an informal conference procedure.

73 1. The FHSAA must provide written notice to the student
 74 athlete, parent, and member school stating specific findings of
 75 fact that support a determination of ineligibility. The student
 76 athlete, parent, or member school must request an informal
 77 conference within 10 days after receipt of such notice if
 78 intending to contest the determination. The informal conference
 79 must be held within 10 days after receipt of the request. The
 80 informal conference may be held by telephone or by video
 81 conference and, if video conference equipment is available, may
 82 be conducted at the student's school.

83 2. If the eligibility dispute is not resolved at the
 84 informal conference and if requested by the student athlete,
 85 parent, or member school, the FHSAA must provide a formal
 86 process for the timely and cost-effective resolution of an
 87 eligibility dispute by a neutral third party whose decision is
 88 binding on the parties to the dispute. The neutral third party
 89 must be mutually agreed to by the parties and may be a retired
 90 or former judge, a dispute resolution professional approved by

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91 The Florida Bar or by the court in the circuit in which the
 92 dispute arose, or a certified mediator or arbitrator in the
 93 jurisdiction in which the dispute arose. If the parties cannot
 94 mutually agree on a neutral third party, the FHSAA must select a
 95 neutral third party at random from a list of dispute resolution
 96 professionals maintained by The Florida Bar.

97 3. A final determination regarding the eligibility dispute
 98 must be issued no later than 30 days after the informal
 99 conference, unless an extension is agreed upon by both parties.

100 (i) ~~(h)~~ In lieu of bylaws adopted under paragraph (h) ~~(g)~~,
 101 the FHSAA may adopt bylaws providing as a minimum the procedural
 102 safeguards of ss. 120.569 and 120.57, making appropriate
 103 provision for appointment of unbiased and qualified hearing
 104 officers.

105 Section 2. This act shall take effect July 1, 2016.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 12, 2016

I respectfully request that **Senate Bill 1026**, relating to High School Athletics, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/16

Meeting Date

SB 1026

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson

Phone 850-224-3427

Street

TLH

City

State

32301

Zip

Email Ron@RLBookPA

ca

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FASAd

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16

Meeting Date

1026

Bill Number (if applicable)

Topic High School Athletics

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd 640

Phone 813 924 8218

Street

Brandon FL 33511

City

State

Zip

Email Natalie@Psecansville.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Sunshine State Athletics Conference

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/CS/SB 1118

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Simmons

SUBJECT: Transportation Network Company Insurance

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1118 specifies minimum insurance requirements for ridesharing companies, also known as transportation network companies (TNCs), such as Uber, Lyft, and SideCar. Transportation network companies use smartphone technology to connect individuals who want to purchase rides with private drivers. Most personal automobile insurance policies do not provide coverage when a vehicle is being used to transport passengers for a fee.

When a driver is logged on a TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- \$125,000 for death and bodily injury per person;
- \$250,000 for death and bodily injury per incident; and
- \$50,000 for property damage.

When a TNC driver is not logged on the TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- \$25,000 for death and bodily injury per person;
- \$50,000 for death and bodily injury per incident; and
- \$10,000 for property damage.

The bill also requires TNCs or TNC drivers to maintain personal injury protection insurance under the Florida Motor Vehicle No-Fault Law.

In addition to the insurance coverage requirements, the TNC must electronically notify TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- If a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

The bill preempts local ordinances imposing insurance requirements on transportation network companies.

There is no fiscal impact to state funds.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. This new technology has led to the creation of ridesharing companies, such as Uber, Lyft, and SideCar. These companies describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire, such as taxi or limousine companies.

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. At least 29 states have enacted legislation regarding transportation network companies.¹

Transportation Network Companies

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

TNC drivers generally use their personal vehicles to transport passengers. Most personal automobile policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.² Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises coverage in the amounts of \$1 million of liability per incident, \$1 million of uninsured/underinsured motorist coverage per incident, and comprehensive and collision insurance if the driver holds personal comprehensive and collision coverage on the

¹See PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, PCI APPLAUDS INNOVATION AND COMMON SENSE APPROACH TO FIXING TRANSPORTATION NETWORK COMPANY INSURANCE GAPS: 29 STATES HAVE ENACTED RIDE HAILING LEGISLATION, <http://www.pciaa.net/industry-issues/transportation-network-companies> (last visited Jan. 12, 2016).

² The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance," contained in s. 627.041, F.S.

vehicle. Uber advertises that its insurance policy applies from the moment a driver accepts a trip to its conclusion.³

Coverage provided by ridesharing companies, however, is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not. This can lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage.

In 2015, stakeholders agreed to create model legislation on regulations for TNCs.⁴ The model legislation is known as the TNC Insurance Compromise Model Bill. The model bill establishes parameters for insurance coverage for TNCs. Coverage varies under the bill, but during the time in which a driver has accepted a ride request and is transporting a passenger, the bill requires \$1 million in liability coverage for death, bodily injury, and property damage.⁵ Premiums may be paid by the TNC driver, the TNC, or a combination of both. The bill identifies and defines various terms relevant to these transactions, including the terms "personal vehicle," "digital network," "transportation network company," "driver," and "prearranged ride."⁶

Insurance Amounts Required for Taxis, Limousines and other For-hire Transportation Services

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage.⁷

Local Ordinances

In 2015, several counties in Florida adopted ordinances regulating transportation network companies (TNCs). Broward adopted an ordinance requiring TNCs and drivers to undergo vehicle inspections, background checks including fingerprinting, purchase of a chauffeur's license, and purchase of 24/7 insurance.⁸ Lee County adopted an ordinance that subjects TNCs to the same requirements as those imposed on taxi and limousine services. The ordinance requires drivers to undergo background checks and requires vehicle registration and the purchase of specified insurance.⁹ Palm Beach County adopted an ordinance subjecting TNCs and drivers to

³ See UBER, INSURANCE FOR UBERX WITH RIDESHARING (Feb. 10, 2014) <http://blog.uber.com/ridesharinginsurance>.

⁴ Stakeholders in agreement include the companies of Allstate, American Insurance Association, Lyft, State Farm, and Uber Technologies. UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

⁵ See NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, SUPPLEMENTAL HANDOUT: TNC INSURANCE COMPROMISE MODEL BILL UPDATED MARCH 26, http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf

⁶ See UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

⁷ See s. 324.032(1), F.S.

⁸ See *Broward County Passes Uber, Lyft Ordinance*, NBC 6 SOUTH FLORIDA, Apr. 28, 2015,

<http://www.nbcmiami.com/news/local/Broward-County-to-Vote-on-Uber-Lyft-Ordinance-301529861.html>.

⁹ See Heather Wysocki, *Lee County Oks regulation for Uber, Lyft services*, NEWS-PRESS.COM, Mar. 17, 2015, <http://www.news-press.com/story/money/2015/03/17/lee-county-oks-regulation-for-uber-lyft-services/24901931/>.

background check and insurance requirements.¹⁰ The ordinance adopted by the city of Sarasota treats TNCs as taxi companies. In so doing, drivers are subject to insurance, background checks, and a \$35 license fee. The ordinance additionally requires vehicle inspections and prohibits the use of vehicles over ten years old.¹¹

III. Effect of Proposed Changes:

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for Transportation Network Companies (TNCs) and TNC drivers. The bill applies the framework of the TNC Insurance Compromise Model Bill, and imposes insurance requirements similar to those required of companies providing taxi services.

The bill replicates many of the same definitions and parameters established in the Model Bill. For example, a TNC is defined as an entity that uses a digital network¹² to connect TNC riders¹³ with TNC drivers¹⁴ who provide prearranged rides. A prearranged ride:

- Begins when the driver accepts a request for a ride by a rider through a digital network controlled by a TNC;
- Continues while the driver transports the rider; and
- Ends when the last rider departs from the vehicle.

A prearranged ride does not include a ride from a taxi, jitney, limousine, or other for-hire vehicles that transport people or goods for compensation.

The term “transportation network company” does not include entities arranging nonemergency medical transportation for individuals qualifying for Medicare or Medicaid pursuant to a contract with a state or managed care organization.

Insurance coverage can be maintained by the TNC, the TNC driver, or a combination of both. Coverage maintained by the TNC must obligate the TNC to defend the claim. The coverage may

¹⁰ See Jenn Strathman, *Uber allowed to operate in Palm Beach County with some regulations: Drivers must have background checks and insurance*, WPTV 5 WEST PALM BEACH, updated Mar. 10, 2015, <http://www.wptv.com/money/consumer/uber-allowed-to-operate-in-palm-beach-county-with-some-regulations> .

¹¹ See Emily Le Coz, *Sarasota poised to regulate Uber*, HERALD-TRIBUNE, last modified Sept. 3, 2015, <http://www.heraldtribune.com/article/20150903/ARTICLE/150909881>; Aaron Eggleston, *Sarasota Uber drivers face tougher regulations*, WWSB 7 MYSUNCOAST, July 6, 2015, http://www.mysuncoast.com/news/local/sarasota-uber-drivers-face-tougher-regulations/article_2ae27ee0-245b-11e5-a38f-a7017122a16e.html .

¹² The bill defines a “digital network” as an online application, software, website, or system offered by or used by a TNC which enables rides with TNC drivers.

¹³ The bill defines a TNC “rider” as an individual who directly or indirectly uses a TNC’s digital network to connect with a TNC driver who provides transportation services in the TNC driver’s personal vehicle. The bill defines personal vehicle as a vehicle used by the TNC driver in connection with providing TNC services and which is owned, leased, or otherwise authorized for use by the TNC driver. The bill provides that a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

¹⁴ The bill defines a TNC “driver” as an individual who receives connections to potential riders and related services from a TNC in exchange for any form of compensation to the TNC and uses a personal vehicle to offer or provide a prearranged ride upon connection through a digital network controlled by a TNC in return for compensation.

not be contingent on the denial of the claim by the TNC driver's personal policy. In other words, the insurance must be primary.

The bill identifies two time periods during which insurance is required. The first time period is during the time when a driver is logged on to the transportation network company's digital network or providing a prearranged ride. The second time period applies at all times other than when a driver is logged on to the TNC network or providing a prearranged ride.

During the first time period, the bill requires transportation network companies or drivers to maintain a minimum of primary automobile liability insurance in the same amounts as is required of taxi and limousine companies. These limits are:

- \$125,000 for death and bodily injury per person;
- \$250,000 for death and bodily injury per incident; and
- \$50,000 for property damage.

During the second time period, the following insurance requirements apply and are the responsibility of the driver:

- \$25,000 for death and bodily injury per person;
- \$50,000 for death and bodily injury per incident; and
- \$10,000 for property damage.

The bill also requires a company or a driver to maintain personal injury protection under the Florida Motor Vehicle No-Fault Law.¹⁵

If a driver carries insurance as required by this bill, the driver is deemed to comply with other statutory insurance requirements.

Responsibilities of the TNC and the TNC Driver

The bill requires a TNC to disclose in writing the following to a TNC driver:

- The type and limits of insurance coverage provided by the TNC;
- The type of automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the TNC; and
- The fact that if a driver provides rides for compensation not covered by the bill the driver must maintain the same coverage limits required of other for-hire passenger transportation vehicles such as taxicabs, jitneys, and limousines¹⁶ and is subject to criminal penalties for failing to comply.¹⁷

The TNC must also provide, through electronic notice, a statement to TNC drivers:

- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy; and

¹⁵ Section 627.736(1), F.S., requires personal injury protection of \$10,000 in medical and disability benefits and \$5,000 in death benefits.

¹⁶ Section 324.032(1), F.S., requires minimum coverage of \$125,000/250,000/50,000.

¹⁷ A driver who fails to comply with the insurance requirements commits a second-degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine. Sections 324.221(1) and (2), 775.082(4)(b), and 775.083(1)(e), F.S.

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network.

Although the required notice states that rides not arranged through a TNC's digital network are illegal, the bill does not specify a penalty for the illegal conduct.

The bill requires the TNC driver to carry proof of insurance required under the bill at all times during the TNC driver's use of a personal vehicle. In the event of an accident, the bill requires the TNC driver to:

- Provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application controlled by a TNC.
- Disclose, upon request, to the directly involved parties, automobile insurers, and investigating law enforcement officers whether the TNC driver was logged on to the TNC digital network or engaged in a prearranged ride at the time of the accident.

Insurer Exclusions

The bill authorizes an insurer that provides personal automobile insurance policies to exclude from coverage any loss or injury that occurs while a TNC driver is logged onto the TNC's digital network or while a driver is engaged in a prearranged ride. The right to exclude coverage includes:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision damage coverage.

If an insurer excludes such coverages, the insurer does not have the duty to defend or indemnify the excluded claim. The bill does not invalidate or limit exclusions contained in policies in use or approved before July 1, 2017. The insurer has a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies a claim which is excluded under the terms of its policy.

The bill does not require a personal automobile insurance policy to provide coverage while the driver is logged into the TNC digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. The bill allows an insurer to provide coverage by contract or endorsement when a personal vehicle is used for such purposes.

Claims Investigations

The bill requires a TNC and any insurer potentially providing coverage for a claim to cooperate to facilitate the exchange of information. The information must provide the precise times that a driver logged on and off the TNC's digital network during the 12 hour periods immediately before and after the accident and provide a clear description of automobile insurance maintained.

A driver who provides a false statement to a law enforcement officer in connection with an accident that may involve a TNC driver commits a second-degree misdemeanor.

Preemption

The bill provides that TNC insurance requirements are governed exclusively by the provisions of the bill and any rules adopted by the Financial Services Commission. A political subdivision may not adopt ordinances imposing insurance requirements on TNCs or TNC drivers. Any existing ordinances are preempted.

Other Provisions

Section 316.066, F.S., requires law enforcement officers to submit crash reports to the Department of Highway Safety and Motor Vehicles after an accident. The reports must include information relating to drivers, passengers, witnesses, and insurance. This bill amends s. 316.066, F.S., to require crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers to include a statement as to whether any driver was provided a prearranged ride or logged into a TNC's digital network at the time of the accident. A driver that provides a false statement in connection with such information commits a second degree misdemeanor.

The insurance required under this bill must be provided by an insurer authorized to do business in Florida which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a "superior," "excellent," "exceptional," or equivalent rating by a rating agency acceptable to the Office of Insurance Regulation.

If the TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC's insurer must issue payment directly to the entity repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

The bill provides that a TNC is not deemed to control, direct, or manage the personal vehicles or TNC drivers who connect to the TNC's digital network. This declaration may minimize a TNC's exposure to lawsuits based on the negligence of its drivers.

The bill provides that the Financial Services Commission may adopt rules to administer the provisions of the bill.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill preempts and supersedes local ordinances, but the bill does not appear to impose a mandate on a city or county.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

CS/CS/SB 1118 preempts local ordinances that address transportation network companies (TNC). Some local governments have instituted fees that the preemption would negate.

B. Private Sector Impact:

The bill imposes insurance requirements on TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs on to their customers.

C. Government Sector Impact:

The preemption clause provides that TNC insurance requirements are governed exclusively by the bill and any rules adopted by the Financial Services Commission. Although rules may need to be adopted, the Department of Financial Services and the Office of Insurance Regulation do not expect a fiscal impact from the provisions of the bill.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 316.066 of the Florida Statutes.

This bill creates section 627.748 of the Florida Statutes.

¹⁸ Department of Financial Services, *Fiscal Impact Statement* (Jan. 11, 2016); Office of Insurance Regulation, *2016 Legislative Bill Analysis* (Jan. 15, 2016).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on February 9, 2016:

The CS requires the TNC to provide, through electronic notice, a statement to TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

CS by Banking and Insurance on January 19, 2016:

The CS changes the required insurance requirements to \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, \$50,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law for time periods in which the driver is logged on to the TNC's digital network and for time periods in which the driver is providing a prearranged ride. At all other times, the coverage requirements are \$25,000 for death and bodily injury per person, \$50,000 for death and bodily injury per incident, \$10,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law.

The CS provides that information about whether a driver is logged on a digital network must be included in crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers.

The CS removed a reference to A.M. Best Company and gave the Office of Insurance Regulation the discretion to rely on other rating agencies to determine financial strength ratings of surplus lines insurers.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/18/2016	.	
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	.	

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 162 - 316

and insert:

maintain primary motor vehicle insurance that recognizes that the driver is a transportation network company driver or that the driver otherwise uses a personal vehicle to transport riders for compensation. Such primary motor vehicle insurance must cover the driver as required under this section, including while the driver is logged on to the transportation network company's



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11 digital network but is not engaged in a prearranged ride, and
12 while the driver is engaged in a prearranged ride.

13 (b) The following motor vehicle insurance coverage
14 requirements apply while a transportation network company driver
15 is logged on to the transportation network company's digital
16 network but is not engaged in a prearranged ride:

17 1. Primary motor vehicle liability insurance coverage of at
18 least \$125,000 for death and bodily injury per person, \$250,000
19 for death and bodily injury per incident, and \$50,000 for
20 property damage; and

21 2. Primary motor vehicle insurance coverage that meets the
22 minimum requirements under ss. 627.730-627.7405.

23 (c) The following motor vehicle insurance coverage
24 requirements apply while a transportation network company driver
25 is engaged in a prearranged ride:

26 1. Primary motor vehicle liability insurance coverage of at
27 least \$1 million for death and bodily injury per person, \$1
28 million for death and bodily injury per incident, and \$50,000
29 for property damage; and

30 2. Primary motor vehicle insurance coverage that meets the
31 minimum requirements under ss. 627.730-627.7405.

32 (d) At all times other than the periods specified in
33 paragraphs (b) and (c), the following motor vehicle insurance
34 requirements apply if a driver has an agreement with a
35 transportation network company to provide any form of
36 transportation service to riders:

37 1. Primary motor vehicle liability insurance coverage of at
38 least \$25,000 for death and bodily injury per person, \$50,000
39 for death and bodily injury per incident, and \$10,000 for



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40 property damage; and

41 2. Primary motor vehicle insurance that provides the
42 minimum requirements under ss. 627.730-627.7405.

43 (e) The coverage requirements of paragraphs (b), (c), and
44 (d) may be satisfied by insurance maintained by the
45 transportation network company driver, by the transportation
46 network company, or by a combination of both.

47 (f) If the insurance maintained by a driver under paragraph
48 (b) or paragraph (c) lapses or does not provide the required
49 coverage, the transportation network company must maintain
50 insurance that provides the coverage required by this section
51 beginning with the first dollar of a claim and must obligate the
52 insurer to defend such a claim in this state.

53 (g) Coverage under a motor vehicle insurance policy
54 maintained by the transportation network company may not be
55 contingent on a denial of a claim under the driver's personal
56 motor vehicle liability insurance policy, nor shall a personal
57 motor vehicle insurer be required to first deny a claim.

58 (h) Insurance required by this section must be provided by
59 an insurer authorized to do business in this state which is a
60 member of the Florida Insurance Guaranty Association or an
61 eligible surplus lines insurer that has a superior, an
62 excellent, an exceptional, or an equivalent financial strength
63 rating by a rating agency acceptable to the office.

64 (i) Insurance that satisfies the requirements of this
65 section is deemed to satisfy the financial responsibility
66 requirements imposed under chapter 324 and the security
67 requirements imposed under s. 627.733. However, the provision of
68 transportation to persons for compensation which is not covered



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69 under this section subjects a vehicle and driver to the
70 requirements of chapters 320 and 324.

71 (j) A transportation network company driver shall carry
72 proof of insurance coverage that meets the requirements of
73 paragraphs (b), (c), and (d) at all times during his or her use
74 of a personal vehicle. In the event of an accident:

75 1. The driver shall provide the insurance coverage
76 information to the directly involved parties, insurers, and
77 investigating law enforcement officers. Proof of financial
78 responsibility may be provided through a digital telephone
79 application under s. 316.646 which is controlled by a
80 transportation network company.

81 2. Upon request, the driver shall disclose to the directly
82 involved parties, insurers, and investigating law enforcement
83 officers whether the driver, at the time of the accident, was
84 logged on to the transportation network company's digital
85 network or engaged in a prearranged ride.

86 (k) Before a driver may accept a request for a prearranged
87 ride on the transportation network company's digital network,
88 the transportation network company shall disclose in writing to
89 each transportation network company driver:

90 1. The type and limits of insurance coverage provided by
91 the transportation network company;

92 2. The type of insurance coverage that the driver must
93 maintain while the driver uses a personal vehicle in connection
94 with the transportation network company; and

95 3. That the provision of rides for compensation, whether
96 prearranged or otherwise, which is not covered by this section
97 subjects the driver to the coverage requirements imposed by s.



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98 324.032(1) and that failure to meet such limits subjects the
99 driver to penalties provided in s. 324.221, up to and including
100 a misdemeanor of the second degree.

101 (1) A transportation network company must provide an
102 electronic notice to transportation network company drivers
103 that:

104 1. It may be illegal for a transportation network company
105 driver to solicit or accept a prearranged ride if the ride is
106 not arranged through a transportation network company's digital
107 network or online-enabled application; and

108 2. Such rides may not be covered by a transportation
109 network company's insurance policy.

110 (m) An insurer that provides personal motor vehicle
111 insurance policies under this part may exclude from coverage
112 under a policy issued to an owner or operator of a personal
113 vehicle any loss or injury that occurs while a driver is logged
114 on to a transportation network company's digital network or
115 while a driver is engaged in a prearranged ride. Such right to
116 exclude coverage applies to any coverage under a motor vehicle
117 insurance policy, including, but not limited to:

118 1. Liability coverage for bodily injury and property
119 damage.

120 2. Personal injury protection coverage.

121 3. Uninsured and underinsured motorist coverage.

122 4. Medical payments coverage.

123 5. Comprehensive physical damage coverage.

124 6. Collision physical damage coverage.

125
126 Such exclusion is limited only to the owner or operator of the



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127 vehicle that is being driven by the owner or operator while
128 logged on to a transportation network company's digital network
129 or engaged in a prearranged ride.

130 (n) The exclusions authorized under paragraph (m) apply
131 notwithstanding any financial responsibility requirements under
132 chapter 324. This section does not require that a personal motor
133 vehicle insurance policy provide coverage while the driver is
134 logged on to the transportation network company's digital
135 network, while the driver is engaged in a prearranged ride, or
136 while the driver otherwise uses a personal vehicle to transport
137 riders for compensation. However, an insurer may elect to
138 provide coverage by contract or endorsement for such driver's
139 personal vehicle used for such purposes.

140 (o) An insurer that excludes coverage as authorized under
141 paragraph (m):

142 1. Does not have a duty to defend or indemnify an excluded
143 claim. This section does not invalidate or limit an exclusion
144 contained in a policy, including any policy in use or approved
145 for use in this state before July 1, 2017.

146 2. Has a right of contribution against other insurers that
147 provide motor vehicle insurance to the same driver in
148 satisfaction of the coverage requirements of this section at the
149 time of loss, if the insurer defends or indemnifies a claim
150 against a driver which is excluded under the terms of its
151 policy.

152 (p) In a claims investigation, a transportation network
153 company and any insurer providing coverage for a claim under
154 this section shall cooperate to facilitate the exchange of
155 relevant information with directly involved parties and insurers



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156 of the transportation network company driver, if applicable.

157 Such information must provide:

158 1. The precise times that a driver logged on and off the
159 transportation network company's digital network during the 12-
160 hour period immediately before and immediately after the
161 accident.

162 2. A clear description of the coverage, any exclusions, and
163 the limits provided under insurance maintained under this
164 section.

165 (q) If a transportation network company's insurer makes a
166 payment for a claim covered under comprehensive coverage or
167 collision coverage, the transportation network company shall
168 cause its insurer to issue the payment directly to the entity
169 repairing the vehicle or jointly to the owner of the vehicle and
170 the primary lienholder on the covered vehicle.

171 (4) Unless agreed to in a written contract, a
172 transportation network company is not deemed to control, direct,
173 or manage the personal vehicles that, or the transportation
174 network company drivers who, connect to its digital network.

175 (5) The Financial Services Commission may adopt rules to

177 ===== T I T L E A M E N D M E N T =====

178 And the title is amended as follows:

179 Delete lines 14 - 45

180 and insert:

181 or a combination of both, to maintain certain primary
182 motor vehicle insurance under certain circumstances;
183 providing coverage requirements under specified
184 circumstances; requiring a transportation network



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185 company to maintain certain insurance and obligate the
186 insurer to defend a certain claim if specified
187 insurance of the driver lapses or does not provide the
188 required coverage; providing that certain coverage may
189 not be contingent on a claim denial; specifying
190 requirements for insurers that provide the required
191 insurance; providing for construction; requiring a
192 transportation network company driver to carry proof
193 of certain insurance coverage at all times during his
194 or her use of a personal vehicle and to disclose
195 specified information in the event of an accident;
196 requiring a transportation network company to make
197 certain disclosures and provide a specified notice to
198 transportation network company drivers; authorizing an
199 insurer to exclude certain coverage for loss or injury
200 to specified persons which occurs under certain
201 circumstances; providing for applicability and
202 construction; requiring a transportation network
203 company and certain insurers to cooperate during a
204 claims investigation to facilitate the exchange of
205 specified information; requiring a transportation
206 network company to cause its insurer to issue payments
207 for claims directly to specified entities under
208 certain circumstances; providing that, unless agreed
209 to in a written contract, a transportation network
210 company is not deemed to control, direct, or manage
211 the personal vehicles or transportation network
212 company drivers that connect to its digital network;

By the Committees on Judiciary; and Banking and Insurance; and
Senator Simmons

590-03304A-16

20161118c2

1 A bill to be entitled
2 An act relating to transportation network company
3 insurance; amending s. 316.066, F.S.; requiring a
4 statement in certain crash reports as to whether any
5 driver at the time of the accident was providing a
6 prearranged ride or logged into a digital network of a
7 transportation network company; providing a criminal
8 penalty for a driver who provides a false statement to
9 a law enforcement officer in connection with certain
10 information; creating s. 627.748, F.S.; providing
11 legislative intent; defining terms; requiring a
12 transportation network company driver, or the
13 transportation network company on the driver's behalf,
14 to maintain certain primary automobile insurance under
15 certain circumstances; providing coverage requirements
16 under specified circumstances; requiring a
17 transportation network company to maintain certain
18 insurance and obligate the insurer to defend a certain
19 claim if specified insurance by the driver lapses or
20 does not provide the required coverage; providing that
21 certain coverage may not be contingent on a claim
22 denial; specifying requirements for insurers who
23 provide certain automobile insurance; requiring a
24 transportation network company driver to carry proof
25 of certain insurance coverage at all times during his
26 or her use of a personal vehicle and to disclose
27 specified information in the event of an accident;
28 requiring a transportation network company to make
29 certain disclosures to transportation network company
30 drivers; authorizing insurers to exclude certain
31 coverages during specified periods for policies issued

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20161118c2

32 to transportation network company drivers for personal
33 vehicles; requiring a transportation network company
34 and certain insurers to cooperate during a claims
35 investigation to facilitate the exchange of specified
36 information; requiring a transportation network
37 company to cause its insurer to issue payments for
38 claims directly to specified entities under certain
39 circumstances; providing that unless agreed to in a
40 written contract, a transportation network company is
41 not deemed to control, direct, or manage the personal
42 vehicles or transportation network company drivers
43 that connect to its digital network; requiring a
44 transportation network company to provide a specified
45 notice to transportation network company drivers;
46 authorizing the Financial Services Commission to adopt
47 rules; providing for preemption of local laws and
48 regulations pertaining to transportation network
49 company insurance; providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Paragraphs (b) and (c) of subsection (1) of
54 section 316.066, Florida Statutes, are amended, and paragraph
55 (e) is added to subsection (3) of that section, to read:
56 316.066 Written reports of crashes.—
57 (1)
58 (b) The Florida Traffic Crash Report, Long Form must
59 include:
60 1. The date, time, and location of the crash.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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61 2. A description of the vehicles involved.

62 3. The names and addresses of the parties involved,

63 including all drivers and passengers, and the identification of

64 the vehicle in which each was a driver or a passenger.

65 4. The names and addresses of witnesses.

66 5. The name, badge number, and law enforcement agency of

67 the officer investigating the crash.

68 6. The names of the insurance companies for the respective

69 parties involved in the crash.

70 7. A statement as to whether, at the time of the accident,

71 any driver was providing a prearranged ride or logged into a

72 digital network of a transportation network company, as those

73 terms are defined in s. 627.748.

74 (c) In any crash for which a Florida Traffic Crash Report,

75 Long Form is not required by this section and which occurs on

76 the public roadways of this state, the law enforcement officer

77 shall complete a short-form crash report or provide a driver

78 exchange-of-information form, to be completed by all drivers and

79 passengers involved in the crash, which requires the

80 identification of each vehicle that the drivers and passengers

81 were in. The short-form report must include:

82 1. The date, time, and location of the crash.

83 2. A description of the vehicles involved.

84 3. The names and addresses of the parties involved,

85 including all drivers and passengers, and the identification of

86 the vehicle in which each was a driver or a passenger.

87 4. The names and addresses of witnesses.

88 5. The name, badge number, and law enforcement agency of

89 the officer investigating the crash.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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90 6. The names of the insurance companies for the respective

91 parties involved in the crash.

92 7. A statement as to whether, at the time of the accident,

93 any driver was providing a prearranged ride or logged into a

94 digital network of a transportation network company, as those

95 terms are defined in s. 627.748.

96 (3)

97 (e) Any driver who provides a false statement to a law

98 enforcement officer in connection with the information that is

99 required to be reported under subparagraph (1)(b)7. or

100 subparagraph (1)(c)7. commits a misdemeanor of the second

101 degree, punishable as provided in s. 775.082 or s. 775.083.

102 Section 2. Section 627.748, Florida Statutes, is created to

103 read:

104 627.748 Transportation network company insurance.—

105 (1) It is the intent of the Legislature to provide for

106 statewide uniformity of laws governing the insurance

107 requirements imposed on transportation network companies and

108 transportation network company drivers.

109 (2) For purposes of this section, the term:

110 (a) "Digital network" means an online application,

111 software, website, or system offered or used by a transportation

112 network company which enables the prearrangement of rides with

113 transportation network company drivers.

114 (b) "Personal vehicle" means a vehicle, however titled,

115 which is used by a transportation network company driver in

116 connection with providing transportation network company service

117 and which:

118 1. Is owned, leased, or otherwise authorized for use by the

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119 transportation network company driver; and

120 2. Is not a taxi, jitney, limousine, or for-hire vehicle as
 121 that term is defined in s. 320.01(15).

122
 123 Notwithstanding any other law, a vehicle that is let or rented
 124 to another for consideration may be used as a personal vehicle.

125 (c) "Prearranged ride" means the provision of
 126 transportation by a driver to or on behalf of a rider, beginning
 127 when a driver accepts a request for a ride by a rider through a
 128 digital network controlled by a transportation network company,
 129 continuing while the driver transports the rider, and ending
 130 when the last rider departs from the personal vehicle. A
 131 prearranged ride does not include transportation provided using
 132 a taxi, jitney, limousine, for-hire vehicle as defined in s.
 133 320.01(15), or street hail service.

134 (d) "Transportation network company" or "company" means a
 135 corporation, partnership, sole proprietorship, or other entity
 136 operating in this state which uses a digital network to connect
 137 transportation network company riders to transportation network
 138 company drivers who provide prearranged rides. A transportation
 139 network company does not include an individual, corporation,
 140 partnership, sole proprietorship, or other entity arranging
 141 nonemergency medical transportation for individuals qualifying
 142 for Medicaid or Medicare pursuant to a contract with the state
 143 or a managed care organization.

144 (e) "Transportation network company driver" or "driver"
 145 means an individual who:

146 1. Receives connections to potential riders and related
 147 services from a transportation network company in exchange for

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148 any form of compensation, including payment of a fee to the
 149 transportation network company; and

150 2. Uses a personal vehicle to offer or provide a
 151 prearranged ride to riders upon connection through a digital
 152 network controlled by a transportation network company in return
 153 for compensation, including payment of a fee.

154 (f) "Transportation network company rider" or "rider" means
 155 an individual who directly or indirectly uses a transportation
 156 network company's digital network to connect with a
 157 transportation network company driver who provides
 158 transportation services to the individual in the driver's
 159 personal vehicle.

160 (3) (a) A transportation network company driver, or a
 161 transportation network company on the driver's behalf, shall
 162 maintain primary automobile insurance that recognizes that the
 163 driver is a transportation network company driver or that the
 164 driver otherwise uses a personal vehicle to transport riders for
 165 compensation. Such primary automobile insurance must cover the
 166 driver as required under this section, including while the
 167 driver is logged on to the transportation network company's
 168 digital network but is not engaged in a prearranged ride, and
 169 while the driver is engaged in a prearranged ride.

170 (b) The following automobile insurance coverage
 171 requirements apply while a transportation network company driver
 172 is logged on to the transportation network company's digital
 173 network but is not engaged in a prearranged ride, and while the
 174 driver is engaged in a prearranged ride:

175 1. Primary automobile liability insurance coverage of at
 176 least \$125,000 for death and bodily injury per person, \$250,000

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177 for death and bodily injury per incident, and \$50,000 for
 178 property damage; and

179 2. Primary automobile insurance coverage that meets the
 180 minimum requirements under ss. 627.730-627.7405.

181 (c) At all times other than the periods specified in
 182 paragraph (b), the following automobile insurance requirements
 183 apply if a driver has an agreement with a transportation network
 184 company to provide any form of transportation service to riders:

185 1. Primary automobile liability insurance coverage of at
 186 least \$25,000 for death and bodily injury per person, \$50,000
 187 for death and bodily injury per incident, and \$10,000 for
 188 property damage; and

189 2. Primary automobile insurance that provides the minimum
 190 requirements under ss. 627.730-627.7405.

191 (d) The coverage requirements of paragraphs (b) and (c) may
 192 be satisfied by automobile insurance maintained by the
 193 transportation network company driver, by the transportation
 194 network company, or by a combination of both.

195 (e) If the insurance maintained by a driver under paragraph
 196 (b) lapses or does not provide the required coverage, the
 197 transportation network company must maintain insurance that
 198 provides the coverage required by this section beginning with
 199 the first dollar of a claim and must obligate the insurer to
 200 defend such a claim in this state.

201 (f) Coverage under an automobile insurance policy
 202 maintained by the transportation network company may not be
 203 contingent on a denial of a claim under the driver's personal
 204 automobile liability insurance policy, nor shall a personal
 205 automobile insurer be required to first deny a claim.

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206 (g) Automobile insurance required by this section must be
 207 provided by an insurer authorized to do business in this state
 208 which is a member of the Florida Insurance Guaranty Association
 209 or an eligible surplus lines insurer that has a superior, an
 210 excellent, an exceptional, or an equivalent financial strength
 211 rating by a rating agency acceptable to the office.

212 (h) Automobile insurance that satisfies the requirements of
 213 this section is deemed to satisfy the financial responsibility
 214 requirements imposed under chapter 324 and the security
 215 requirements imposed under s. 627.733. However, the provision of
 216 transportation to persons for compensation that is not covered
 217 under this section subjects a vehicle and driver to the
 218 requirements of chapters 320 and 324.

219 (i) A transportation network company driver shall carry
 220 proof of insurance coverage that meets the requirements of
 221 paragraphs (b) and (c) at all times during his or her use of a
 222 personal vehicle. In the event of an accident:

223 1. The driver shall provide the insurance coverage
 224 information to the directly involved parties, automobile
 225 insurers, and investigating law enforcement officers. Proof of
 226 financial responsibility may be provided through a digital
 227 telephone application under s. 316.646 which is controlled by a
 228 transportation network company.

229 2. Upon request, the driver shall disclose to the directly
 230 involved parties, automobile insurers, and investigating law
 231 enforcement officers whether the driver, at the time of the
 232 accident, was logged on to the transportation network company's
 233 digital network or engaged in a prearranged ride.

234 (j) Before a driver may accept a request for a prearranged

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235 ride on the transportation network company's digital network,
 236 the transportation network company shall disclose in writing to
 237 each transportation network company driver:

238 1. The type and limits of insurance coverage provided by
 239 the transportation network company;

240 2. The type of automobile insurance coverage that the
 241 driver must maintain while the driver uses a personal vehicle in
 242 connection with the transportation network company; and

243 3. That the provision of rides for compensation, whether
 244 prearranged or otherwise, which is not covered by this section
 245 subjects the driver to the coverage requirements imposed by s.
 246 324.032(1) and that failure to meet such limits subjects the
 247 driver to penalties provided in s. 324.221, up to and including
 248 a misdemeanor of the second degree.

249 (k) An insurer that provides personal automobile insurance
 250 policies under this part may exclude from coverage under a
 251 policy issued to an owner or operator of a personal vehicle any
 252 loss or injury that occurs while a driver is logged on to a
 253 transportation network company's digital network or while a
 254 driver is engaged in a prearranged ride. Such right to exclude
 255 coverage applies to any coverage under an automobile insurance
 256 policy, including, but not limited to:

257 1. Liability coverage for bodily injury and property
 258 damage.

259 2. Personal injury protection coverage.

260 3. Uninsured and underinsured motorist coverage.

261 4. Medical payments coverage.

262 5. Comprehensive physical damage coverage.

263 6. Collision physical damage coverage.

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264 (l) The exclusions authorized under paragraph (k) apply
 265 notwithstanding any financial responsibility requirements under
 266 chapter 324. This section does not require that a personal
 267 automobile insurance policy provide coverage while the driver is
 268 logged on to the transportation network company's digital
 269 network, while the driver is engaged in a prearranged ride, or
 270 while the driver otherwise uses a personal vehicle to transport
 271 riders for compensation. However, an insurer may elect to
 272 provide coverage by contract or endorsement for such driver's
 273 personal vehicle used for such purposes.

274 (m) An insurer that excludes coverage as authorized under
 275 paragraph (k):

276 1. Does not have a duty to defend or indemnify an excluded
 277 claim. This section does not invalidate or limit an exclusion
 278 contained in a policy, including any policy in use or approved
 279 for use in this state before July 1, 2017.

280 2. Has a right of contribution against other insurers that
 281 provide automobile insurance to the same driver in satisfaction
 282 of the coverage requirements of this section at the time of
 283 loss, if the insurer defends or indemnifies a claim against a
 284 driver which is excluded under the terms of its policy.

285 (n) In a claims investigation, a transportation network
 286 company and any insurer providing coverage for a claim under
 287 this section shall cooperate to facilitate the exchange of
 288 relevant information with directly involved parties and insurers
 289 of the transportation network company driver, if applicable.
 290 Such information must provide:

291 1. The precise times that a driver logged on and off the
 292 transportation network company's digital network during the 12-

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293 hour period immediately before and immediately after the
 294 accident.

295 2. A clear description of the coverage, any exclusions, and
 296 the limits provided under automobile insurance maintained under
 297 this section.

298 (o) If a transportation network company's insurer makes a
 299 payment for a claim covered under comprehensive coverage or
 300 collision coverage, the transportation network company shall
 301 cause its insurer to issue the payment directly to the entity
 302 repairing the vehicle or jointly to the owner of the vehicle and
 303 the primary lienholder on the covered vehicle.

304 (4) Unless agreed to in a written contract, a
 305 transportation network company is not deemed to control, direct,
 306 or manage the personal vehicles that, or the transportation
 307 network company drivers who, connect to its digital network.

308 (5) A transportation network company shall provide an
 309 electronic notice to transportation network company drivers
 310 which states that it is illegal for a transportation network
 311 company driver to solicit or accept a ride if the ride is not
 312 arranged through a transportation network company's digital
 313 network, and that such rides may not be covered by a
 314 transportation network company driver's or a transportation
 315 network company's insurance policy.

316 (6) The Financial Services Commission may adopt rules to
 317 administer this section.

318 Section 3. PREEMPTION.—Notwithstanding any other law,
 319 transportation network company insurance requirements are
 320 governed exclusively by this section and any rules adopted by
 321 the Financial Services Commission to administer this section. A

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322 political subdivision of this state may not adopt any ordinance
 323 imposing insurance requirements on a transportation network
 324 company or driver. All such ordinances, whether existing or
 325 proposed, are preempted and superseded by general law.

326 Section 4. This act shall take effect January 1, 2017.

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The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 9, 2016

I respectfully request that **Senate Bill 1118**, relating to Transportation Network Company Insurance, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/18/16

Meeting Date

1118

Bill Number (if applicable)

107054

Amendment Barcode (if applicable)

Topic _____

Name Gerald Wester

Job Title _____

Address 101 E College

Street

Phone 850 445 7250

Tallahassee, FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing American Insurance Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

SB1118
Bill Number (if applicable)

107054
Amendment Barcode (if applicable)

Topic Amendment/Livery Exclusion

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun #600

Phone 224-7000

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing State Farm Mutual Automobile Ins Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

SB 1118

Bill Number (if applicable)

Topic TNC INSURANCE

Amendment Barcode (if applicable)

Name BRAD NAIL

Job Title RISK MANAGER

Address 1717 Rhodestad Ave NW, 4th floor

Phone 617-686-5071

Street

Washington

City

DC

State

20036

Zip

Email brad.nail@uber.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Uber

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18
Meeting Date

1118
Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name Roger Chapin

Job Title VP

Address 18 324 W. Gore St Phone _____
Street

Orlando FL 32806 Email _____
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Means

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

1118

Bill Number (if applicable)

Topic Trans Network Co INS.

Amendment Barcode (if applicable)

Name Ellyn Bogdanoff

Job Title _____

Address 908 S. Andrews Ave

Phone _____

Street

FT LAUD FL 33316

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA TAXI ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

1118

Bill Number (if applicable)

Topic INC Transportation

Amendment Barcode (if applicable)

Name Louis Minard

Job Title President

Address 7413 W. Hempsteads St

Phone (813) 977-7546

Tampa FL 33614

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Taxpayers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

1118
Bill Number (if applicable)

Topic TNK Insurance

Amendment Barcode (if applicable)

Name John Camillo

Job Title President, Yellow Cab Broward/Leon

Address 221 W OAKLAND PK Blvd
Street

Phone 954 565 8900

Fort Lauderdale FL
City State Zip

Email scamillo@blservicinc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Yellow Cab Broward/Leon

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations

BILL: CS/SB 1176

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Diaz de la Portilla

SUBJECT: Dredge and Fill Activities

DATE: February 17, 2016 **REVISED:** 02/19/16

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.	Howard	DeLoach	AGG	Recommend: Favorable
3.	Howard	Kynoch	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1176 authorizes the Department of Environmental Protection (DEP) to implement a voluntary state programmatic general permit for all dredge and fill activities impacting ten acres or less of wetlands or other surface waters, subject to agreement with the United States Army Corps of Engineers (Corps), if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. Additionally, the bill requires that a person seeking to use a statewide programmatic general permit consent to applicable federal wetland jurisdiction criteria.

There is no fiscal impact to the state unless the DEP seeks an expansion of the State Programmatic General Permit (SPGP) program and receives approval from the Corps. Expansion of the program may require additional resources that are indeterminate.

The bill shall take effect upon becoming law.

II. Present Situation:

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters.¹ Filling means deposition of any material in wetlands or

¹ Section 373.403(13), F.S.

other surface waters.² Dirt, sand, gravel, rocks, shell, pilings, mulch, and concrete are all considered fill if they are placed in a wetland or other surface water. Dredging and filling activities are regulated by local governments, the water management districts, the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (Corps).

Federal Regulation: Section 10 and Section 404 Permitting

Section 10 of the Rivers and Harbors Act of 1899 (Section 10), regulates virtually all work in, over, and under waters listed as navigable waters of the United States.³ Examples of projects requiring Section 10 permits include beach nourishment, boat ramps, breakwaters, dredging, filling, mooring buoys, piers, and construction of marina facilities. Additionally, Section 404 of the Clean Water Act governs activities in wetlands and regulates the discharge of “dredged or fill” material into the waters of the United States.⁴

Section 404 establishes a program for permits for the discharge of dredged or fill material into the navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects. The Corps has been responsible for regulating activities in navigable waters ways through the granting of permits since the passage of the Rivers and Harbors Act of 1899.⁵ Section 404 of the CWA broadened the Corps authority over “dredging and filling” in the waters of the United States, including many wetlands.⁶ The Corps administers the permits under the U.S. Environmental Protection Agency (EPA) established guidelines, and subject to an EPA veto on a case-by-case basis.⁷

The basic premise of the permitting program is that no discharge of dredged or fill material may be permitted if:

- A practicable alternative exists that is less damaging to the aquatic environment; or
- The nation’s waters would be significantly degraded.⁸

An individual permit is required for potentially significant impacts. Individual permits are reviewed by the Corps, who evaluates applications under a public interest review, as well as the environmental criteria set forth by the EPA.⁹ Under the guidelines no discharge of dredged or fill material may be permitted if there is a practicable alternative to the proposed discharge which would have a less adverse impact on the aquatic ecosystem, so long as such alternative does not

² Section 373.403(14), F.S.

³ See 33 U.S.C. s. 403 (2012).

⁴ See 33 U.S.C. s. 1344 (2012).

⁵ DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 2 (Sept. 30, 2005) available at http://www.aswm.org/pdf_lib/consolidation_program.pdf.

⁶ *Id.*

⁷ O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1255 (1995) available at <http://digitalcommons.law.umaryland.edu/mlr/vol54/iss4/6/>.

⁸ EPA, *Section 404 Permitting Program*, <http://www.epa.gov/cwa-404/section-404-permit-program> (last visited Jan. 23, 2016).

⁹ *Id.*

have other significant adverse environmental consequences.¹⁰ Practicable alternatives, include, but are not limited to:

- Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.
- Discharges or dredged or fill material at other locations in waters of the United States or ocean waters.¹¹

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.¹²

State Assumption

The CWA authorizes the EPA to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if determined that the activities in such category:

- Are similar in nature;
- Will cause only minimal adverse environmental effects when performed separately; and
- Will have only minimal cumulative adverse effects on the environment.¹³

General permits are not available for waters that are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto.¹⁴ This exception prohibits general permits for what are termed “Phase I waters”, the traditional navigable waters of the United States and adjacent wetlands.¹⁵ Therefore, state assumption under Section 404 does not affect the Corps responsibilities to regulate the navigable waters under Section 10.

To administer its own individual and general permit program, a state must submit an application to the EPA, which includes a complete description of the program it proposes to administer and establish under state law.¹⁶ In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.¹⁷ The EPA then conducts a rigorous assessment of the state’s program and ensures that it is no less stringent than the federal program.¹⁸ If the EPA authorizes the state to “assume” control over the federal Section 404 permit program, then an applicant would only need to get a state permit for dredged or fill material discharges in certain waters. Any general permit issued is only valid for a period of up to five years.¹⁹

¹⁰ 40 C.F.R. §404(b)(1).

¹¹ *Id.*

¹² 40 C.F.R. §404(b)(2).

¹³ 33 U.S.C. s. 1344(e).

¹⁴ 33 U.S.C. s. 1344(g).

¹⁵ Houck at 1255.

¹⁶ 33 U.S.C. s. 1344(g).

¹⁷ *Id.*

¹⁸ David Evans, *Clean Water Act §404 Assumption: What is it, how does it work, and what are the benefits?*, Vol. 31, No.3 National Wetlands Newsletter, pg. 18 (May-June 2009) available at http://www.aswm.org/pdf_lib/evans_2009.pdf.

¹⁹ 33 U.S.C. s. 1344(h)(1)(A)(ii).

Two states, Michigan and New Jersey, have assumed administration of the federal permit program.²⁰ Other states have reviewed the possibility of assuming Section 404 permitting but have expressed reasons for not pursuing assumption such as lack of funding, limit of program administration to "non-navigable waters," concerns regarding Federal requirements and oversight, availability of alternative mechanisms for state wetlands protection, and the controversial nature of regulation of wetlands and other aquatic resources.²¹ Additionally, the Endangered Species Act poses challenges for state assumption. To be granted assumption a state would have to have an equivalent level of protection as under the Endangered Species Act for listed species.²²

In 2005, the Florida Legislature directed the DEP to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and secure complete authority over dredge and fill activities impacting 10 acres or less of wetlands and other surface waters, including navigable waters, through the environmental resource permitting.²³ Most of the waters in Florida are Phase I waters and are not eligible for assumption.²⁴ The report concluded that complete assumption of the federal program would require changes to federal and Florida law and recommended that the Legislature consult with the Congressional delegation on opportunities to amend the federal regulations to make assumption more viable.²⁵

General Permits

As an alternative to state assumption, the CWA was amended in 1977 to authorize the Corps to issue general permits that:

- Are similar in nature;
- Cause only minimal adverse environmental effects when performed separately;
- Conform to the Section 404(b)(1) guidelines;
- Set forth specific requirements and standards for authorized activities; and
- Terminate within five years.²⁶

A category of general permits was set forth by Corps regulations called programmatic permits.²⁷ The St. Johns River Water Management Program was issued a Programmatic General Permit (PGP) on behalf of the Corps for certain types of projects with minor impacts to wetlands or

²⁰ O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1268 (1995).

²¹ EPA, *State or Tribal Assumption of the Section 404 Permit Program*, <http://www.epa.gov/cwa-404/state-or-tribal-assumption-section-404-permit-program> (last visited Jan. 23, 2016).

²² Leah Stetson, Association of State Wetlands Managers, Inc. (ASWM), *State Programmatic General Permits (A Cautionary Tale to Enhance Dialogue)*, pg. 5 (April-May 2008), available at http://www.aswm.org/pdf_lib/spgps_0508.pdf.

²³ Ch. 2005-273, s. 3, Laws of Fla.

²⁴ DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 2, 8 (Sept. 30, 2005).

²⁵ *Id.* at 3.

²⁶ 33 U.S.C. s. 1344(e).

²⁷ O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1282 (1995).

surface waters.²⁸ The scope of the PGP is limited to residential, commercial, or institutional projects with up to three acres of impacts to low quality or urbanized non-tidal wetlands of the following four types:

- Wetlands in pine plantations with raised beds in production over twenty years;
- Herbaceous wetlands in improved pasture;
- Wetlands on parcels bordered by at least 75 percent development; or
- Wetlands covered by greater than 80 percent invasive exotic vegetation.²⁹

The Corps combined the concepts of a general permit (for “similar” and “minimal activities”), with a programmatic permit (for “duplicative” state programs) and created a State Programmatic General Permit (SPGP).³⁰ Under a SPGP, the designated state agency issues permits on behalf of the federal government for projects of a defined and limited impact. A SPGP is designed to streamline the permitting process by eliminating duplication of efforts between the Corps and states, while obeying state and federal wetland laws and regulations. Each SPGP is reviewed and reissued every five years by the Corps district with input from other federal agencies, the state, and the public.³¹

Unlike under complete assumption, under a SPGP program the state or agency is authorized to issue federal permits, which means federal resource agency coordination requirements remain. The state or agency reviews the application and makes the initial determination of the level of impact of the proposed permit. Because projects authorized under the SPGP are limited to minimal individual and cumulative impacts, the complexity and physical size of projects are limited as well.³² Typical wetland impacts allowed in SPGPs range from 5,000 square feet to one acre.³³

Section 373.4144, F.S., authorizes the DEP and water management districts to implement a voluntary state programmatic general permit for all dredge and fill activities impacting three acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

Florida was issued a pilot state programmatic general permit (SPGP I) in 1994 which was limited to four categories of activities, including docks, piers and marinas; shoreline stabilization; boat ramps; and maintenance dredging, in only the counties of Duval, Nassau, Clay, and St. Johns. The permit was expanded in 1996 to include the rest of the DEP’s Northeast District (SPGP-II) and to the areas of the other districts, except for Northwest Florida and Monroe County, in 1997

²⁸ Department of the Army, *Programmatic General Permit SAJ-111*, pg. 1 (Oct. 31, 2014) available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/PGP/Signed%20SAJ-111.pdf.

²⁹ *Id.* at 1, 2.

³⁰ Houck at 1283.

³¹ Leah Stetson, Association of State Wetlands Managers, Inc. (ASWM), *State Programmatic General Permits (A Cautionary Tale to Enhance Dialogue)*, pg. 2 (April-May 2008).

³² DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 5 (Sept. 30, 2005).

³³ *Id.*

(SPGP-III). SPGP III was an expanded version that covered additional types of activities but was later scaled back to the original four project categories.³⁴

SPGP-IV was issued in 2006 by the Corps. The permit covered docks, piers, and marinas; shore stabilization; boat ramps; and maintenance and dredging. SPGP-IV was revised in 2011 for use throughout the entire state, except for Monroe County and other specified areas. SPGP IV-R1 covers the following categories of work:

- Shoreline stabilization;
- Boat ramps and boat launch areas;
- Docks, piers, associated facilities, and other minor piling-supported structures; and
- Maintenance dredging of canals and channels (including removal of organic detrital material from freshwater lakes and rivers).³⁵

The DEP reviews a permit application for the type of work covered under SPGP IV-R1.³⁶ The agreement specifies under what circumstances a project is considered green, yellow, or red. If the permit meets all of the conditions of the SPGP program it is processed as “green” in which case issuance of the permit by the DEP constitutes verification of qualification for the corresponding federal permit. “Yellow” projects require additional federal review. The Corps meets with the appropriate federal agencies and a combined federal position on the permit is taken.³⁷ The position may state that all concerns have been addressed and the project is now considered “green” and the DEP is authorized to issue the permit; that special conditions may be applied; or that the Corps elects to evaluate the project separately.³⁸ If a project has the potential to adversely impact a federally-listed threatened or endangered species or its designated critical habitat then it is considered “red.” If the project is “red” then the DEP and the Corps review the project separately and separate permits are issued.³⁹

In August 2015, the Corps published a draft of the proposed SPGP V.⁴⁰ The permit would add a fifth category of work to include “transient activities (removal of derelict vessels, scientific devices, upland to upland directional drilling, and geotechnical investigations)” to the list of covered categories.⁴¹ Additionally, the proposed draft would require projects for shoreline stabilization, boat ramps or launches, or dock, piers, or associated facilities that are proposed “anywhere between the shoreline and federally maintained channel, turning basin, etc., of a port or inlet” to be considered “red,” and, therefore, such projects would require the Corps to review the project separately.⁴²

³⁴ ASWM at 5.

³⁵ U.S. Army Corps of Engineers, *State Programmatic General Permit (SPGP IV-R1) State of Florida*, pg. 1 (July 25, 2011) available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.

³⁶ SPGP IV-R1 at 1.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ U.S. Corps of Army Engineers, *Draft of Proposed State Programmatic General Permit (SPGP-V)*, available at <http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices/tabid/6072/Article/613604/spgp-v-saj-2015-02575.aspx>.

⁴¹ *Id.* at 1.

⁴² *Id.* at 7, 9, and 12.

Wetlands Delineation

Under Florida law, wetlands are defined as those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils.⁴³ The DEP in coordination with the water management districts created a statewide methodology for the delineation of the extent of wetlands.⁴⁴ Section 373.4211, F.S., provides ratification of the statewide delineation rule. All state, local, and regional governments in Florida delineate wetlands in accordance with the state methodology.⁴⁵ Under federal law, wetland boundaries are delineated using the U.S. Army Corps of Engineers 1987 wetland delineation manual adopted in coordination with the Environmental Protection Agency.⁴⁶ For most projects, the use of the federal delineation method and the state delineation method result in similar wetland boundaries.⁴⁷ However, the primary area of difference between the state and federal methodologies is in the indicator status of certain plants and social conditions.⁴⁸

III. Effect of Proposed Changes:

This bill amends s. 373.4144, F.S., to increase the acreage threshold within which the Department of Environmental Protection (DEP) is authorized to implement a voluntary state programmatic general permit (SPGP) for all dredge and fill activities pursuant to an agreement with the United States Army Corps of Engineers. The bill would authorize the DEP to seek an SPGP program covering dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters.

The bill requires an applicant seeking to use a statewide programmatic general permit to consent to the applicable federal wetland jurisdiction criteria that is authorized by regulations implementing Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for the limited purpose of implementing the state programmatic general permit.

The bill authorizes the DEP to pursue delegation or assumption of the federal permitting program regulating the discharge of dredged or fill material and removes the requirement that assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

The bill shall take effect upon becoming law.

⁴³ Section 373.019, F.S.

⁴⁴ Chapter 62-340, F.A.C.

⁴⁵ DEP, *Homeowner's Guide to Wetlands*, pg. 6 (July 2002), http://www.dep.state.fl.us/water/wetlands/docs/erp/wetland_guide.pdf.

⁴⁶ EPA, *Section 404 of the Clean Water Act: How Wetlands are Defined and Identified*, <http://www.epa.gov/cwa-404/section-404-clean-water-act-how-wetlands-are-defined-and-identified> (last visited Jan. 23, 2016).

⁴⁷ DEP at 6.

⁴⁸ *Id.* at 8.

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:

Under CS/SB 1176, if the State Programmatic General Permit (SPGP) program is expanded to include dredge and fill activities impacting ten acres or less of wetlands or other surface waters, additional costs incurred by permit applicants may be reduced as a result of the streamlined permitting process.

C. Government Sector Impact:

This bill has an indeterminate fiscal impact to the state. If the Department of Environmental Protection (DEP) seeks expansion of its current State Programmatic General Permit program and approval is granted from the United States Army Corps of Engineers, reprogramming the permit tracking and compliance and enforcement applications and databases would be necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4144 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 27, 2016:

The CS removes the requirement that the delegation or assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environmental Preservation and Conservation;
and Senator Diaz de la Portilla

592-02667-16

20161176c1

A bill to be entitled

An act relating to dredge and fill activities;
amending s. 373.4144, F.S.; revising the acreage of
wetlands and other surface waters subject to impact by
dredge and fill activities under a state programmatic
general permit; providing that seeking to use such a
permit consents to specified federal wetland
jurisdiction criteria; authorizing the Department of
Environmental Protection to delegate federal
permitting programs for the discharge of dredged or
fill material; deleting certain conditions limiting
when the department may assume federal permitting
programs for the discharge of dredged or fill
material; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 373.4144,
Florida Statutes, are amended to read:

373.4144 Federal environmental permitting.—

(2) (a) In order to effectuate efficient wetland permitting
and avoid duplication, the department and water management
districts are authorized to implement a voluntary state
programmatic general permit for all dredge and fill activities
impacting 10 ~~3~~ acres or less of wetlands or other surface
waters, including navigable waters, subject to agreement with
the United States Army Corps of Engineers, if the general permit
is at least as protective of the environment and natural
resources as existing state law under this part and federal law
under the Clean Water Act and the Rivers and Harbors Act of
1899.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02667-16

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(b) By seeking to use a statewide programmatic general
permit, an applicant consents to applicable federal wetland
jurisdiction criteria, which are not included pursuant to this
part, but which are authorized by the regulations implementing
s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
Act of 1899 as required by the United States Army Corps of
Engineers, notwithstanding s. 373.4145 and for the limited
purpose of implementing the state programmatic general permit
authorized by this subsection.

(3) The department may pursue ~~This section may not preclude
the department from pursuing a series of regional general
permits for construction activities in wetlands or surface
waters or delegation or ~~complete~~ assumption of federal
permitting programs regulating the discharge of dredged or fill
material pursuant to s. 404 of the Clean Water Act, Pub. L. No.
92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the
Rivers and Harbors Act of 1899, ~~so long as the assumption
encompasses all dredge and fill activities in, on, or over
jurisdictional wetlands or waters, including navigable waters,
within the state.~~~~

Section 2. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

February 11, 2016

The Honorable Tom Lee
Chairman
Appropriations Committee

Via Email

Dear Chair Lee:

I would appreciate it if you would agenda the following bill at your next committee meeting:

CS/SB 1176, Dredge and Fill Activities

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Ms. Cindy Kynoch, Staff Director; Ms. Alicia Wells, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations

BILL: CS/SB 1426

INTRODUCER: Community Affairs Committee; and Senators Stargel and Gaetz

SUBJECT: Membership Associations

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1426 prohibits membership associations from expending any money received from public funds on litigation against the state. A membership association is defined as “a not-for-profit corporation... the majority of whose board members are constitutional officers who... operate, control, and supervise public entities that receive annual state appropriations... prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act.”

The bill also:

- Requires such organizations to file an annual report with the Legislature.
- Provides that dues paid to a membership association with public funds must be assessed for each elected or appointed public officer, but dues are prohibited for officers that elect not to join the association.
- Requires the Auditor General to conduct annual financial and operational audits of each membership association.
- Provides that all records of membership associations are public records.

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

The bill takes effect upon becoming law.

II. Present Situation:

Not For Profit Corporations

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation.¹ The Act authorizes not for profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.² The Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.³

Florida law authorizes not for profit corporations to operate with the same degree of power provided to for profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.⁴ Officers and directors of certain not for profit corporations also are protected by the same immunity from civil liability provided to directors of for profit corporations.⁵ Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.⁶

Not for profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the law of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in the state;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in the state and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Act.⁷

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as "moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all

¹ Chapter 90-179, L.O.F.

² Section 617.0301, F.S.

³ *Id.*

⁴ *See* ss. 617.0302 and 607.0302, F.S.

⁵ *See* ss. 617.0834 and 607.0831, F.S.

⁶ *See* 26 U.S.C. s. 501; Section 212.08(7)(p), F.S.

⁷ Section 617.1622, F.S.

other funds held, as trust funds or otherwise, for any public purpose.”⁸ The state or a local government may provide public funds to a not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.⁹

District School Boards

Section 4(a) of Article IX of the Florida Constitution provides in part that in each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.¹⁰

Section 1001.32(2), F.S., provides that in accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.¹¹

School districts in Florida are public entities that receive annual state appropriations through a statutorily defined formulaic allocation (e.g., the FEFP) funded and prescribed annually in the General Appropriations Act or the act’s implementing bill.¹²

Florida School Board Association

The Florida School Boards Association, Inc. (FSBA) is a not-for-profit corporation representing all school board members in Florida¹³. The FSBA has been the collective voice for Florida school districts since 1930 and is closely allied with other educational and community agencies to work toward improvement of education in Florida.¹⁴

Duly qualified members of Florida’s county school boards are eligible for membership in the FSBA, upon payment of annual dues by the local county school board.¹⁵ The FSBA Board of Directors is comprised of five executive officers, 27 directors representing geographical districts

⁸ Section 215.85(3)(b), F.S.

⁹ See, e.g., Section 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); Section 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee’s membership in a professional organization not required by his or her job).

¹⁰ Art. IX s. 4(a), Fla. Const.

¹¹ Section 1001.32(2), F.S.

¹² Sections 1.01(8) and 1011.62, F.S.

¹³ Florida School Boards Association, *Mission and Beliefs*, <http://www.fsba.org/beliefs/> (last visited January 29, 2016); Florida Department of State Division of Corporations, *Florida School Boards Association, Inc.*, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDASCHOOLBOARDASSOCIATION%207033620&aggregateId=domnp-703362-624caed9-dafe-4fc1-a205-1afc640b4365&searchTerm=florida%20school%20board%20association&listNameOrder=FLORIDASCHOOLBOARDASSOCIATION%207033620> (last visited January 29, 2016).

¹⁴ *Id.*

¹⁵ Florida School Boards Association, *Bylaws, Article III – Membership*, <http://www.neola.com/fsba/> (last visited January 29, 2016).

in the state, and FSBA members who serve as an officer or member of the Board of Directors of the National School Boards Association or the Southern Regional School Boards Association.¹⁶

Florida Coalition of School Board Members

The Florida Coalition of School Board Members (FCSBM) is a not-for-profit corporation formed to create and promote public interest in the cause of public education, and to support similar decision makers and organizations in K-12 education.¹⁷

The FCSBM is a non-partisan individual membership organization for elected school board members.¹⁸ The FCSBM Board of Directors consists of 5 people who are members of district school boards in Florida.¹⁹

III. Effect of Proposed Changes:

Section 1 creates s. 617.221, F.S., to prohibit certain membership associations from expending any money received from public funds on litigation against the state.

The bill defines a membership association for purposes of this section as “a not-for-profit corporation, including a department or division of such corporation, the majority of whose board members are constitutional officers who, pursuant to s. 1001.32(2), operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. Section 1001.32(2), F.S., provides that district school boards shall operate, control, and supervise all free public schools in their respective districts. The term does not include a labor organization as defined in s. 447.02 or an entity funded through the Justice Administrative Commission.”

The bill also requires the membership associations to file an annual report with the Legislature by January 1 of each year covering the following topics:

- The name and address of the membership association and any parent membership association, or state, national, or international membership association with which it is affiliated.
- The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association.
- The fee required to become a member of the membership association, if any, and the annual dues that each member must pay.
- The current annual financial statements of the membership association as described in s. 617.1605, F.S.

¹⁶ Florida School Boards Association, *Board of Directors*, <http://fsba.org/membership/board-of-directors/> (last visited January 29, 2016).

¹⁷ Florida Department of State Division of Corporations, Florida Coalition of School Board Members, Inc., *Electronic Articles of Incorporation*, <http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2015%5C0109%5C70176387.tif&documentNumber=N15000000268> (last visited January 29, 2016)

¹⁸ Florida Coalition of School Board members, *About*, <http://www.fcsbm.org/about> (last visited January 29, 2016).

¹⁹ Florida Coalition of School Board Members, *Board of Directors*, http://www.fcsbm.org/board_of_directors (last visited January 29, 2016)

- A copy of the current constitution and bylaws of the membership association.
- A description of the assets and liabilities of the association at the beginning and end of the preceding fiscal year.
- A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than \$10,000 total from the membership association and any other state, national, or international membership association affiliate.
- The annual amount of the following benefit packages paid to each of the principal officers of the membership association:
 - Health, major medical, vision, dental, and life insurance.
 - Retirement plans.
 - Automobile allowances.
- The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate.
- The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by full name and address of each person who received a disbursement.
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill also provides that dues paid to a membership association which are paid with public funds shall be assessed for each elected or appointed public officer. If a public officer elects not to join the membership association, the dues assessed to that public officer may not be paid to the membership association.

The bill requires the Auditor General to conduct an annual financial and operational audit of accounts and records of each membership association.

Furthermore, all records of a membership association constitute public records for purposes of ch. 119, F.S.

In effect, the requirements for membership associations under this new statute would most likely apply, at a minimum, to the Florida School Boards Association and the Florida Coalition of School Board Members.

Section 2 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill applies to membership associations organized as a corporation not for profit but does not apply to membership associations organized as a corporation for profit. As such, it may violate the constitutional right of equal protection under the United States Constitution. Unlike the federal Equal Protection Clause, Florida's constitutional right to equal protection only applies to natural persons.²⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1426 may have an indeterminate negative fiscal impact on membership associations because they would be required to file an annual report with the Legislature.

C. Government Sector Impact:

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 617.221 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs on January 26, 2016:

Revises the definition of membership associations. The term now includes only a not-for-

²⁰ Fla. Const., Art. I, s. 2.

profit corporation the majority of whose members are constitutional officers who, pursuant to s. 1001.32(2), F.S., operate, control, and supervise public entities that receive annual state appropriations. The reference to s. 1001.32(3), F.S., was removed.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Community Affairs; and Senators Stargel and Gaetz

578-02604-16

20161426c1

A bill to be entitled

An act relating to membership associations; creating s. 617.221, F.S.; defining the term "membership association"; requiring membership associations to file an annual report with the Legislature; specifying the requirements for the annual report; prohibiting a membership association from using public funds for certain litigation; requiring the assessment of dues paid to a membership association by certain elected and appointed officials with public funds; requiring the Auditor General to conduct certain audits annually; specifying that all membership association records constitute public records under certain law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 617.221, Florida Statutes, is created to read:

617.221 Membership associations; reporting requirements; restrictions on use of funds.-

(1) As used in this section, the term "membership association" means a not-for-profit corporation, including a department or division of such corporation, the majority of whose board members are constitutional officers who, pursuant to s. 1001.32(2), operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The term does not include a labor organization as defined in s. 447.02 or an

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entity funded through the Justice Administrative Commission.

(2) A membership association shall file a report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must provide:

(a) The name and address of the membership association and any parent membership association or state, national, or international membership association with which it is affiliated.

(b) The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association.

(c) The amount of the fee required to become a member of the membership association, if any, and the annual dues each member must pay.

(d) The current annual financial statements of the membership association as described in s. 617.1605.

(e) A copy of the current constitution and bylaws of the membership association.

(f) A description of the assets and liabilities of the membership association at the beginning and end of the preceding fiscal year.

(g) A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than \$10,000 in the aggregate from the membership association and any other state, national, or international membership association affiliated with the membership association.

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61 (h) The annual amount of the following benefit packages
 62 paid to each of the principal officers of the membership
 63 association:
 64 1. Health, major medical, vision, dental, and life
 65 insurance.
 66 2. Retirement plans.
 67 3. Automobile allowances.
 68 (i) The per-member amount of annual dues sent from the
 69 membership association to each state, national, or international
 70 affiliate.
 71 (j) The total amount of direct or indirect disbursements
 72 for lobbying activity at the federal, state, or local level
 73 incurred by the membership association, listed by full name and
 74 address of each person who received a disbursement.
 75 (k) The total amount of direct or indirect disbursements
 76 for litigation expenses incurred by the membership association,
 77 listed by case citation.
 78 (3) A membership association may not expend moneys received
 79 from public funds, as defined in s. 215.85(3), on litigation
 80 against the state.
 81 (4) Dues paid to a membership association which are paid
 82 with public funds shall be assessed for each elected or
 83 appointed public officer. If a public officer elects not to join
 84 the membership association, the dues assessed to that public
 85 officer may not be paid to the membership association.
 86 (5) The Auditor General shall conduct an annual financial
 87 and operational audit of accounts and records of each membership
 88 association.
 89 (6) All records of a membership association constitute

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-02604-16

20161426c1

90 public records for purposes of chapter 119.
 91 Section 2. This act shall take effect upon becoming a law.
 92

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 3, 2016

The Honorable Tom Lee
Senate Appropriations Committee, Chair
418 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Lee:

I respectfully request that SB 1426, related to *Membership Associations*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Lisa Roberts/ AA
Alicia Weiss/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

SB1426
Bill Number (if applicable)

Topic Membership Associations

Amendment Barcode (if applicable)

Name SANDRA MALDONADO-ROSS

Job Title Teacher of Students with Special Needs

Address 6919 Compass Ct
Street

Phone 407-694-6481

Orlando, FL 32810
City State Zip

Email Sandrarossrec@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.18.16
Meeting Date

1426
Bill Number (if applicable)

Topic Membership Association

Amendment Barcode (if applicable)

Name Debbie Northam

Job Title Advocacy Director

Address 215 S. Monroe St.
Street

Phone 251-2278

724 FL 32301
City State Zip

Email debbie@excellined.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Foundation for Florida's Future

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16

Meeting Date

1426

Bill Number (if applicable)

Topic Membership Associations

Amendment Barcode (if applicable)

Name Andrea Messina

Job Title Executive Director

Address 203 South Monroe

Phone 850-414-2578

Street

Tallahassee FL 32301

Email messina@fsba.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida School Boards Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL: CS/SB 1584

INTRODUCER: Transportation Committee; and Senator Smith and others

SUBJECT: Suspended Driver Licenses

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	Fav/CS
2.	Harkness	Sadberry	ACJ	Recommend: Favorable
3.	Harkness	Kynoch	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1584 establishes a Driver License Reinstatement Days pilot program in certain counties throughout the state. The program requires the Department of Highway Safety and Motor Vehicles (DHSMV), state attorney, public defender's office, circuit and county courts, clerk of the court, and interested organizations within each county, participate in the pilot program. The purpose of the program is to reinstate suspended driver licenses. The clerk of the circuit court (clerk of court) is authorized to waive certain fees to facilitate driver license reinstatements for eligible persons. By October 1, 2017, the DHSMV is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The bill does not have a discernible state fiscal impact. See Section V.

The act takes effect July 1, 2016.

II. Present Situation:

Driver License Suspensions and Revocations

Individuals who violate Florida laws may be sanctioned through the suspension or revocation of their driving privilege. Driver license revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.¹ To reinstate a suspended or revoked license, individuals must fulfill legal and financial obligations. Drivers will need to pay reinstatement fees in addition to any outstanding obligations to legally drive.

Entities at both state and local level play a role in driver license suspensions. At the state level, the DHSMV is responsible for issuing driver licenses and administering driver license examinations, as well as suspending and revoking driver licenses, which includes providing notice required by law and communicating license reinstatement requirements. The role of other state agencies is to notify the DHSMV when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue (DOR) notifies the DHSMV to start the process of driver license suspension.

At the local level, clerks of court are responsible for collecting financial obligations imposed by a court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Clerks of court use driver license sanctions as a means to improve collections of fines and fees. Section 322.245, F.S., requires clerks of court to notify the DHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses. Failure to pay can result in a license suspension. In addition, clerks of court provide information to the DHSMV about any court actions that require the suspension or revocation of driver licenses. On behalf of DHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

Effectiveness

As three-fourths of drivers with suspended or revoked licenses are estimated to continue to drive, indicating driver license sanctions may not effectively force compliance.² Driver license suspension and revocation penalties are commonly used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Penalties for driving with a suspended or revoked license increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally get to and from work. If they are caught driving while the license is suspended or revoked, they will incur additional court costs and penalties.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a driver license suspension or revocation to pay a service fee of \$45 following a suspension and \$75

¹ Sections 322.01(36) and (40), F.S.

² *Id.*

following a revocation, in addition to the \$25 fee to replace their license if necessary. “Failure to comply” suspensions require a \$60 reinstatement fee.

Driver License Reinstatement Days³

In July 2015, Sarasota County held a Driver License Reinstatement Day. The purpose of the event was to negotiate fees with people whose licenses were suspended because of a failure to pay fines. An estimated 2,000 people attended, of which approximately 500 were served. Of those 500 people, 100 were able to reinstate their license. Some were not eligible for reinstatement because they were habitual traffic offenders, under suspension for a DUI, or other were facing charges. All 500 people experienced some level of reduction in the local county fees they owed.

In April 2015, the Duval County Clerk of the Circuit Court, in conjunction with 59 other clerk of courts’ offices, participated in a statewide campaign called “Operation Green Light.” The goal of the operation was to allow individuals who were delinquent in traffic or court fines and fees to make those payments and assist them in getting their licenses reinstated. The 40 percent collections surcharge was waived for these individuals.⁴

III. Effect of Proposed Changes:

The bill establishes a Driver License Reinstatement Days program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas County.

The purpose of the program is to reinstate suspended driver licenses. A person is eligible for reinstatement under this program if the period of his or her suspension has elapsed, the person completed any required course or program, the person is otherwise eligible for reinstatement, and the license was suspended for:

- Driving without a valid license;
- Driving with a suspended license;
- Failing to make payments on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of ch. 318, F.S., relating to disposition of a traffic citation, or ch. 322, F.S., relating to driver licenses.

A person is not eligible for reinstatement under this program if the person’s driver license is suspended or revoked for:

- Failing to fulfill any court-ordered or administratively established child support obligations;
- A violation under s. 316.193, F.S., involving driving under the influence of alcohol or drugs;
- Failing to complete a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- Commission of a traffic-related felony;

³ Email from the DHSMV, *Draft – SB 1584 Legislative Bill Analysis* (Jan. 22, 2016) (on file with the Senate Committee on Transportation).

⁴ See American Safety Council, *Florida’s Operation Green Light Program* (April 17, 2015), <http://blog.americansafetycouncil.com/florida-operation-green-light/> (last visited Jan. 24, 2016).

- Becoming a habitual traffic offender; or
- An offense committed outside a county in which the pilot program is being implemented.

The DHSMV has indicated within these six counties approximately 541,681 licenses are suspended for failure to appear or comply with a traffic summons, failure to pay a traffic fine, or failure to pay or appear on a criminal charge. These counts are broken down by county and suspension categories below⁵:

Suspended Driver Category:	Broward	Duval	Hillsboro.	Dade	Orange	Pinellas	Total
Fail to Appear-Traffic Summons	23,567	17,214	12,454	56,296	9,410	6,177	125,118
Fail to Comply-Traffic Summons	2,073	1,964	1,488	2,198	1,800	872	10,395
Failed to pay Traffic Fine-Penalty	63,221	47,965	44,622	118,794	51,034	28,158	353,794
Criminal-Fail to Pay	17,574	3,352	11,060	4,291	2,646	2,515	41,438
Criminal- Failed to Appear	2,703	998	2,729	2,509	1,003	994	10,936
	109,138	71,493	72,353	184,088	65,893	38,716	541,681

Participants within each county implementing the pilot program shall include the DHSMV, state attorney, public defender’s office, circuit and county courts, clerk of court, and interested organizations within each county participate in the pilot program.

The clerk of court, in consultation with the other participants, will select one or more days for the event. The bill requires a person seeking reinstatement through the program to pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

The clerk of court and the DHSMV are responsible for verifying any information necessary for reinstatement of a driver license under the program.

The DHSMV, by October 1, 2017, is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The act takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵ *Supra* note 3.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1584 will have a positive impact on individuals who may have their financial obligations waived or reduced, and assistance in reinstating their driver license.

The bill may also have a negative impact on collection agents working with the clerk of courts, if collection fees and costs are waived.

C. Government Sector Impact:

The bill may have a negative impact to local clerks of court if clerks waive fees and costs, as permitted in the bill.

The costs associated with implementing the program are unknown; therefore, the bill could have a negative fiscal impact on the required participants.

The bill will likely have a positive impact on state revenue from the increase in reinstatement fees collected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of law that will be repealed October 1, 2017.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Transportation on January 27, 2016:

The CS amended the language of SB 1584 to maintain consistency with statutory provisions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Transportation; and Senators Smith and Thompson

596-02695-16

20161584c1

A bill to be entitled

An act relating to suspended driver licenses; establishing a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; specifying participants; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles; authorizing the clerk of court to compromise certain fees and costs; providing for program eligibility; directing the department to make a report to the Governor and Legislature; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Driver License Reinstatement Days.

(1) There is established a Driver License Reinstatement Days pilot program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas Counties for the purpose of reinstating suspended driver licenses. Participants within each county shall include the Department of Highway Safety and Motor Vehicles, the state attorney, the public defender's office, the circuit and county courts, the clerk of court, and interested community organizations.

(2) The clerk of court, in consultation with the other participants, shall select 1 or more days for an event at which persons with suspended driver licenses may have their licenses reinstated pursuant to this section. A person must pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

(3) (a) A person is eligible for reinstatement under the

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pilot program if the person's driver license was suspended because the person:

1. Was driving without a valid driver license;

2. Was driving with a suspended license;

3. Failed to make payments on penalties in collection;

4. Failed to appear in court for a traffic violation; or

5. Failed to comply with provisions of chapter 318, Florida

Statutes, relating to disposition of a traffic citation, or chapter 322, Florida Statutes, relating to driver licenses.

(b) Notwithstanding paragraphs (4) (a)-(c), a person is eligible for reinstatement under the pilot program if the period of suspension has elapsed, the person has completed any required course or program as described in paragraph (4) (c), and the person is otherwise eligible for reinstatement of his or her driver license.

(4) A person is not eligible for reinstatement under the pilot program if:

(a) The person's driver license is under suspension because the person failed to fulfill court-ordered or administratively established child support obligations;

(b) The person's driver license is under suspension or has been revoked for a violation under s. 316.193, Florida Statutes, involving driving under the influence of alcohol or drugs;

(c) The person's driver license is under suspension because the person has not completed a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program required under s. 316.192, s. 316.193, s. 322.2616, s. 322.271, or s. 322.291, Florida Statutes;

(d) The person's driver license has been revoked for

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61 commission of a traffic-related felony;

62 (e) The person's driver license was revoked because the
63 person is a habitual traffic offender under s. 322.264, Florida
64 Statutes; or

65 (f) The person's driver license is under suspension for an
66 offense committed outside a county in which the pilot program is
67 being implemented.

68 (5) The clerk of court and the Department of Highway Safety
69 and Motor Vehicles shall verify any information necessary for
70 reinstatement of a driver license under the pilot program.

71 (6) By October 1, 2017, the Department of Highway Safety
72 and Motor Vehicles shall report the results of the pilot program
73 to the Governor, the President of the Senate, and the Speaker of
74 the House of Representatives. The report shall include any
75 recommendation by the department to continue, discontinue, or
76 expand the pilot program and any necessary legislative action to
77 facilitate a continuation or expansion of the pilot program.

78 (7) This section is repealed October 1, 2017.

79 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016

1584

Meeting Date

Bill Number (if applicable)

Topic Suspended Driver License

Amendment Barcode (if applicable)

Name Sheldon Gusky

Job Title Executive Director

Address 103 North Gadsden Street

Phone 850.488.6850

Street

Tallahassee

Florida

32301

Email sgusky@fpda.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/16/16

Meeting Date

1584

Bill Number (if applicable)

Topic DRIVERS License Reinstatement

Amendment Barcode (if applicable)

Name DAN HENDRICKSON

Job Title ADVOCACY Committee

Address 319 E PARK AVE

Phone 850/570-1967

Street Tallahassee FL 32302

Email danhendrickson@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing B16 BEND Mental Health Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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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 Appropriations

BILL: CS/SB 7058

INTRODUCER: Appropriations Committee and Education Pre-K - 12 Committee

SUBJECT: Early Childhood Development

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>AP</u>	ED Submitted as Committee Bill
	<u>Sikes</u>	<u>Kynoch</u>		Fav/CS

I. Summary:

CS/SB 7058 revises the Early Steps program in the Department of Health (DOH) and revises provisions of the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant.

The Early Steps program provides screening and early intervention services to parents with infants and toddlers who have or may have a developmental delay. The program is funded with both state and federal funds.

The bill expands the duties of the DOH clearinghouse for information on early intervention services for parents and providers of early intervention services. The bill provides goals for the Early Steps program, defines terms, and assigns duties to the DOH as well as the local Early Steps offices. The bill sets eligibility criteria for the program. The bill requires a statewide plan, performance standards, and an accountability report each year. The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law. The bill provides procedures for the successful transition of children from the Early Steps program to the local school districts. Finally, the bill repeals outdated sections of statute relating to the Early Steps program.

The bill also revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant.

Specifically, the bill:

- Increases health and safety standards.
- Expands requirements for employment history checks and child care personnel background screenings.
- Expands availability of child care information, including inspection and monitoring reports.

- Expands School Readiness provider standards to include preservice and inservice training requirements and appropriate group size and staff-to-child ratios.
- Aligns child eligibility criteria to the federal requirements

According to the DOH, the bill will require expenditures of approximately \$130,988 in general revenue, \$3,999 of which is nonrecurring, in the 2016-2017 fiscal year. The Early Steps program received a recurring appropriation of \$11 million of general revenue in the 2015-2016 fiscal year, which will be adequate to cover those expenditures during Fiscal Year 2016-2017. The DOH also reports that, if the bill's new eligibility criteria are implemented, at least \$1,317,000 in recurring general revenue would be needed. However, the bill directs the DOH to implement the new criteria subject to specific funding provided in the General Appropriations Act.

The bill also increases licensing and inspection requirements related to the School Readiness program. SB 2500, the Senate 2016-2017 General Appropriations Bill, appropriates \$614,755 to the Department of Children and Families for these additional requirements.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Early Steps Program

Florida's Early Steps program has its foundation in federal law. The Individuals with Disabilities Education Act (IDEA) originally was enacted by Congress in 1975 to help ensure that children with disabilities have the opportunity to receive a free appropriate public education, just like other children. The law has been revised many times. The most recent amendments expanded the program to pre-school children and were passed by Congress in December 2004, with final regulations published in August 2006 (Part B for school-aged children) and in September 2011 (Part C, for babies and toddlers).

The Early Steps program (Part C of the IDEA) provides services to families with infants and toddlers from birth until three years of age who have or are at risk of developmental delays or disabilities.¹ The federal government created grants to assist states in providing early intervention programs under Part C of the IDEA.² The program has no financial eligibility requirements and is an entitlement to any eligible child.³ Florida's Early Steps program is administered by Children's Medical Services within the Department of Health (DOH). The DOH contracts with hospitals and not-for-profit organizations such as Easter Seals across the state for coordination and delivery of services.⁴

States are not required to participate in Early Steps. The federal government encourages states to participate through its grant funding. By accepting a grant, states are required to abide by federal

¹ s. 391.302, F.S.

² 34 *Code of Federal Regulations* Part 303

³ *Id.*

⁴ Office of Program Policy Analysis & Government Accountability. Florida Legislature, Early Steps Has Revised Reimbursement Rates but Needs to Assess Impact of Expanded Outreach on Child Participation, Report No. 08-44, (July 2008) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0844rpt.pdf>.

law and regulations for the program. For Fiscal Year 2015-2016, Florida's federal grant award is \$22.6 million.⁵ The 2015-2016 General Appropriations Act provides \$45.2 million general revenue for the program.⁶

The amount of a state's federal grant award is based each year on the number of children in the state's general population under three years of age, based upon United States Census Bureau data.⁷ The amount of the grant is capped annually on that basis, regardless of the number of children receiving services. Federal data indicate that Florida served 1.9 percent of the population of infants and toddlers younger than three years of age in 2012, or 12,036 children.⁸

Federal rules governing early intervention programs for infants and toddlers with disabilities are found in Part 303 of Title 34, Code of Federal Regulations. The rules provide the purpose of the early intervention program, the activities that may be supported, the children that are eligible to be served, the types of services available, the definition of service coordination activities, and use of service coordinators.

Subpart D of Part 303 provides for a statewide system of early intervention services. This system must include a public awareness program; a comprehensive "child find" system that includes referral procedures; and procedures and timelines for comprehensive, multidisciplinary evaluations of children and an identification of family needs. States must also develop policies and procedures for individualized family support plans (IFSP). Early Steps lead agencies must ensure the IFSP is developed and implemented for each eligible child.

Federal law allows for early intervention services for an eligible child and the child's family to begin before the completion of the evaluation and assessment, under certain conditions. While each agency or person involved in the provision of early intervention services is responsible for making good-faith efforts to assist the eligible child in achieving the outcomes in the IFSP, the law states that any agency or person cannot be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

States must establish qualifications for personnel providing early intervention services to eligible children and families.⁹ States must have standards to ensure that necessary personnel carry out the purposes of the program and are appropriately and adequately prepared and trained.¹⁰ Parents must give written consent before the Early Steps program may evaluate, assess, and provide early intervention services to a child.¹¹ In the event parents do not give consent, reasonable efforts should be made to ensure the parent is aware of the nature of the evaluation,

⁵ Department of Health, presentation to the Senate Appropriations Subcommittee on Health and Human Services, October 7, 2015, available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AHS/MeetingRecords/MeetingPacket_3169.pdf (last visited Dec. 11, 2015).

⁶ See Specific Appropriation 530, s. 3, ch. 2015-232, Laws of Florida.

⁷ U.S. Department of Education, Office of Special Education (OSEP), *Grants for Infants and Families, Part C of IDEA, Grants for Infants and Toddlers*, <http://www2.ed.gov/programs/osepeip/index.html> (last visited: Nov. 16, 2015).

⁸ U.S. Department of Education, *36th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014*, pg. 261, <http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf> (last visited: Nov. 16, 2015).

⁹ 34 CFR. s. 303.361

¹⁰ *Id.*

¹¹ 34 CFR. s 303.404

assessment, and services available, and understands that without consent, the child will not be able to receive the evaluation, assessment, or services.¹²

Federal regulations require that service providers give written notice to parents before the provider initiates or changes the identification, evaluation, or placement of the child, or provides the appropriate early intervention services to the child and the child's family.¹³ Procedures to resolve disputes through a mediation process, at a minimum, must be available whenever a parent requests a hearing.¹⁴ The mediation process is voluntary, must be conducted by a qualified mediator, and cannot be used to deny or delay a parent's right to a due process hearing.¹⁵ Mediation must be timely scheduled. Any agreement reached by the parties to the dispute must be in writing, and discussions that occur during mediation are confidential and cannot be used as evidence in any subsequent proceeding.¹⁶ The state must bear the cost of the mediation process.¹⁷ During the mediation, the child must continue to receive early intervention services currently being provided.¹⁸ If the complaint involves an application for initial services, the child must receive any services that are not in dispute.¹⁹

State policy must specify which functions and services will be provided at no cost to all parents and which will be subject to a system of payments.²⁰ The inability of parents of an eligible child to pay for services must not result in a denial of services to the child or the child's family.²¹ States may establish a schedule of sliding fees for early intervention services but some functions such as evaluation, assessment, and service coordination are not subject to fees.²²

Funds provided by the federal grant may be used only for early intervention services for an eligible child who is not entitled to these services under any other federal, state, local or private source.²³ Interim payments to avoid delay in providing needed services to an eligible child are allowed but the agency that has ultimate responsibility for the payment must reimburse the program.²⁴

Each State that receives financial assistance for the program must establish a State Interagency Coordinating Council (council). The council must be appointed by the Governor and membership must reasonably represent the population of the state.²⁵ The council is to advise and assist the lead agency in:

- The development and implementation of the policies that constitute the statewide system;

¹² *Id.*

¹³ 34 CFR s. 303.403

¹⁴ 34 CFR s. 303.419

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 34 CFR s. 303.425

¹⁹ *Id.*

²⁰ 34 CFR s. 303.520

²¹ *Id.*

²² 34 CFR s. 303.521

²³ 34 CFR s.303.527

²⁴ *Id.*

²⁵ 34 CFR s. 303.600

- Achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state; and
- The integration of services for infants and toddlers with disabilities and at-risk toddlers and their families regardless of whether at-risk infants and toddlers are eligible for early intervention services.²⁶

Eligible infants and toddlers are identified through referrals from hospitals, healthcare providers, and childcare staff who may interact on a regular basis with infants and toddlers. Parents may also contact the state's program directly for an evaluation and assessment. Before any evaluation can be conducted, parental consent is required. Evaluations and assessments must be completed within 45 days of the referral.²⁷

Early intervention skills for this population focus on five areas:

- Physical (reaching, rolling, crawling, and walking);
- Cognitive (thinking, learning, and solving problems);
- Communication (talking, listening, and understanding);
- Social/emotional (playing and feeling secure and happy); and
- Adaptive/self-help (eating and dressing).²⁸

States must have various components under 20 U.S.C. 1435, which broadly covers administrative, oversight, and regulatory functions, such as:

- Policies to ensure appropriate delivery of early intervention services to infants, toddlers, and their families;
- Individualized family service plans (IFSP) for each infant or toddler with a disability;
- A properly functioning administrative structure that identifies eligible infants and toddlers using a rigorous definition of "developmental delay," makes referrals, centrally collects information, provides a directory of services and resources, incorporates data, and has a comprehensive system for personnel development;
- A single line of responsibility in a lead agency designated by the Governor, including financial responsibility, provision of services, resolution of disputes, and development of procedures to ensure timeliness of services; and
- A state interagency coordination council.

The IDEA requires that early intervention services be provided, to the maximum extent appropriate, in natural environments²⁹ such as the child's home.³⁰ Florida has increased the

²⁶ 34 CFR s. 303.650

²⁷ Center for Parent Information and Resources, *Basics of the Early Intervention Process under Part C of the IDEA - Handout I*, http://www.parentcenterhub.org/wp-content/uploads/repo_items/legacy/partc/handout1.pdf (last visited: Nov. 16, 2015).

²⁸ Center for Parent Information and Resources, *Overview of Early Intervention - What is Early Intervention?* <http://www.parentcenterhub.org/repository/ei-overview/> (last visited: Nov. 16, 2015).

²⁹ A "natural environment" includes the child's home or a community setting where children would typically be participating if they did not have a disability. See "Program Description," U.S. Department of Education, available at <http://www2.ed.gov/programs/osepeip/index.html> (last visited Dec. 11, 2015).

³⁰ U.S. Department of Education, Office of Special Education (OSEP), *Grants for Infants and Families, Part C of IDEA, Grants for Infants and Toddlers*, <http://www2.ed.gov/programs/osepeip/index.html> (last visited: Nov. 16, 2015).

delivery of services in the home or community based setting since 2008 but still falls below the national average for home-based services.³¹

Child Care and Development Block Grant (CCDBG)

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to affordable, high-quality early care and afterschool programs.³² The OCC administers the Child Care and Development Fund (CCDF) and works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.³³ The CCDF provides funding for state efforts to provide child care services for low-income family members who work, train for work, attend school, or whose children receive or need to receive protective services.³⁴ Block grant funding can be used for public or private, religious or non-religious, and center or home-based care.³⁵ Child care programs that accept funding must comply with state health and safety requirements.³⁶

School Readiness Program

Florida's Office of Early Learning (OEL)³⁷ is the designated lead agency for purposes of administering the CCDF Block Grant Trust Fund and provides state-level administration for the School Readiness program.³⁸ The School Readiness program is a state-federal partnership between OEL and the OCC.³⁹ The School Readiness program receives funding from a mixture of state and federal sources, including the federal CCDF, the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.⁴⁰ The School Readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.

³¹ U.S. Department of Education, *36th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014*, pg. 120-121, <http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf> (last visited: Nov. 16, 2015).

³² Office of Child Care, *What We Do*, <http://www.acf.hhs.gov/programs/occ/about/what-we-do> (last visited January 27, 2016).

³³ *Id.*

³⁴ U.S. Department of Education, Office of Non-Public Education, <http://www2.ed.gov/about/offices/list/oji/nonpublic/childcare.html> (last visited January 27, 2016).

³⁵ *Id.*

³⁶ *Id.*

³⁷ In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE). The office is administered by an executive director and is fully accountable to the Commissioner of Education but independently exercises all powers, duties, and functions prescribed by law, as well as adopting rules for the establishment and operation of the School Readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as* s. 1001.213, F.S.

³⁸ Section 1002.82(1), F.S.

³⁹ Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.

⁴⁰ Specific Appropriation 82, s. 2, ch. 2015-232, L.O.F.

The School Readiness program utilizes a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.⁴¹ The Florida Department of Children and Families' Office of Child Care Regulation (OCCR), as the agency responsible for the state's child care provider licensing program, regulates some, but not all, of the child care providers that provide early learning programs.⁴² The program is administered at the county or regional level by early learning coalitions (ELC).⁴³

In order to be eligible to deliver the School Readiness program, a provider must be:⁴⁴

- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or non-public school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal child care provider authorized in the state's CCDF plan.⁴⁵

Reauthorization of the CCDBG Act

On November 19, 2014, the CCDBG Act of 2014 was signed into law reauthorizing the CCDF for the first time since 1996.⁴⁶ The new law prescribes health and safety requirements for School Readiness program providers and requires transparent information to parents and the general public about available child care choices.⁴⁷

While Florida's School Readiness program currently meets many of the new federal requirements, there are specific federal requirements that necessitate changes to Florida law including:⁴⁸

- Screening for child care staff to include searches of the National Sex Offender Registry, as well as searches of state criminal records, the sex offender registry and child abuse and neglect registry of any state in which the child care personnel resided during the preceding 5 years.⁴⁹

⁴¹ Section 1002.88(1)(a), F.S.

⁴² See ss. 402.301-319, F.S., and part VI, ch. 1002, F.S.

⁴³ Sections 1002.83-1002.85, F.S. There are currently 30 ELCs, but 31 is the maximum permitted by law. Section 1002.83(1), F.S. See Florida's Office of Early Learning, *Early Learning Coalition Directory* (Jan. 11, 2016), available at <http://www.floridaearlylearning.com/sites/www/Uploads/files/Coalition/Coalition%20Directory/CoalitionDirectory%201.11.16.pdf>.

⁴⁴ Section 1002.88(1)(a), F.S.

⁴⁵ See Florida Office of Early Learning, *Florida's Child Care and Development Fund State Plan FFY 2014-15*, available at http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015_CCDF_Plan_%20Optimized.pdf. The CCDF State Plan for 2016-2018 is due March 1, 2016 to the Administration for Children and Families and will become effective, once approved, on June 1, 2016. Florida Office of Early Learning, CCDF Plan, http://www.floridaearlylearning.com/oel_resources/ccdf_plan.aspx (last visited January 27, 2016).

⁴⁶ Office of Child Care, *CCDF Reauthorization*, <http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization> (last visited January 27, 2016).

⁴⁷ *Id.*

⁴⁸ Pub. L. No. 113-186, 128 Stat. 1971, Child Care and Development Block Grant Act Reauthorization (2014), available at <https://www.gpo.gov/fdsys/pkg/PLAW-113publ186/pdf/PLAW-113publ186.pdf>.

⁴⁹ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b)

- Posting of monitoring and inspection reports through electronic means.⁵⁰
- Providing parents and the general public, information, via a website, regarding:
 - The availability of child care services to promote informed child care choices;
 - The process for licensing child care providers;
 - The conducting of background screening;
 - The monitoring and inspection of child care providers; and
 - The offenses that would prevent individuals and entities from serving as child care providers in the state.⁵¹
- Inspecting license-exempt providers receiving CCDBG funds for compliance with health, safety, and fire standards.⁵²
- Requiring disaster preparedness plan to include procedures for staff and volunteer emergency preparedness training and practice drills.⁵³
- Certifying in the state plan, compliance with the child abuse reporting requirements of the Child Abuse Prevention and Treatment Act.⁵⁴

Furthermore, pursuant to the CCDBG Act of 2014, child care personnel are ineligible for employment by a School Readiness provider if an individual:⁵⁵

- Refuses to consent to a criminal background check;
- Knowingly makes a materially false statement in connection with such criminal background check;
- Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry;
- Has been convicted of a felony consisting of:
 - Murder;
 - Child abuse or neglect;
 - A crime against children, including child pornography;
 - Spousal abuse;
 - A crime involving rape or sexual assault;
 - Kidnapping;
 - Arson;
 - Physical assault or battery; or
 - A drug-related offense committed during the preceding 5 years; or
- Has been convicted of a violent misdemeanor committed as an adult against a child, including:
 - Child abuse;
 - Child endangerment;
 - Sexual assault; or
 - A misdemeanor involving child pornography.

⁵⁰ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C)

⁵¹ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C)

⁵² Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(K).

⁵³ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(U).

⁵⁴ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(L).

⁵⁵ 42 U.S.C. 9858f(c)(1).

Child Care Personnel

The Department of Children and Families (DCF) is responsible for the licensure and regulation of child care facilities, family day care homes, and large family child care homes.⁵⁶ However, there are child care providers that are not licensed by the DCF, including those that are required only to register with the DCF and those that are exempt from licensure by virtue of being an integral part of a church or parochial school.⁵⁷

All child care personnel employed in a setting regulated by the DCF, whether licensed, registered, or religious-exempt, are required to undergo background screening using the level 2 standards set forth in chapter 435, F.S.⁵⁸ If an applicant for employment is disqualified from working with children due to the results of the level 2 background screening, the Secretary of the DCF may grant an exemption from that disqualification.⁵⁹

Level 2 Background Screening

A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁶⁰ A vendor may perform all or part of the electronic fingerprinting of an applicant and submit those fingerprints to the FDLE, which in turn runs statewide records checks and submits the electronic file to the FBI for national records checks.⁶¹

Once the background screening is completed, and FDLE has received the information from the FBI, the criminal history information is transmitted to the DCF. The DCF then determines if the screening contains any disqualifying information for employment. The DCF must ensure that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any prohibited offense including, but not limited to, such crimes as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.⁶² If the DCF finds that an individual has a history containing any of these offenses, they must disqualify that individual from employment in child care settings regulated by the DCF.⁶³

Exemptions from Disqualification

The Secretary of the DCF is authorized to grant an exemption from disqualification to applicants for employment, including child care applicants, based on the following:⁶⁴

⁵⁶ Sections 402.301-402.319, F.S.

⁵⁷ Section 402.316, F.S.

⁵⁸ Section 402.305 (2)(a), F.S. The level 2 background screening standards are set forth in s. 435.04, F.S.

⁵⁹ Section 435.07, F.S.

⁶⁰ Section 435.04(1)(a), F.S.

⁶¹ *Id.* at (1).

⁶² *Id.* at (2).

⁶³ Section 435.07, F.S.

⁶⁴ *Id.* at (1).

- Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under chapter 425, F.S., or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁶⁵

The Secretary of the DCF may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, specified felony or misdemeanor offenses solely by reason of any pardon, executive clemency, or restoration of civil rights.⁶⁶ Also, an exemption may not be granted to anyone who is considered a sexual predator,⁶⁷ career offender,⁶⁸ or sexual offender (unless not required to register).⁶⁹

III. Effect of Proposed Changes:

The bill revises the Early Steps program in the Department of Health (DOH) and revises provisions of the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant.

Developmental Disabilities Information Clearinghouse

The bill amends s. 383.141, F.S., to provide additional direction to the information clearinghouse administered by the DOH. The bill requires the clearinghouse to provide comprehensive information to educate parents and providers of early intervention services. The DOH is directed to refer to children with developmental disabilities or delays as children with “unique abilities” whenever possible in the clearinghouse. The DOH is to provide education and training to parents and providers through the clearinghouse. The clearinghouse is to promote public awareness of intervention services available to parents of children with unique abilities.

The bill deletes from Florida law the requirement for the DOH to establish access to clearinghouse information on its Internet website. The program is already subject to similar requirements under federal regulations.

⁶⁵ *Id.* at (1)(a)4. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense. *Id.*

⁶⁶ Sections 435.03 and 435.04(2), F.S.

⁶⁷ Section 775.21, F.S.

⁶⁸ Section 775.261, F.S.

⁶⁹ Sections 943.0435 and 943.04354, F.S.

Early Steps Program

The bill renames the Florida Infants and Toddlers Early Intervention Program under the Children's Medical Services program as the Early Steps program and adds to the DOH's responsibilities the administration of the Early Steps program.

The bill also updates the legislative intent of the Early Steps program and establishes goals for the program. Under the bill, the program must:

- Integrate information and coordinate services with other programs serving infants and toddlers;
- Enhance the development of infants and toddlers with disabilities and delays;
- Increase the awareness among parents, health care providers, and the public of the importance of the first three years of life for the development of the brain;
- Maintain the importance of the family in early intervention services;
- Provide comprehensive and coordinated services;
- Ensure timely evaluation of infants and toddlers and provide individual planning for intervention services;
- Improve the capacity of health care providers to serve children with unique needs; and
- Ensure programmatic and financial accountability through the establishment of a high-capacity data system, active monitoring of performance indicators, and ongoing quality improvement.

The bill amends s. 391.302, F.S., to add definitions for "developmental delay," "developmental disability," "habilitative services and devices," "local program office," and "rehabilitative services and devices" for the Early Steps program. The bill also deletes the definitions of "in-hospital intervention services" and "parent support and training."

The bill amends s. 391.308, F.S., to provide additional structure and guidance for the Early Steps program. The bill establishes performance standards for the program relating to services and referrals, individualized family support plans, and outcomes for infants and toddlers served.

The bill provides new duties to the DOH for the Early Steps program. The bill requires the DOH to:

- Develop a statewide plan for the program;
- Ensure that local program offices educate hospitals providing Level II and Level III neonatal intensive care about the program and the referral process for evaluation and intervention services;
- Establish standards and qualifications for service providers used by the program;
- Develop uniform procedures to determine eligibility for the program;
- Provide a statewide format for individualized family support plans;
- Promote interagency cooperation with the Medicaid program, the Department of Education, and programs providing child screening;
- Provide guidance to local program offices for coordinating Early Step program benefits with other programs such as Medicaid and private insurance;

- Provide a mediation process and, if necessary, an appeals process for parents whose infant or toddler is determined not to be eligible for developmental evaluation or early intervention services or who were denied financial support for such services;
- Competitively procure local offices to administer the Early Steps program;
- Establish performance measures and standards to evaluate local Early Step offices; and
- Provide technical assistance to local Early Step offices.
- Report to the Governor and Legislature on the performance of the Early Steps program December 1st each year.

The bill establishes eligibility criteria for the Early Steps program. The eligibility criteria are based on federal law with the underlying premise that infants and toddlers are eligible for an evaluation to determine the presence of a developmental disability or the risk of a developmental delay based on a physical or medical condition. The DOH is directed to apply specified criteria to determine eligibility for post-evaluation services if funding is provided, and the associated applicable eligibility criteria are identified, in the General Appropriations Act. Infants and toddlers meeting the following criteria will be determined eligible:

- Having a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 1.5 standard deviations from the mean in two or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 2.0 standard deviations from the mean in one of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 1.5 standard deviations from the mean in one or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion; or
- Being at risk of developmental delay based on an established condition known to result in developmental delay, or a physical or mental condition known to create a risk of developmental delay.

The bill provides duties to the Early Steps offices. These offices must:

- Evaluate a child within 45 days after referral;
- Notify parents if the child is eligible for services and provide an appeal process to those parents whose child is found ineligible;
- Make interagency agreements with local school districts;
- Provide services directly or procure early intervention services;
- Provide services in a natural environment to the extent possible;
- Develop an individualized family support plan for each child served in the program;
- Assess the progress of the child in meeting the goals of the individualized family support plan;
- Provide service coordination to ensure that assistance for families is properly managed, regardless of whether the program provides the services directly or through referral to other service providers;

- Make agreements with local Medicaid managed care organizations;
- Make agreements with local private insurers;
- Provide data required by the DOH to assess the performance of the program; and
- Facilitate transition to the local school district after age three for a child needing special education or related services.

The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law.

School Readiness Program

This bill revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant (CCDBG).

Specifically, the bill:

- Increases health and safety standards.
- Expands requirements for employment history checks and child care personnel background screenings.
- Expands availability of child care information, including inspection and monitoring reports.
- Expands School Readiness provider standards to include preservice and inservice training requirements and appropriate group size and staff-to-child ratios.
- Aligns child eligibility criteria to the federal requirements.

Health & Safety Standards

Current law requires a child care provider to provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children. A licensed provider may satisfy this requirement through compliance with current licensing standards for child care facilities, large family child care homes, or family day care homes. Faith-based child care providers, informal child care providers, and nonpublic schools exempt from licensure satisfy this requirement by posting a health and safety checklist adopted by the Office of Early Learning (OEL).

Pursuant to the CCDBG Reauthorization, all School Readiness program providers must meet a minimum level of health and safety requirements and receive at least one annual inspection. The bill requires registered or license-exempt School Readiness providers to comply with the health and safety checklist and training requirements adopted by the OEL, as well as the child care personnel background screening requirements.

Screening of Child Care Personnel

The bill redefines the definition of “screening” to include employment history checks consisting of documented attempts to contact each employer that employed the child care applicant within the preceding 5 years and documented findings from such contact. The bill requires that a screening include a search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during

the preceding 5 years. In effect, the bill revises the definition of screening to align to the new federal requirements, and requires that any School Readiness provider screen individuals seeking employment in a manner consistent with the requirements.

The bill authorizes the use of information in the Department of Children and Families' (DCF) Central Abuse Hotline for purposes of conducting background screenings of child care personnel. Generally, the use of information in the Central Abuse Hotline is prohibited from being used for employment screenings, except in specified instances (*e.g.*, child or adult protective investigations or licensure or approval of child care facilities). Furthermore, the bill authorizes employees, authorized agents, and contract providers of the OEL to have access to DCF child abuse and neglect reports and records to ensure compliance with the federal requirements.

Disqualification from Employment

The bill prohibits the removal of or exemption from disqualification from employment for any current or prospective School Readiness provider personnel if an individual is registered, or is required to be registered, as a sex offender.⁷⁰ The bill disqualifies current or prospective personnel from employment with a School Readiness provider if they are arrested and awaiting final disposition or convicted of, or plead guilty to, specified state felony and misdemeanor offenses or similar offenses in another jurisdiction, including federal offenses. The bill also disqualifies a person from employment with a School Readiness provider regardless of any prior exemption from disqualification. The change in law is consistent with the federal prohibitions relating to child care personnel of School Readiness providers pursuant to the CCDBG Act of 2014.⁷¹

Affidavit of Compliance with Mandatory Child Abuse Reporting

The bill requires each child care facility, family day care home, and large family day care home to annually submit an affidavit of compliance with the mandatory reporting requirements in Florida law.⁷² The change in law is consistent with the new federal requirement that child care personnel of School Readiness providers be familiar and comply with the mandatory child abuse, abandonment, or neglect reporting requirements.

DCF Inspection & Monitoring of School Readiness Providers

The bill requires School Readiness providers to permit access to the DCF to inspect facilities, personnel, and records for the purpose of verifying compliance with the standards established and adopted by the OEL. Under the bill, inspection and monitoring of School Readiness providers by the DCF or local licensing agencies must be governed by a memorandum of understanding between the OEL and the DCF or local licensing agencies for verifying compliance solely with the standards contained in the statewide provider contract and the health and safety checklist. Furthermore, the bill requires that a School Readiness provider's contract be terminated if the provider refuses permission for entry or inspection.

⁷⁰ 42 U.S.C. 9858f(c)(1)(C).

⁷¹ 42 U.S.C. 9858f(c)(1).

⁷² See s. 39.201, F.S.

Child Care Information

The bill requires the DCF and local licensing agencies to make electronically available to the public all licensing standards and procedures, health and safety standards for School Readiness providers, monitoring and inspection reports, and the names and addresses of licensed child care facilities, School Readiness providers, and licensed or registered family day care homes.

Additionally, the bill requires the DCF to make publicly available the following information:

- Number of deaths, serious injuries, and instances of substantiated child abuse which have occurred in child care settings each year;
- Research and best practices in child development; and
- Resources regarding social-emotional development, parent and family engagement, healthy eating, and physical activity.

Requiring that such information be made publicly available is consistent with the federal requirements in the CCDBG Reauthorization.

Office of Early Learning's Duty to Align Standards to the Federal Requirements

Consistent with federal law, the bill requires the OEL to:

- Develop and implement strategies to increase the supply and improve the quality of child care services for infants and toddlers, children with disabilities, children who receive care during nontraditional hours, children in underserved areas, and children in areas that have significant concentrations of poverty and unemployment.
- Establish preservice and inservice training requirements addressing, at a minimum:
 - School Readiness child development standards.
 - Health and safety requirements.
 - Social-emotional behavior intervention models.
- Establish standards for emergency preparedness plans.
- Establish group size and staff-to-child ratios.
- Establish eligibility criteria, including income-based limitations and family assets.

Child Eligibility

The bill revises provisions relating to child eligibility to align to the federal requirement that once a child is deemed eligible for School Readiness program services, he or she remains eligible for a minimum of 12 months. Under current law, a child's eligibility may be redetermined at any time based on a change in family income or upon notification of a parent's change in employment status. Consequently, the bill repeals a requirement that each early learning coalition (ELC) redetermine eligibility twice per year for an additional 50 percent of the ELC's enrollment through a statistically valid random sampling.

Pursuant to the CCDBG Reauthorization, the bill provides that if a child's eligibility priority category requires the child to be from a working family, he or she will become ineligible to receive School Readiness program services if the parent does not reestablish employment or resume attendance at a job training or educational program within 90 days after becoming unemployed or ceasing to attend the job training or educational program. Current law affords a parent 60 days to reestablish employment or resume attendance at a job training or educational

program. The change will provide additional time for parents to reestablish employment or resume attendance at a job training or educational program, so that their children may continue to receive School Readiness program services.

Also, the bill authorizes an ELC to temporarily waive the parent's copayment for a child whose family's income is at or below the federal poverty level and whose family experiences a natural disaster or an event that limits the parent's ability to pay. Authorizing waiver of the copayment is consistent with federal law, which contemplates that a copayment not be a barrier to families receiving School Readiness program services.

The bill provides an effective date of 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:

Under CS/SB 7058, additional guidance provided for the administration of the Early Steps program may result in additional opportunities for private providers of early childhood intervention services.

The Department of Health (DOH) reports that local Early Steps agencies under contract with the DOH might experience an increased workload associated with additional duties under the bill. Such an effect, if any, has an indeterminate cost.⁷³

⁷³ Department of Health, *2016 Agency Legislative Bill Analysis, SB 7034*, Jan. 20, 2016, on file with the Senate Appropriations Subcommittee on Health and Human Services.

C. Government Sector Impact:

The DOH reports that eligibility criteria created under the bill, if applied, will result in at least 1,000 children becoming eligible for Early Steps who would not otherwise qualify, at a cost of \$1,317,000 recurring general revenue.⁷⁴ However, the bill directs the DOH to apply the new eligibility criteria if specific funding is provided, and the associated applicable eligibility criteria are identified, in the General Appropriations Act (GAA), and the GAA might or might not include such funding.

The DOH also reports that, under the bill:⁷⁵

- The requirements for new hotlines specific to Down syndrome and other prenatally diagnosed developmental disabilities, the expansion of the clearinghouse database, and the accompanying duties to revise the DOH website, will cost \$130,988 in general revenue, \$3,999 of which is nonrecurring, which includes funding for a new full-time equivalent (FTE) position; and
- The DOH might experience a recurring, but indeterminate, increase in workload associated with other duties that existing DOH resources cannot absorb.

The bill also requires additional licensing and inspections related to the School Readiness program. SB 2500, the Senate 2016-2017 General Appropriations Bill, appropriates \$614,755 to the Department of Children and Families for these additional requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Health (DOH) reports that:⁷⁶

- The bill's provision for eligibility criteria to be implemented "if specific funding is provided" could create a conflict with the program's nature as an entitlement program; and
- The bill's requirements for posting public information do not meet the federal requirements for stakeholder input and that a more realistic implementation date for the bill's changes to eligibility criteria would be January 2017.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 383.141, 391.025, 391.026, 391.301, 391.302, 391.308, 402.302, 402.3025, 402.306, 402.311, 402.319, 413.092, 435.07, 1002.82, 1002.84, 1002.87, 1002.88, 1002.89, and 1003.575.

The bill repeals the following sections of the Florida Statutes: 391.303, 391.304, 391.305, 391.306, 391.307, and 402.3057.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

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

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

CS by Appropriations on February 18, 2016:

The committee substitute revises the Early Steps program in the Department of Health (DOH). Specifically, the bill

- Expands the duties of the DOH clearinghouse for information on early intervention services for parents and providers of early intervention services.
- Provides goals for the Early Steps program, defines terms, and assigns duties to the DOH as well as the local Early Steps offices.
- Sets eligibility criteria for the program.
- Requires a statewide plan, performance standards, and an accountability report each year.
- Designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law.
- Provides procedures for the successful transition of children from the Early Steps program to the local school districts.
- Repeals outdated sections of statute relating to the Early Steps program.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 39.201, Florida
Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or
neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be
used for employment screening, except as provided in s.



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11 39.202(2)(a) and (h) or s. 402.302(15). Information in the
12 central abuse hotline and the department's automated abuse
13 information system may be used by the department, its authorized
14 agents or contract providers, the Department of Health, or
15 county agencies as part of the licensure or registration process
16 pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

17 Section 2. Paragraph (a) of subsection (2) of section
18 39.202, Florida Statutes, is amended to read:

19 39.202 Confidentiality of reports and records in cases of
20 child abuse or neglect.-

21 (2) Except as provided in subsection (4), access to such
22 records, excluding the name of the reporter which shall be
23 released only as provided in subsection (5), shall be granted
24 only to the following persons, officials, and agencies:

25 (a) Employees, authorized agents, or contract providers of
26 the department, the Department of Health, the Agency for Persons
27 with Disabilities, the Office of Early Learning, or county
28 agencies responsible for carrying out:

- 29 1. Child or adult protective investigations;
- 30 2. Ongoing child or adult protective services;
- 31 3. Early intervention and prevention services;
- 32 4. Healthy Start services;
- 33 5. Licensure or approval of adoptive homes, foster homes,
34 child care facilities, facilities licensed under chapter 393, ~~or~~
35 family day care homes, or informal child care providers who
36 receive school readiness funding under part VI of chapter 1002,
37 or other homes used to provide for the care and welfare of
38 children; or
- 39 6. Services for victims of domestic violence when provided



40 by certified domestic violence centers working at the
41 department's request as case consultants or with shared clients.

42
43 Also, employees or agents of the Department of Juvenile Justice
44 responsible for the provision of services to children, pursuant
45 to chapters 984 and 985.

46 Section 3. Subsections (2) and (3) of section 383.141,
47 Florida Statutes, are amended to read:

48 383.141 Prenatally diagnosed conditions; patient to be
49 provided information; definitions; information clearinghouse;
50 advisory council.-

51 (2) When a developmental disability is diagnosed based on
52 the results of a prenatal test, the health care provider who
53 ordered the prenatal test, or his or her designee, shall provide
54 the patient with current information about the nature of the
55 developmental disability, the accuracy of the prenatal test, and
56 resources for obtaining relevant support services, including
57 hotlines, resource centers, and information clearinghouses
58 related to Down syndrome or other prenatally diagnosed
59 developmental disabilities; support programs for parents and
60 families; and developmental evaluation and intervention services
61 under this part ~~s. 391.303~~.

62 (3) The Department of Health shall develop and implement a
63 comprehensive information clearinghouse to educate health care
64 providers, inform parents, and increase public awareness
65 regarding brain development, developmental disabilities and
66 delays, and all services, resources, and interventions available
67 to mitigate the effects of impaired development among children.
68 The clearinghouse must use the term "unique abilities" as much



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69 as possible when identifying infants or children with
70 developmental disabilities and delays. The clearinghouse must
71 provide:

72 (a) Health information on conditions that may lead to
73 impaired development of physical, learning, language, or
74 behavioral skills.

75 (b) Education and information to support parents whose
76 unborn children have been prenatally diagnosed with
77 developmental disabilities or whose children have diagnosed or
78 suspected developmental delays.

79 (c) Education and training for health care providers to
80 recognize and respond appropriately to developmental
81 disabilities, delays, and conditions related to disabilities or
82 delays. Specific information approved by the advisory council
83 shall be made available to health care providers for use in
84 counseling parents whose unborn children have been prenatally
85 diagnosed with developmental disabilities or whose children have
86 diagnosed or suspected developmental delays.

87 (d) Promotion of public awareness of availability of
88 supportive services, such as resource centers, educational
89 programs, other support programs for parents and families, and
90 developmental evaluation and intervention services.

91 (e) Hotlines specific to Down syndrome and other prenatally
92 diagnosed developmental disabilities. The hotlines and the
93 department's clearinghouse must provide information to parents
94 and families or other caregivers regarding the Early Steps
95 Program under s. 391.301, the Florida Diagnostic and Learning
96 Resources System, the Early Learning program, Healthy Start,
97 Help Me Grow, and any other intervention programs. Information



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98 offered must include directions on how to obtain early
99 intervention, rehabilitative, and habilitative services and
100 devices ~~establish on its Internet website a clearinghouse of~~
101 ~~information related to developmental disabilities concerning~~
102 ~~providers of supportive services, information hotlines specific~~
103 ~~to Down syndrome and other prenatally diagnosed developmental~~
104 ~~disabilities, resource centers, educational programs, other~~
105 ~~support programs for parents and families, and developmental~~
106 ~~evaluation and intervention services under s. 391.303. Such~~
107 ~~information shall be made available to health care providers for~~
108 ~~use in counseling pregnant women whose unborn children have been~~
109 ~~prenatally diagnosed with developmental disabilities.~~

110 (4) (a) There is established an advisory council within the
111 Department of Health which consists of health care providers and
112 caregivers who perform health care services for persons who have
113 developmental disabilities, including Down syndrome and autism.
114 This group shall consist of nine members as follows:

- 115 1. Three members appointed by the Governor;
116 2. Three members appointed by the President of the Senate;
117 and
118 3. Three members appointed by the Speaker of the House of
119 Representatives.

120 (b) The advisory council shall provide technical assistance
121 to the Department of Health in the establishment of the
122 information clearinghouse and give the department the benefit of
123 the council members' knowledge and experience relating to the
124 needs of patients and families of patients with developmental
125 disabilities and available support services.

126 (c) Members of the council shall elect a chairperson and a



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127 vice chairperson. The elected chairperson and vice chairperson
128 shall serve in these roles until their terms of appointment on
129 the council expire.

130 (d) The advisory council shall meet quarterly to review
131 this clearinghouse of information, and may meet more often at
132 the call of the chairperson or as determined by a majority of
133 members.

134 (e) The council members shall be appointed to 4-year terms,
135 except that, to provide for staggered terms, one initial
136 appointee each from the Governor, the President of the Senate,
137 and the Speaker of the House of Representatives shall be
138 appointed to a 2-year term, one appointee each from these
139 officials shall be appointed to a 3-year term, and the remaining
140 initial appointees shall be appointed to 4-year terms. All
141 subsequent appointments shall be for 4-year terms. A vacancy
142 shall be filled for the remainder of the unexpired term in the
143 same manner as the original appointment.

144 (f) Members of the council shall serve without
145 compensation. Meetings of the council may be held in person,
146 without reimbursement for travel expenses, or by teleconference
147 or other electronic means.

148 (g) The Department of Health shall provide administrative
149 support for the advisory council.

150 Section 4. Paragraph (c) of subsection (1) of section
151 391.025, Florida Statutes, is amended to read:

152 391.025 Applicability and scope.—

153 (1) The Children's Medical Services program consists of the
154 following components:

155 (c) The developmental evaluation and intervention program,



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156 including the Early Steps Florida Infants and Toddlers Early
157 Intervention Program.

158 Section 5. Subsection (19) is added to section 391.026,
159 Florida Statutes, to read:

160 391.026 Powers and duties of the department.—The department
161 shall have the following powers, duties, and responsibilities:

162 (19) To serve as the lead agency in administering the Early
163 Steps Program pursuant to part C of the federal Individuals with
164 Disabilities Education Act and part III of this chapter.

165 Section 6. Section 391.301, Florida Statutes, is amended to
166 read:

167 391.301 Early Steps Program; establishment and goals
168 Developmental evaluation and intervention programs; legislative
169 findings and intent.—

170 (1) The Early Steps Program is established within the
171 department to serve infants and toddlers who are at risk of
172 developmental disabilities based on a physical or mental
173 condition and infants and toddlers with developmental delays by
174 providing developmental evaluation and early intervention and by
175 providing families with training and support services in a
176 variety of home and community settings in order to enhance
177 family and caregiver competence, confidence, and capacity to
178 meet their child's developmental needs and desired outcomes The
179 ~~Legislature finds that the high-risk and disabled newborn~~
180 ~~infants in this state need in-hospital and outpatient~~
181 ~~developmental evaluation and intervention and that their~~
182 ~~families need training and support services. The Legislature~~
183 ~~further finds that there is an identifiable and increasing~~
184 ~~number of infants who need developmental evaluation and~~



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185 ~~intervention and family support due to the fact that increased~~
186 ~~numbers of low-birthweight and sick full-term newborn infants~~
187 ~~are now surviving because of the advances in neonatal intensive~~
188 ~~care medicine; increased numbers of medically involved infants~~
189 ~~are remaining inappropriately in hospitals because their parents~~
190 ~~lack the confidence or skills to care for these infants without~~
191 ~~support; and increased numbers of infants are at risk due to~~
192 ~~parent risk factors, such as substance abuse, teenage pregnancy,~~
193 ~~and other high-risk conditions.~~

194 (2) The program may include screening and referral ~~It is~~
195 ~~the intent of the Legislature to establish developmental~~
196 ~~evaluation and intervention services at all hospitals providing~~
197 ~~Level II or Level III neonatal intensive care services, in order~~
198 ~~to promptly identify newborns with disabilities or with~~
199 ~~conditions associated with risks of developmental delays so that~~
200 ~~families with high-risk or disabled infants may gain as early as~~
201 ~~possible the services and skills they need to support their~~
202 ~~infants' development~~ infants.

203 (3) The program must ~~It is the intent of the Legislature~~
204 ~~that a methodology be developed to integrate information and~~
205 ~~coordinate services on infants with potentially disabling~~
206 ~~conditions with other programs serving infants and toddlers~~
207 ~~early intervention programs, including, but not limited to, Part~~
208 ~~C of Pub. L. No. 105-17 and the Healthy Start program, the~~
209 ~~newborn screening program, and the Blind Babies Program.~~

210 (4) The program must:

211 (a) Provide services to enhance the development of infants
212 and toddlers with disabilities and delays.

213 (b) Expand the recognition by health care providers,



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214 families, and the public of the significant brain development
215 that occurs during a child's first 3 years of life.

216 (c) Maintain the importance of the family in all areas of
217 the child's development and support the family's participation
218 in early intervention services and decisions affecting the
219 child.

220 (d) Operate a comprehensive, coordinated interagency system
221 of early intervention services and supports in accordance with
222 part C of the federal Individuals with Disabilities Education
223 Act.

224 (e) Ensure timely evaluation, individual planning, and
225 early intervention services necessary to meet the unique needs
226 of eligible infants and toddlers.

227 (f) Build the service capacity and enhance the competencies
228 of health care providers serving infants and toddlers with
229 unique needs and abilities.

230 (g) Ensure programmatic and fiscal accountability through
231 establishment of a high-capacity data system, active monitoring
232 of performance indicators, and ongoing quality improvement.

233 Section 7. Section 391.302, Florida Statutes, is amended to
234 read:

235 391.302 Definitions.—As used in ss. 391.301-391.308 ~~ss.~~
236 ~~391.301-391.307~~, the term:

237 (1) "Developmental delay" means a condition, identified and
238 measured through appropriate instruments and procedures, which
239 may delay physical, cognitive, communication, social or
240 emotional, or adaptive development.

241 (2) "Developmental disability" means a condition,
242 identified and measured through appropriate instruments and



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243 procedures, which may impair physical, cognitive, communication,
244 social or emotional, or adaptive development.

245 (3) "Developmental intervention" or "early intervention"
246 means individual and group individualized therapies and services
247 needed to enhance both the infant's or toddler's growth and
248 development and family functioning. The term includes
249 habilitative services and assistive technology devices,
250 rehabilitative services and assistive technology devices, and
251 parent support and training.

252 (4) "Habilitative services and devices" means health care
253 services and assistive technology devices that help a child
254 maintain, learn, or improve skills and functioning for daily
255 living.

256 (5)-(2) "Infant or toddler" or "child" means a child from
257 birth until the child's third birthday.

258 (6) "Local program office" means an office that administers
259 the Early Steps Program within a municipality, county, or
260 region.

261 (7) "Rehabilitative services and devices" means restorative
262 and remedial services that maintain or enhance the current level
263 of functioning of a child if there is a possibility of
264 improvement or reversal of impairment.

265 ~~(3) "In-hospital intervention services" means the provision~~
266 ~~of assessments; the provision of individualized services;~~
267 ~~monitoring and modifying the delivery of medical interventions;~~
268 ~~and enhancing the environment for the high-risk, developmentally~~
269 ~~disabled, or medically involved infant or toddler in order to~~
270 ~~achieve optimum growth and development.~~

271 ~~(4) "Parent support and training" means a range of services~~



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272 ~~to families of high risk, developmentally disabled, or medically~~
273 ~~involved infants or toddlers, including family counseling,~~
274 ~~financial planning; agency referral; development of parent to~~
275 ~~parent support groups; education concerning growth, development,~~
276 ~~and developmental intervention and objective measurable skills,~~
277 ~~including abuse avoidance skills; training of parents to~~
278 ~~advocate for their child; and bereavement counseling.~~

279 Section 8. Sections 391.303, 391.304, 391.305, 391.306, and
280 391.307, Florida Statutes, are repealed.

281 Section 9. Section 391.308, Florida Statutes, is amended to
282 read:

283 391.308 Early Steps Infants and Toddlers Early Intervention
284 Program.—The department shall Department of Health may implement
285 and administer part C of the federal Individuals with
286 Disabilities Education Act (IDEA), which shall be known as the
287 “Early Steps “Florida Infants and Toddlers Early Intervention
288 Program.”

289 (1) PERFORMANCE STANDARDS.—The department shall ensure that
290 the Early Steps Program complies with the following performance
291 standards:

292 (a) The program must provide services from referral through
293 transition in a family-centered manner that recognizes and
294 responds to unique circumstances and needs of infants and
295 toddlers and their families as measured by a variety of
296 qualitative data, including satisfaction surveys, interviews,
297 focus groups, and input from stakeholders.

298 (b) The program must provide individualized family support
299 plans that are understandable and usable by families, health
300 care providers, and payers and that identify the current level



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301 of functioning of the infant or toddler, family supports and
302 resources, expected outcomes, and specific early intervention
303 services needed to achieve the expected outcomes, as measured by
304 periodic system independent evaluation.

305 (c) The program must help each family to use available
306 resources in a way that maximizes the child's access to services
307 necessary to achieve the outcomes of the individualized family
308 support plan, as measured by family feedback and by independent
309 assessments of services used by each child.

310 (d) The program must offer families access to quality
311 services that effectively enable infants and toddlers with
312 developmental disabilities and developmental delays to achieve
313 optimal functional levels as measured by an independent
314 evaluation of outcome indicators in social or emotional skills,
315 communication, and adaptive behaviors.

316 (2) DUTIES OF THE DEPARTMENT.—The department shall:

317 (a) Jointly with the Department of Education, shall
318 Annually prepare a grant application to the United States
319 Department of Education for funding early intervention services
320 for infants and toddlers with disabilities, from birth through
321 36 months of age, and their families pursuant to part C of the
322 federal Individuals with Disabilities Education Act.

323 (b) ~~(2)~~ The department, Jointly with the Department of
324 Education, provide shall include a reading initiative as an
325 early intervention service for infants and toddlers.

326 (c) Annually develop a state plan for the Early Steps
327 Program.

328 1. The plan must assess the need for early intervention
329 services, evaluate the extent of the statewide need that is met



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330 by the program, identify barriers to fully meeting the need, and
331 recommend specific action steps to improve program performance.

332 2. The plan must be developed through an inclusive process
333 that involves families, local program offices, health care
334 providers, and other stakeholders.

335 (d) Ensure local program offices educate hospitals that
336 provide Level II and Level III neonatal intensive care services
337 about the Early Steps Program and the referral process for the
338 provision of developmental evaluation and intervention services.

339 (e) Establish standards and qualifications for
340 developmental evaluation and early intervention service
341 providers, including standards for determining the adequacy of
342 provider networks in each local program office service area.

343 (f) Establish statewide uniform protocols and procedures to
344 determine eligibility for developmental evaluation and early
345 intervention services.

346 (g) Establish a consistent, statewide format and procedure
347 for preparing and completing an individualized family support
348 plan.

349 (h) Promote interagency cooperation and coordination, with
350 the Medicaid program, the Department of Education program
351 pursuant to part B of the federal Individuals with Disabilities
352 Education Act, and programs providing child screening such as
353 the Florida Diagnostic and Learning Resources System, the Office
354 of Early Learning, Healthy Start, and the Help Me Grow program.

355 1. Coordination with the Medicaid program shall be
356 developed and maintained through written agreements with the
357 Agency for Health Care Administration and Medicaid managed care
358 organizations as well as through active and ongoing



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359 communication with these organizations. The department shall
360 assist local program offices to negotiate agreements with
361 Medicaid managed care organizations in the service areas of the
362 local program offices. Such agreements may be formal or
363 informal.

364 2. Coordination with education programs pursuant to part B
365 of the federal Individuals with Disabilities Education Act shall
366 be developed and maintained through written agreements with the
367 Department of Education. The department shall assist local
368 program offices to negotiate agreements with school districts in
369 the service areas of the local program offices.

370 (i) Develop and disseminate the knowledge and methods
371 necessary to effectively coordinate benefits among various payer
372 types.

373 (j) Provide a mediation process and if necessary, an
374 appeals process for applicants found ineligible for
375 developmental evaluation or early intervention services or
376 denied financial support for such services.

377 (k) Competitively procure local program offices to provide
378 services throughout the state in accordance with chapter 287.
379 The department shall specify the requirements and qualifications
380 for local program offices in the procurement document.

381 (l) Establish performance standards and other metrics for
382 evaluation of local program offices, including standards for
383 measuring timeliness of services, outcomes of early intervention
384 services, and administrative efficiency. Performance standards
385 and metrics shall be developed in consultation with local
386 program offices.

387 (m) Provide technical assistance to the local program



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388 offices.

389 (3) ELIGIBILITY.—The department shall apply the following
390 eligibility criteria if specific funding is provided, and the
391 associated applicable eligibility criteria are identified, in
392 the General Appropriations Act:

393 (a) Infants and toddlers are eligible for an evaluation to
394 determine the presence of a developmental disability or the risk
395 of a developmental delay based on a physical or medical
396 condition.

397 (b) Infants and toddlers determined to have a developmental
398 delay based on informed clinical opinion and an evaluation using
399 a standard evaluation instrument which results in a score that
400 is 1.5 standard deviations from the mean in two or more of the
401 following domains: physical, cognitive, communication, social or
402 emotional, and adaptive.

403 (c) Infants and toddlers determined to have a developmental
404 delay based on informed clinical opinion and an evaluation using
405 a standard evaluation instrument which results in a score that
406 is 2.0 standard deviations from the mean in one of the following
407 domains: physical, cognitive, communication, social or
408 emotional, and adaptive.

409 (d) Infants and toddlers determined to have a developmental
410 delay based on informed clinical opinion and an evaluation using
411 a standard evaluation instrument which results in a score that
412 is 1.5 standard deviations from the mean in one or more of the
413 following domains: physical, cognitive, communication, social or
414 emotional, and adaptive.

415 (e) Infants and toddlers determined to have a developmental
416 delay based on informed clinical opinion.



417 (f) Infants and toddlers at risk of developmental delay
418 based on an established condition known to result in
419 developmental delay, or a physical or mental condition known to
420 create a risk of developmental delay.

421 (4) DUTIES OF THE LOCAL PROGRAM OFFICES.—A local program
422 office shall:

423 (a) Evaluate a child to determine eligibility within 45
424 calendar days after the child is referred to the program.

425 (b) Notify the parent or legal guardian of his or her
426 child's eligibility status initially and at least annually
427 thereafter. If a child is determined not to be eligible, the
428 local program office must provide the parent or legal guardian
429 with written information on the right to an appeal and the
430 process for making such an appeal.

431 (c) Secure and maintain interagency agreements or contracts
432 with local school districts in a local service area.

433 (d) Provide services directly or procure services from
434 health care providers that meet or exceed the minimum
435 qualifications established for service providers. The local
436 program office must become a Medicaid provider if it provides
437 services directly.

438 (e) Provide directly or procure services that are, to the
439 extent possible, delivered in a child's natural environment,
440 such as in the child's home or community setting. The inability
441 to provide services in the natural environment is not a
442 sufficient reason to deny services.

443 (f) Develop an individualized family support plan for each
444 child served. The plan must:

445 1. Be completed within 45 calendar days after the child is



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446 referred to the program;
447 2. Be developed in conjunction with the child's parent or
448 legal guardian who provides written consent for the services
449 included in the plan;
450 3. Be reviewed at least every 6 months with the parent or
451 legal guardian and updated if needed; and
452 4. Include steps to transition to school or other future
453 services by the child's third birthday.
454 (g) Assess the progress of the child and his or her family
455 in meeting the goals of the individualized family support plan.
456 (h) For each service required by the individualized family
457 support plan, refer the child to an appropriate service provider
458 or work with Medicaid managed care organizations or private
459 insurers to secure the needed services.
460 (i) Provide service coordination, including contacting the
461 appropriate service provider to determine whether the provider
462 can timely deliver the service, providing the parent or legal
463 guardian with the name and contact information of the service
464 provider and the date and location of the service of any
465 appointment made on behalf of the child, and contacting the
466 parent or legal guardian after the service is provided to ensure
467 that the service is timely delivered and to determine whether
468 the family requests additional services.
469 (j) Negotiate and maintain agreements with Medicaid
470 providers and Medicaid managed care organizations in its area.
471 1. With the parent's or legal guardian's permission, the
472 services in the child's approved individualized family support
473 plan shall be communicated to the Medicaid managed care
474 organization. Services that cannot be funded by Medicaid must be



475 specifically identified and explained to the family.
476 2. The agreement between the local program office and
477 Medicaid managed care organizations must establish methods of
478 communication and procedures for the timely approval of services
479 covered by Medicaid.
480 (k) Develop agreements and arrangements with private
481 insurers in order to coordinate benefits and services for any
482 mutual enrollee.
483 1. The child's approved individualized family support plan
484 may be communicated to the child's insurer with the parent's or
485 legal guardian's permission.
486 2. The local program office and private insurers shall
487 establish methods of communication and procedures for the timely
488 approval of services covered by the child's insurer, if
489 appropriate and approved by the child's parent or legal
490 guardian.
491 (1) Provide to the department data necessary for an
492 evaluation of the local program office performance.
493 (5) ACCOUNTABILITY REPORTING.—By December 1 of each year,
494 the department shall prepare and submit a report that assesses
495 the performance of the Early Steps Program to the Governor, the
496 President of the Senate, the Speaker of the House of
497 Representatives, and the Florida Interagency Coordinating
498 Council for Infants and Toddlers. The department must address
499 the performance standards in subsection (1) and report actual
500 performance compared to the standards for the prior fiscal year.
501 The data used to compile the report must be submitted by each
502 local program office in the state. The department shall report
503 on all of the following measures:



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504 (a) Number and percentage of infants and toddlers served
505 with an individualized family support plan.

506 (b) Number and percentage of infants and toddlers
507 demonstrating improved social or emotional skills after the
508 program.

509 (c) Number and percentage of infants and toddlers
510 demonstrating improved use of knowledge and cognitive skills
511 after the program.

512 (d) Number and percentage of families reporting positive
513 outcomes in their infant's and toddler's development as a result
514 of early intervention services.

515 (e) Progress toward meeting the goals of individualized
516 family support plans.

517 (f) Any additional measures established by the department.

518 (6) STATE INTERAGENCY COORDINATING COUNCIL.—The Florida
519 Interagency Coordinating Council for Infants and Toddlers shall
520 serve as the state interagency coordinating council required by
521 34 C.F.R. s. 303.600. The council shall be housed for
522 administrative purposes in the department, and the department
523 shall provide administrative support to the council.

524 (7) TRANSITION TO EDUCATION.—

525 (a) At least 90 days before a child reaches 3 years of age,
526 the local program office shall initiate transition planning to
527 ensure the child's successful transition from the Early Steps
528 Program to a school district program for children with
529 disabilities or to another program as part of an individual
530 family support plan.

531 (b) At least 90 days before a child reaches 3 years of age,
532 the local program office shall:



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533 1. Notify the local school district in which the child
534 resides and the Department of Education that the child may be
535 eligible for special education or related services as determined
536 by the local school district pursuant to ss. 1003.21 and
537 1003.57, unless the child's parent or legal guardian has opted
538 out of such notification; and

539 2. Upon approval by the child's parent or legal guardian,
540 convene a transition conference that includes participation of a
541 local school district representative and the parent or legal
542 guardian to discuss options for and availability of services.

543 (c) The local school district shall evaluate and determine
544 a child's eligibility to receive special education or related
545 services pursuant to part B of the federal Individuals with
546 Disabilities Education Act and ss. 1003.21 and 1003.57.

547 (d) The local program office, in conjunction with the local
548 school district, shall modify a child's individual family
549 support plan or, if applicable, the local school district shall
550 develop an individual education plan for the child pursuant to
551 ss. 1003.57, 1003.571, and 1003.5715, which identifies special
552 education or related services that the child will receive and
553 the providers or agencies that will provide such services.

554 (e) If a child is determined to be ineligible for school
555 district program services, the local program office and the
556 local school district shall provide the child's parent or legal
557 guardian with written information on other available services or
558 community resources.

559 (f) The local program office shall negotiate and maintain
560 an interagency agreement with each local school district in its
561 service area pursuant to the Individuals with Disabilities



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562 Education Act, 20 U.S.C. s. 1435(a)(10)(F). Each interagency
563 agreement must be reviewed at least annually and updated upon
564 review, if needed.

565 Section 10. Subsection (15) of section 402.302, Florida
566 Statutes, is amended to read:

567 402.302 Definitions.—As used in this chapter, the term:

568 (15) "Screening" means the act of assessing the background
569 of child care personnel, in accordance with state and federal
570 law, and volunteers and includes, but is not limited to:7

571 (a) Employment history checks, including documented
572 attempts to contact each employer that employed the applicant
573 within the preceding 5 years and documentation of the findings.

574 (b) A search of the criminal history records, sexual
575 predator and sexual offender registry, and child abuse and
576 neglect registry of any state in which the applicant resided
577 during the preceding 5 years.

578
579 An applicant must submit a full set of fingerprints to the
580 department or to a vendor, entity, or agency authorized by s.
581 943.053(13). The department, vendor, entity, or agency shall
582 forward the fingerprints to ~~local criminal records checks~~
583 ~~through local law enforcement agencies, fingerprinting for all~~
584 ~~purposes and checks in this subsection, statewide criminal~~
585 ~~records checks through~~ the Department of Law Enforcement for
586 state processing, and the Department of Law Enforcement shall
587 forward the fingerprints to ~~federal criminal records checks~~
588 ~~through~~ the Federal Bureau of Investigation for national
589 processing. Fingerprint submission must comply with s. 435.12.

590 Section 11. Section 402.3057, Florida Statutes, is



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591 repealed.

592 Section 12. Subsection (3) of section 402.306, Florida
593 Statutes, is amended to read:

594 402.306 Designation of licensing agency; dissemination by
595 the department and local licensing agency of information on
596 child care.—

597 (3) The department and local licensing agencies, or the
598 designees thereof, shall be responsible for coordination and
599 dissemination of information on child care to the community and
600 shall make available through electronic means ~~upon request~~ all
601 licensing standards and procedures, health and safety standards
602 for school readiness providers, monitoring and inspection
603 reports, and in addition to the names and addresses of licensed
604 child care facilities, school readiness program providers, and,
605 where applicable pursuant to s. 402.313, licensed or registered
606 family day care homes. This information shall also include the
607 number of deaths, serious injuries, and instances of
608 substantiated child abuse that have occurred in child care
609 settings each year; research and best practices in child
610 development; and resources regarding social-emotional
611 development, parent and family engagement, healthy eating, and
612 physical activity.

613 Section 13. Section 402.311, Florida Statutes, is amended
614 to read:

615 402.311 Inspection.—

616 (1) A licensed child care facility shall accord to the
617 department or the local licensing agency, whichever is
618 applicable, the privilege of inspection, including access to
619 facilities and personnel and to those records required in s.



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620 402.305, at reasonable times during regular business hours, to
621 ensure compliance with ~~the provisions of~~ ss. 402.301-402.319.
622 The right of entry and inspection shall also extend to any
623 premises which the department or local licensing agency has
624 reason to believe are being operated or maintained as a child
625 care facility without a license, but no such entry or inspection
626 of any premises shall be made without the permission of the
627 person in charge thereof unless a warrant is first obtained from
628 the circuit court authorizing such entry or inspection ~~same~~. Any
629 application for a license or renewal made pursuant to this act
630 or the advertisement to the public for the provision of child
631 care as defined in s. 402.302 shall constitute permission for
632 any entry or inspection of the premises for which the license is
633 sought in order to facilitate verification of the information
634 submitted on or in connection with the application. In the event
635 a licensed facility refuses permission for entry or inspection
636 to the department or local licensing agency, a warrant shall be
637 obtained from the circuit court authorizing entry or inspection
638 before ~~same prior to~~ such entry or inspection. The department or
639 local licensing agency may institute disciplinary proceedings
640 pursuant to s. 402.310~~7~~ for such refusal.

641 (2) A school readiness program provider shall accord to the
642 department or the local licensing agency, whichever is
643 applicable, the privilege of inspection, including access to
644 facilities, personnel, and records, to verify compliance with
645 the requirements of s. 1002.88. Entry, inspection, and issuance
646 of an inspection report by the department or the local licensing
647 agency to verify compliance with the requirements of s. 1002.88
648 is an exercise of a discretionary power to enforce compliance



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649 with the laws duly enacted by a governmental body.

650 (3) The department's issuance, transmittal, or publication
651 of an inspection report resulting from an inspection under this
652 section does not constitute agency action subject to chapter
653 120.

654 Section 14. Subsection (3) is added to section 402.319,
655 Florida Statutes, to read:

656 402.319 Penalties.—

657 (3) Each child care facility, family day care home, and
658 large family child care home shall annually submit an affidavit
659 of compliance with s. 39.201.

660 Section 15. Paragraph (c) is added to subsection (4) of
661 section 435.07, Florida Statutes, to read:

662 435.07 Exemptions from disqualification.—Unless otherwise
663 provided by law, the provisions of this section apply to
664 exemptions from disqualification for disqualifying offenses
665 revealed pursuant to background screenings required under this
666 chapter, regardless of whether those disqualifying offenses are
667 listed in this chapter or other laws.

668 (4)

669 (c) Disqualification from employment under this chapter may
670 not be removed from, and an exemption may not be granted to, any
671 current or prospective child care personnel of a provider
672 receiving school readiness funding under part VI of chapter
673 1002, and such a person is disqualified from employment as child
674 care personnel with such providers, regardless of any prior
675 exemptions from disqualification, if the person has been
676 registered as a sex offender as described in 42 U.S.C. s.
677 9858f(c) (1) (C) or has been arrested for and is awaiting final



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678 disposition of, has been convicted or found guilty of, or
679 entered a plea of guilty or nolo contendere to, regardless of
680 adjudication, or has been adjudicated delinquent and the record
681 has not been sealed or expunged for, any offense prohibited
682 under any of the following provisions of state law or a similar
683 law of another jurisdiction:
684 1. A felony offense prohibited under any of the following
685 statutes:
686 a. Chapter 741, relating to domestic violence.
687 b. Section 782.04, relating to murder.
688 c. Section 782.07, relating to manslaughter, aggravated
689 manslaughter of an elderly person or disabled adult, aggravated
690 manslaughter of a child, or aggravated manslaughter of an
691 officer, a firefighter, an emergency medical technician, or a
692 paramedic.
693 d. Section 784.021, relating to aggravated assault.
694 e. Section 784.045, relating to aggravated battery.
695 f. Section 787.01, relating to kidnapping.
696 g. Section 787.025, relating to luring or enticing a child.
697 h. Section 787.04(2), relating to leading, taking,
698 enticing, or removing a minor beyond the state limits, or
699 concealing the location of a minor, with criminal intent pending
700 custody proceedings.
701 i. Section 787.04(3), relating to leading, taking,
702 enticing, or removing a minor beyond the state limits, or
703 concealing the location of a minor, with criminal intent pending
704 dependency proceedings or proceedings concerning alleged abuse
705 or neglect of a minor.
706 j. Section 794.011, relating to sexual battery.



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707 k. Former s. 794.041, relating to sexual activity with or
708 solicitation of a child by a person in familial or custodial
709 authority.

710 l. Section 794.05, relating to unlawful sexual activity
711 with certain minors.

712 m. Section 794.08, relating to female genital mutilation.

713 n. Section 806.01, relating to arson.

714 o. Section 826.04, relating to incest.

715 p. Section 827.03, relating to child abuse, aggravated
716 child abuse, or neglect of a child.

717 q. Section 827.04, relating to contributing to the
718 delinquency or dependency of a child.

719 r. Section 827.071, relating to sexual performance by a
720 child.

721 s. Chapter 847, relating to child pornography.

722 t. Section 985.701, relating to sexual misconduct in
723 juvenile justice programs.

724 2. A misdemeanor offense prohibited under any of the
725 following statutes:

726 a. Section 784.03, relating to battery, if the victim of
727 the offense was a minor.

728 b. Section 787.025, relating to luring or enticing a child.

729 c. Chapter 847, relating to child pornography.

730 3. A criminal act committed in another state or under
731 federal law which, if committed in this state, constitutes an
732 offense prohibited under any statute listed in subparagraph 1.
733 or subparagraph 2.

734 Section 16. Paragraph (i) of subsection (2) of section
735 1002.82, Florida Statutes, is amended, and paragraphs (s)



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736 through (x) are added to that subsection, to read:

737 1002.82 Office of Early Learning; powers and duties.—

738 (2) The office shall:

739 (i) Enter into a memorandum of understanding with local
740 licensing agencies and Develop, in coordination with the Child
741 Care Services Program Office of the Department of Children and
742 Families for inspections of school readiness program providers
743 to monitor and verify compliance with s. 1002.88 and the health
744 and safety checklist adopted by the office. The provider
745 contract of a school readiness program provider that refuses
746 permission for entry or inspection shall be terminated. The, and
747 adopt a health and safety checklist may to be completed by
748 license-exempt providers that does not exceed the requirements
749 of s. 402.305 and the Child Care and Development Fund pursuant
750 to 45 C.F.R. part 98.

751 (s) Develop and implement strategies to increase the supply
752 and improve the quality of child care services for infants and
753 toddlers, children with disabilities, children who receive care
754 during nontraditional hours, children in underserved areas, and
755 children in areas that have significant concentrations of
756 poverty and unemployment.

757 (t) Establish preservice and inservice training
758 requirements that address, at a minimum, school readiness child
759 development standards, health and safety requirements, and
760 social-emotional behavior intervention models, which may include
761 positive behavior intervention and support models.

762 (u) Establish standards for emergency preparedness plans
763 for school readiness program providers.

764 (v) Establish group sizes.



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765 (w) Establish staff-to-children ratios that do not exceed
766 the requirements of s. 402.302(8) or (11) or s. 402.305(4), as
767 applicable, for school readiness program providers.

768 (x) Establish eligibility criteria, including limitations
769 based on income and family assets, in accordance with s. 1002.87
770 and federal law.

771 Section 17. Subsections (7) and (8) of section 1002.84,
772 Florida Statutes, are amended to read:

773 1002.84 Early learning coalitions; school readiness powers
774 and duties.—Each early learning coalition shall:

775 (7) Determine child eligibility pursuant to s. 1002.87 and
776 provider eligibility pursuant to s. 1002.88. ~~At a minimum, Child~~
777 ~~eligibility must be redetermined annually. Redetermination must~~
778 ~~also be conducted twice per year for an additional 50 percent of~~
779 ~~a coalition's enrollment through a statistically valid random~~
780 ~~sampling.~~ A coalition must document the reason ~~why~~ a child is no
781 longer eligible for the school readiness program according to
782 the standard codes prescribed by the office.

783 (8) Establish a parent sliding fee scale that provides for
784 ~~requires~~ a parent copayment that is not a barrier to families
785 receiving ~~to participate in the~~ school readiness program
786 services. Providers are required to collect the parent's
787 copayment. A coalition may, on a case-by-case basis, waive the
788 copayment for an at-risk child or temporarily waive the
789 copayment for a child whose family's income is at or below the
790 federal poverty level and whose family experiences a natural
791 disaster or an event that limits the parent's ability to pay,
792 such as incarceration, placement in residential treatment, or
793 becoming homeless, or an emergency situation such as a household



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794 fire or burglary, or while the parent is participating in
795 parenting classes. A parent may not transfer school readiness
796 program services to another school readiness program provider
797 until the parent has submitted documentation from the current
798 school readiness program provider to the early learning
799 coalition stating that the parent has satisfactorily fulfilled
800 the copayment obligation.

801 Section 18. Subsections (1), (4), (5), and (6) of section
802 1002.87, Florida Statutes, are amended to read:

803 1002.87 School readiness program; eligibility and
804 enrollment.—

805 ~~(1) Effective August 1, 2013, or upon reevaluation of~~
806 ~~eligibility for children currently served, whichever is later,~~
807 Each early learning coalition shall give priority for
808 participation in the school readiness program as follows:

809 (a) Priority shall be given first to a child younger than
810 13 years of age from a family that includes a parent who is
811 receiving temporary cash assistance under chapter 414 and
812 subject to the federal work requirements.

813 (b) Priority shall be given next to an at-risk child
814 younger than 9 years of age.

815 (c) Priority shall be given next to a child from birth to
816 the beginning of the school year for which the child is eligible
817 for admission to kindergarten in a public school under s.

818 1003.21(1)(a)2. who is from a working family that is
819 economically disadvantaged, and may include such child's
820 eligible siblings, beginning with the school year in which the
821 sibling is eligible for admission to kindergarten in a public
822 school under s. 1003.21(1)(a)2. until the beginning of the



823 school year in which the sibling is eligible to begin 6th grade,
824 provided that the first priority for funding an eligible sibling
825 is local revenues available to the coalition for funding direct
826 services. ~~However, a child eligible under this paragraph ceases~~
827 ~~to be eligible if his or her family income exceeds 200 percent~~
828 ~~of the federal poverty level.~~

829 (d) Priority shall be given next to a child of a parent who
830 transitions from the work program into employment as described
831 in s. 445.032 from birth to the beginning of the school year for
832 which the child is eligible for admission to kindergarten in a
833 public school under s. 1003.21(1)(a)2.

834 (e) Priority shall be given next to an at-risk child who is
835 at least 9 years of age but younger than 13 years of age. An at-
836 risk child whose sibling is enrolled in the school readiness
837 program within an eligibility priority category listed in
838 paragraphs (a)-(c) shall be given priority over other children
839 who are eligible under this paragraph.

840 (f) Priority shall be given next to a child who is younger
841 than 13 years of age from a working family that is economically
842 disadvantaged. A child who is eligible under this paragraph
843 whose sibling is enrolled in the school readiness program under
844 paragraph (c) shall be given priority over other children who
845 are eligible under this paragraph. ~~However, a child eligible~~
846 ~~under this paragraph ceases to be eligible if his or her family~~
847 ~~income exceeds 200 percent of the federal poverty level.~~

848 (g) Priority shall be given next to a child of a parent who
849 transitions from the work program into employment as described
850 in s. 445.032 who is younger than 13 years of age.

851 (h) Priority shall be given next to a child who has special



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852 needs, has been determined eligible as a student with a
853 disability, has a current individual education plan with a
854 Florida school district, and is not younger than 3 years of age.
855 A special needs child eligible under this paragraph remains
856 eligible until the child is eligible for admission to
857 kindergarten in a public school under s. 1003.21(1)(a)2.

858 (i) Notwithstanding paragraphs (a)-(d), priority shall be
859 given last to a child who otherwise meets one of the eligibility
860 criteria in paragraphs (a)-(d) but who is also enrolled
861 concurrently in the federal Head Start Program and the Voluntary
862 Prekindergarten Education Program.

863 (4) The parent of a child enrolled in the school readiness
864 program must notify the coalition or its designee within 10 days
865 after any change in employment status, income, or family size or
866 failure to maintain attendance at a job training or educational
867 program in accordance with program requirements. ~~Upon~~
868 ~~notification by the parent, the child's eligibility must be~~
869 ~~reevaluated.~~

870 (5) A child whose eligibility priority category requires
871 the child to be from a working family ceases to be eligible for
872 the school readiness program if a parent with whom the child
873 resides does not reestablish employment or resume attendance at
874 a job training or educational program within 90 ~~60~~ days after
875 becoming unemployed or ceasing to attend a job training or
876 educational program.

877 (6) Eligibility for each child must be reevaluated
878 annually. Upon reevaluation, a child may not continue to receive
879 school readiness program services if he or she has ceased to be
880 eligible under this section. A child who is ineligible due to a



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881 parent's job loss or cessation of education or job training
882 shall continue to receive school readiness program services for
883 at least 3 months to enable the parent to obtain employment.

884 Section 19. Paragraphs (c), (d), and (e) of subsection (1)
885 of section 1002.88, Florida Statutes, are amended to read:

886 1002.88 School readiness program provider standards;
887 eligibility to deliver the school readiness program.-

888 (1) To be eligible to deliver the school readiness program,
889 a school readiness program provider must:

890 (c) Provide basic health and safety of its premises and
891 facilities and compliance with requirements for age-appropriate
892 immunizations of children enrolled in the school readiness
893 program.

894 1. For a provider that is licensed ~~child care facility, a~~
895 ~~large family child care home, or a licensed family day care~~
896 ~~home, compliance with s. 402.305, s. 402.3131, or s. 402.313 and~~
897 ~~this subsection, as verified pursuant to s. 402.311, satisfies~~
898 this requirement.

899 2. For a provider that is a registered family day care home
900 or is not subject to licensure or registration by the Department
901 of Children and Families, compliance with this subsection, as
902 verified pursuant to s. 402.311, satisfies this requirement.

903 Upon verification pursuant to s. 402.311, the provider ~~For a~~
904 ~~public or nonpublic school, compliance with s. 402.3025 or s.~~
905 ~~1003.22 satisfies this requirement. A faith-based child care~~
906 ~~provider, an informal child care provider, or a nonpublic~~
907 ~~school, exempt from licensure under s. 402.316 or s. 402.3025,~~
908 shall annually post ~~complete~~ the health and safety checklist
909 adopted by the office, ~~post the checklist~~ prominently on its



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910 premises in plain sight for visitors and parents, and shall
911 annually submit the checklist ~~it annually~~ to its local early
912 learning coalition.

913 (d) Provide an appropriate group size and staff-to-children
914 ratio, ~~pursuant to s. 402.305(4) or s. 402.302(8) or (11), as~~
915 ~~applicable, and as verified pursuant to s. 402.311.~~

916 (e) Employ child care personnel, as defined in s.
917 402.302(3), who have satisfied the screening requirements of
918 chapter 402 and fulfilled the training requirements of the
919 office ~~Provide a healthy and safe environment pursuant to s.~~
920 ~~402.305(5), (6), and (7), as applicable, and as verified~~
921 ~~pursuant to s. 402.311.~~

922 Section 20. Subsections (6) and (7) of section 1002.89,
923 Florida Statutes, are amended to read:

924 1002.89 School readiness program; funding.—

925 (6) Costs shall be kept to the minimum necessary for the
926 efficient and effective administration of the school readiness
927 program with the highest priority of expenditure being direct
928 services for eligible children. However, no more than 5 percent
929 of the funds described in subsection (5) may be used for
930 administrative costs and no more than 22 percent of the funds
931 described in subsection (5) may be used in any fiscal year for
932 any combination of administrative costs, quality activities, and
933 nondirect services as follows:

934 (a) Administrative costs as described in 45 C.F.R. s.
935 98.52, which shall include monitoring providers using the
936 standard methodology adopted under s. 1002.82 to improve
937 compliance with state and federal regulations and law pursuant
938 to the requirements of the statewide provider contract adopted



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939 under s. 1002.82(2)(m).

940 (b) Activities to improve the quality of child care as
941 described in 45 C.F.R. s. 98.51, which shall be limited to the
942 following:

943 1. Developing, establishing, expanding, operating, and
944 coordinating resource and referral programs specifically related
945 to the provision of comprehensive consumer education to parents
946 and the public to promote informed child care choices specified
947 in 45 C.F.R. s. 98.33 ~~regarding participation in the school~~
948 ~~readiness program and parental choice.~~

949 2. Awarding grants and providing financial support to
950 school readiness program providers and their staff to assist
951 them in meeting applicable state requirements for child care
952 performance standards, implementing developmentally appropriate
953 curricula and related classroom resources that support
954 curricula, providing literacy supports, and providing continued
955 professional development and training. Any grants awarded
956 pursuant to this subparagraph shall comply with ~~the requirements~~
957 ~~of~~ ss. 215.971 and 287.058.

958 3. Providing training, ~~and~~ technical assistance, and
959 financial support to ~~for~~ school readiness program providers,
960 staff, and parents on standards, child screenings, child
961 assessments, child development research and best practices,
962 developmentally appropriate curricula, character development,
963 teacher-child interactions, age-appropriate discipline
964 practices, health and safety, nutrition, first aid,
965 cardiopulmonary resuscitation, the recognition of communicable
966 diseases, and child abuse detection, ~~and~~ prevention, and
967 reporting.



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968 4. Providing, from among the funds provided for the
969 activities described in subparagraphs 1.-3., adequate funding
970 for infants and toddlers as necessary to meet federal
971 requirements related to expenditures for quality activities for
972 infant and toddler care.

973 5. Improving the monitoring of compliance with, and
974 enforcement of, applicable state and local requirements as
975 described in and limited by 45 C.F.R. s. 98.40.

976 6. Responding to Warm-Line requests by providers and
977 parents ~~related to school readiness program children~~, including
978 providing developmental and health screenings to school
979 readiness program children.

980 (c) Nondirect services as described in applicable Office of
981 Management and Budget instructions are those services not
982 defined as administrative, direct, or quality services that are
983 required to administer the school readiness program. Such
984 services include, but are not limited to:

985 1. Assisting families to complete the required application
986 and eligibility documentation.

987 2. Determining child and family eligibility.

988 3. Recruiting eligible child care providers.

989 4. Processing and tracking attendance records.

990 5. Developing and maintaining a statewide child care
991 information system.

992

993 As used in this paragraph, the term "nondirect services" does
994 not include payments to school readiness program providers for
995 direct services provided to children who are eligible under s.
996 1002.87, administrative costs as described in paragraph (a), or



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997 quality activities as described in paragraph (b).

998 (7) Funds appropriated for the school readiness program may
999 not be expended for the purchase or improvement of land; for the
1000 purchase, construction, or permanent improvement of any building
1001 or facility; or for the purchase of buses. However, funds may be
1002 expended for minor remodeling and upgrading of child care
1003 facilities which is necessary for the administration of the
1004 program and to ensure that providers meet state and local child
1005 care standards, including applicable health and safety
1006 requirements.

1007 Section 21. Paragraph (c) of subsection (2) of section
1008 402.3025, Florida Statutes, is amended to read:

1009 402.3025 Public and nonpublic schools.—For the purposes of
1010 ss. 402.301-402.319, the following shall apply:

1011 (2) NONPUBLIC SCHOOLS.—

1012 (c) Programs for children who are at least 3 years of age,
1013 but under 5 years of age, shall not be deemed to be child care
1014 and shall not be subject to the provisions of ss. 402.301-
1015 402.319 relating to child care facilities, provided the programs
1016 in the schools are operated and staffed directly by the schools,
1017 provided a majority of the children enrolled in the schools are
1018 5 years of age or older, and provided there is compliance with
1019 the screening requirements for personnel pursuant to s. 402.305
1020 ~~or s. 402.3057~~. A nonpublic school may designate certain
1021 programs as child care, in which case these programs shall be
1022 subject to the provisions of ss. 402.301-402.319.

1023 Section 22. Subsections (1) and (2) of section 413.092,
1024 Florida Statutes, are amended to read:

1025 413.092 Blind Babies Program.—



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1026 (1) The Blind Babies Program is created within the Division
1027 of Blind Services of the Department of Education to provide
1028 community-based early-intervention education to children from
1029 birth through 5 years of age who are blind or visually impaired,
1030 and to their parents, families, and caregivers, through
1031 community-based provider organizations. The division shall
1032 enlist parents, ophthalmologists, pediatricians, schools, the
1033 Early Steps Program Infant and Toddlers Early Intervention
1034 Programs, and therapists to help identify and enroll blind and
1035 visually impaired children, as well as their parents, families,
1036 and caregivers, in these educational programs.

1037 (2) The program is not an entitlement but shall promote
1038 early development with a special emphasis on vision skills to
1039 minimize developmental delays. The education shall lay the
1040 groundwork for future learning by helping a child progress
1041 through normal developmental stages. It shall teach children to
1042 discover and make the best use of their skills for future
1043 success in school. It shall seek to ensure that visually
1044 impaired and blind children enter school as ready to learn as
1045 their sighted classmates. The program shall seek to link these
1046 children, and their parents, families, and caregivers, to other
1047 available services, training, education, and employment programs
1048 that could assist these families in the future. This linkage may
1049 include referrals to the school districts and the Early Steps
1050 Infants and Toddlers Early Intervention Program for assessments
1051 to identify any additional services needed which are not
1052 provided by the Blind Babies Program. The division shall develop
1053 a formula for eligibility based on financial means and may
1054 create a means-based matrix to set a copayment fee for families



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1055 having sufficient financial means.

1056 Section 23. Subsection (1) of section 1003.575, Florida
1057 Statutes, is amended to read:

1058 1003.575 Assistive technology devices; findings;
1059 interagency agreements.—Accessibility, utilization, and
1060 coordination of appropriate assistive technology devices and
1061 services are essential as a young person with disabilities moves
1062 from early intervention to preschool, from preschool to school,
1063 from one school to another, and from school to employment or
1064 independent living. If an individual education plan team makes a
1065 recommendation in accordance with State Board of Education rule
1066 for a student with a disability, as defined in s. 1003.01(3), to
1067 receive an assistive technology assessment, that assessment must
1068 be completed within 60 school days after the team's
1069 recommendation. To ensure that an assistive technology device
1070 issued to a young person as part of his or her individualized
1071 family support plan, individual support plan, or an individual
1072 education plan remains with the individual through such
1073 transitions, the following agencies shall enter into interagency
1074 agreements, as appropriate, to ensure the transaction of
1075 assistive technology devices:

1076 (1) The Early Steps ~~Florida Infants and Toddlers Early~~
1077 ~~Intervention~~ Program in the Division of Children's Medical
1078 Services of the Department of Health.

1079
1080 Interagency agreements entered into pursuant to this section
1081 shall provide a framework for ensuring that young persons with
1082 disabilities and their families, educators, and employers are
1083 informed about the utilization and coordination of assistive



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1084 technology devices and services that may assist in meeting
1085 transition needs, and shall establish a mechanism by which a
1086 young person or his or her parent may request that an assistive
1087 technology device remain with the young person as he or she
1088 moves through the continuum from home to school to postschool.

1089 Section 24. This act shall take effect July 1, 2016.

1090
1091 ===== T I T L E A M E N D M E N T =====

1092 And the title is amended as follows:

1093 Delete everything before the enacting clause
1094 and insert:

1095 A bill to be entitled
1096 An act relating to early childhood development;
1097 amending s. 39.201, F.S.; providing an exception from
1098 a prohibition against the use of information in the
1099 Department of Children and Families central abuse
1100 hotline for employment screening of certain child care
1101 personnel; amending s. 39.202, F.S.; expanding the
1102 list of entities that have access to child abuse
1103 records for purposes of approving providers of school
1104 readiness services; amending s. 383.141, F.S.;
1105 revising the requirements for the Department of Health
1106 to maintain a clearinghouse of information for parents
1107 and health care providers and to increase public
1108 awareness of developmental evaluation and early
1109 intervention programs; requiring the clearinghouse to
1110 use a specified term; revising the information to be
1111 included in the clearinghouse; amending s. 391.025,
1112 F.S.; renaming the "Infants and Toddlers Early



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1113 Intervention Program" as the "Early Steps Program";
1114 revising the components of the Children's Medical
1115 Services program; amending s. 391.026, F.S.; requiring
1116 the department to serve as the lead agency in
1117 administering the Early Steps Program; amending s.
1118 391.301, F.S.; establishing the Early Steps Program
1119 within the department; deleting provisions relating to
1120 legislative findings; authorizing the program to
1121 include certain screening and referral services for
1122 specified purposes; providing requirements and
1123 responsibilities for the program; amending s. 391.302,
1124 F.S.; defining terms; revising the definitions of
1125 certain terms; deleting terms; repealing ss. 391.303,
1126 391.304, 391.305, 391.306, and 391.307, F.S., relating
1127 to requirements for the Children's Medical Services
1128 program, program coordination, program standards,
1129 program funding and contracts, and program review,
1130 respectively; amending s. 391.308, F.S.; renaming the
1131 "Infants and Toddlers Early Intervention Program" as
1132 the "Early Steps Program"; requiring, rather than
1133 authorizing, the department to implement and
1134 administer the program; requiring the department to
1135 ensure that the program follows specified performance
1136 standards; providing requirements of the program to
1137 meet such performance standards; revising the duties
1138 of the department; requiring the department to apply
1139 specified eligibility criteria for the program based
1140 on an appropriation of funds; providing duties for
1141 local program offices; requiring the local program



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1142 office to negotiate and maintain agreements with
1143 specified providers and managed care organizations;
1144 requiring the development of an individualized family
1145 support plan for each child served in the program;
1146 requiring the local program office to coordinate with
1147 managed care organizations; requiring the department
1148 to submit an annual report, subject to certain
1149 requirements, to the Governor, the Legislature, and
1150 the Florida Interagency Coordinating Council for
1151 Infants and Toddlers by a specified date; designating
1152 the Florida Interagency Coordinating Council for
1153 Infants and Toddlers as the state interagency
1154 coordinating council required by federal rule subject
1155 to certain requirements; providing requirements for
1156 the local program office and local school district to
1157 prepare certain children for the transition to school
1158 under certain circumstances; amending s. 402.302,
1159 F.S.; revising the definition of the term "screening"
1160 for purposes of child care licensing requirements;
1161 repealing s. 402.3057, F.S., relating to persons not
1162 required to be refingerprinted or rescreened; amending
1163 s. 402.306, F.S.; requiring the Department of Children
1164 and Families and local licensing agencies to
1165 electronically post certain information relating to
1166 child care and school readiness providers; amending s.
1167 402.311, F.S.; requiring school readiness program
1168 providers to provide the department or local licensing
1169 agencies with access to facilities, personnel, and
1170 records for inspection purposes; amending s. 402.319,



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1171 F.S.; requiring certain child care providers to submit
1172 an affidavit of compliance with certain mandatory
1173 reporting requirements; amending s. 435.07, F.S.;
1174 providing criteria for disqualification from
1175 employment with a school readiness program provider;
1176 amending s. 1002.82, F.S.; revising the duties of the
1177 Office of Early Learning of the Department of
1178 Education; requiring the office to coordinate with the
1179 Department of Children and Families and local
1180 licensing agencies for inspections of school readiness
1181 program providers; amending s. 1002.84, F.S.; revising
1182 provisions relating to determination of child
1183 eligibility for school readiness programs; revising
1184 requirements for determining parent copayments for
1185 participation in the program; amending s. 1002.87,
1186 F.S.; revising school readiness program eligibility
1187 requirements; amending s. 1002.88, F.S.; revising
1188 requirements for school readiness program providers;
1189 amending s. 1002.89, F.S.; providing for additional
1190 uses of funds for school readiness programs; amending
1191 ss. 402.3025, 413.092, and 1003.575, F.S.; conforming
1192 provisions to changes made by the act; providing an
1193 effective date.

By the Committee on Education Pre-K - 12

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1 A bill to be entitled
 2 An act relating to the Child Care and Development
 3 Block Grant Program; amending s. 39.201, F.S.;
 4 providing an exception from a prohibition against the
 5 use of information in the Department of Children and
 6 Families central abuse hotline for employment
 7 screening of certain child care personnel; amending s.
 8 39.202, F.S.; expanding the list of entities that have
 9 access to child abuse records for purposes of
 10 approving providers of school readiness services;
 11 amending s. 402.302, F.S.; revising the definition of
 12 the term "screening" for purposes of child care
 13 licensing requirements; amending s. 402.3057, F.S.;
 14 clarifying individuals who are exempt from certain
 15 refingerprinting or rescreening requirements; amending
 16 s. 402.306, F.S.; requiring the Department of Children
 17 and Families and local licensing agencies to
 18 electronically post certain information relating to
 19 child care and school readiness providers; amending s.
 20 402.311, F.S.; requiring school readiness program
 21 providers to provide the Department of Children and
 22 Families or local licensing agencies with access to
 23 facilities, personnel, and records for inspection
 24 purposes; amending s. 402.319, F.S.; requiring certain
 25 child care providers to submit an affidavit of
 26 compliance with certain mandatory reporting
 27 requirements; amending s. 409.1757, F.S.; clarifying
 28 individuals who are exempt from certain
 29 refingerprinting or rescreening requirements; amending
 30 s. 435.07, F.S.; prohibiting removal or exemption from
 31 disqualification from employment for any school
 32 readiness provider personnel if registered as a sex

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33 offender or convicted of specified crimes; amending s.
 34 1002.82, F.S.; revising the duties of the Office of
 35 Early Learning of the Department of Education;
 36 requiring the office to coordinate with the Department
 37 of Children and Families and local licensing agencies
 38 for inspections of school readiness program providers;
 39 amending s. 1002.84, F.S.; revising provisions
 40 relating to determination of child eligibility for
 41 school readiness programs; revising requirements for
 42 determining parent copayments for the programs;
 43 amending s. 1002.87, F.S.; revising the prioritization
 44 of participation in school readiness programs;
 45 revising school readiness program eligibility
 46 requirements for parents; amending s. 1002.88, F.S.;
 47 revising requirements for school readiness program
 48 providers; amending s. 1002.89, F.S.; providing for
 49 additional uses of funds for school readiness
 50 programs; providing an effective date.

51
 52 Be It Enacted by the Legislature of the State of Florida:

53
 54 Section 1. Subsection (6) of section 39.201, Florida
 55 Statutes, is amended to read:

56 39.201 Mandatory reports of child abuse, abandonment, or
 57 neglect; mandatory reports of death; central abuse hotline.—

58 (6) Information in the central abuse hotline may not be
 59 used for employment screening, except as provided in s.
 60 39.202(2)(a) and (h) or s. 402.302(15). Information in the
 61 central abuse hotline and the department's automated abuse

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62 information system may be used by the department, its authorized
63 agents or contract providers, the Department of Health, or
64 county agencies as part of the licensure or registration process
65 pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

66 Section 2. Paragraph (a) of subsection (2) of section
67 39.202, Florida Statutes, is amended to read:

68 39.202 Confidentiality of reports and records in cases of
69 child abuse or neglect.—

70 (2) Except as provided in subsection (4), access to such
71 records, excluding the name of the reporter which shall be
72 released only as provided in subsection (5), shall be granted
73 only to the following persons, officials, and agencies:

74 (a) Employees, authorized agents, or contract providers of
75 the department, the Department of Health, the Agency for Persons
76 with Disabilities, the Office of Early Learning, or county
77 agencies responsible for carrying out:

- 78 1. Child or adult protective investigations;
- 79 2. Ongoing child or adult protective services;
- 80 3. Early intervention and prevention services;
- 81 4. Healthy Start services;
- 82 5. Licensure or approval of adoptive homes, foster homes,
83 child care facilities, facilities licensed under chapter 393, ~~or~~
84 family day care homes, ~~or informal child care providers who~~
85 receive school readiness funding under part VI of chapter 1002,
86 or other homes used to provide for the care and welfare of
87 children; or
- 88 6. Services for victims of domestic violence when provided
89 by certified domestic violence centers working at the
90 department's request as case consultants or with shared clients.

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91 Also, employees or agents of the Department of Juvenile Justice
92 responsible for the provision of services to children, pursuant
93 to chapters 984 and 985.

94 Section 3. Subsection (15) of section 402.302, Florida
95 Statutes, is amended to read:

96 402.302 Definitions.—As used in this chapter, the term:

97 (15) "Screening" means the act of assessing the background
98 of child care personnel, in accordance with state and federal
99 law, and volunteers and includes, but is not limited to:—

100 (a) Employment history checks, including documented
101 attempts to contact each employer that employed the applicant
102 within the preceding 5 years and documentation of the findings.

103 (b) A search of the criminal history records, sexual
104 predator and sexual offender registry, and child abuse and
105 neglect registry of any state in which the applicant resided
106 during the preceding 5 years.

107
108
109 An applicant must submit a full set of fingerprints to the
110 department or to a vendor, an entity, or an agency authorized by
111 s. 943.053(13). The department, vendor, entity, or agency shall
112 forward the fingerprints to local criminal records checks
113 through local law enforcement agencies, fingerprinting for all
114 purposes and checks in this subsection, statewide criminal
115 records checks through the Department of Law Enforcement for
116 state processing, and the Department of Law Enforcement shall
117 forward the fingerprints to, and federal criminal records checks
118 through the Federal Bureau of Investigation for national
119 processing.

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120 Section 4. Section 402.3057, Florida Statutes, is amended
 121 to read:

122 402.3057 ~~Individuals~~ Persons not required to be
 123 refingerprinted or rescreened. ~~Individuals~~ Any provision of law
 124 ~~to the contrary notwithstanding, human resource personnel~~ who
 125 have been fingerprinted or screened pursuant to chapters 393,
 126 394, 397, 402, and 409, ~~and teachers and noninstructional~~
 127 ~~personnel who have been fingerprinted pursuant to chapter 1012,~~
 128 who have not been unemployed for more than 90 days thereafter,
 129 and who under the penalty of perjury attest to the completion of
 130 such fingerprinting or screening and to compliance with the
 131 provisions of this section and the standards for good moral
 132 character as contained in such provisions as ss. 110.1127(2)(c),
 133 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6),
 134 are shall not be required to be refingerprinted or rescreened in
 135 order to comply with any ~~caretaker~~ screening or fingerprinting
 136 requirements of this chapter.

137 Section 5. Subsection (3) of section 402.306, Florida
 138 Statutes, is amended to read:

139 402.306 Designation of licensing agency; dissemination by
 140 the department and local licensing agency of information on
 141 child care.—

142 (3) The department and local licensing agencies, or the
 143 designees thereof, shall be responsible for coordination and
 144 dissemination of information on child care to the community and
 145 shall make available through electronic means upon request all
 146 licensing standards and procedures, health and safety standards
 147 for school readiness providers, monitoring and inspection
 148 reports, and in addition to the names and addresses of licensed

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149 child care facilities, school readiness program providers, and,
 150 where applicable pursuant to s. 402.313, licensed or registered
 151 family day care homes. This information must also include the
 152 number of deaths, serious injuries, and instances of
 153 substantiated child abuse which have occurred in child care
 154 settings each year; research and best practices in child
 155 development; and resources regarding social-emotional
 156 development, parent and family engagement, healthy eating, and
 157 physical activity.

158 Section 6. Section 402.311, Florida Statutes, is amended to
 159 read:

160 402.311 Inspection.—

161 (1) A licensed child care facility shall accord to the
 162 department or the local licensing agency, whichever is
 163 applicable, the privilege of inspection, including access to
 164 facilities and personnel and to those records required in s.
 165 402.305, at reasonable times during regular business hours, to
 166 ensure compliance with ~~the provisions of~~ ss. 402.301-402.319.
 167 The right of entry and inspection shall also extend to any
 168 premises which the department or local licensing agency has
 169 reason to believe are being operated or maintained as a child
 170 care facility without a license, but no such entry or inspection
 171 of any premises shall be made without the permission of the
 172 person in charge thereof unless a warrant is first obtained from
 173 the circuit court authorizing such entry or inspection ~~same~~. Any
 174 application for a license or renewal made pursuant to this act
 175 or the advertisement to the public for the provision of child
 176 care as defined in s. 402.302 shall constitute permission for
 177 any entry or inspection of the premises for which the license is

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 178 sought in order to facilitate verification of the information
 179 submitted on or in connection with the application. In the event
 180 a licensed facility refuses permission for entry or inspection
 181 to the department or local licensing agency, a warrant shall be
 182 obtained from the circuit court authorizing entry or inspection
 183 ~~before same~~ prior to such entry or inspection. The department or
 184 local licensing agency may institute disciplinary proceedings
 185 pursuant to s. 402.310~~7~~ for such refusal.

186 (2) A school readiness program provider shall accord to the
 187 department or the local licensing agency, whichever is
 188 applicable, the privilege of inspection, including access to
 189 facilities, personnel, and records, to verify compliance with s.
 190 1002.88. Entry, inspection, and issuance of an inspection report
 191 by the department or the local licensing agency to verify
 192 compliance with s. 1002.88 is an exercise of a discretionary
 193 power to enforce compliance with the laws duly enacted by a
 194 governmental body.

195 (3) The department's issuance, transmittal, or publication
 196 of an inspection report resulting from an inspection under this
 197 section does not constitute agency action subject to chapter
 198 120.

199 Section 7. Subsection (3) is added to section 402.319,
 200 Florida Statutes, to read:

201 402.319 Penalties.—

202 (3) Each child care facility, family day care home, and
 203 large family child care home shall annually submit an affidavit
 204 of compliance with s. 39.201.

205 Section 8. Section 409.1757, Florida Statutes, is amended
 206 to read:

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 207 409.1757 Individuals ~~Persons~~ not required to be
 208 refingerprinted or rescreened.—~~Individuals Any law to the~~
 209 ~~contrary notwithstanding, human resource personnel~~ who have been
 210 fingerprinted or screened pursuant to chapters 393, 394, 397,
 211 402, and this chapter, teachers who have been fingerprinted
 212 pursuant to chapter 1012, and law enforcement officers who meet
 213 the requirements of s. 943.13, who have not been unemployed for
 214 more than 90 days thereafter, and who under the penalty of
 215 perjury attest to the completion of such fingerprinting or
 216 screening and to compliance with this section and the standards
 217 for good moral character as contained in such provisions as ss.
 218 110.1127(2)(c), 393.0655(1), 394.457(6), 397.451, 402.305(2),
 219 409.175(6), and 943.13(7), are not required to be
 220 refingerprinted or rescreened in order to comply with any
 221 ~~caretaker~~ screening or fingerprinting requirements of this
 222 chapter.

223 Section 9. Paragraph (c) is added to subsection (4) of
 224 section 435.07, Florida Statutes, to read:

225 435.07 Exemptions from disqualification.—Unless otherwise
 226 provided by law, the provisions of this section apply to
 227 exemptions from disqualification for disqualifying offenses
 228 revealed pursuant to background screenings required under this
 229 chapter, regardless of whether those disqualifying offenses are
 230 listed in this chapter or other laws.

231 (4)

232 (c) Disqualification from employment under this chapter may
 233 not be removed from, nor may an exemption be granted to, any
 234 current or prospective personnel of a provider receiving school
 235 readiness funding under part VI of chapter 1002, if such person

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236 is registered as a sex offender as described in 42 U.S.C. s.
 237 9858f(c)(1)(C) or has been convicted of crimes referenced in 42
 238 U.S.C. s. 9858f. Such persons are disqualified from employment
 239 with a school readiness provider regardless of any prior
 240 exemptions from disqualification. Any person employed by a
 241 school readiness provider on July 1, 2016, who has been granted
 242 an exemption from disqualification must be rescreened no later
 243 than August 1, 2016.

244 Section 10. Paragraph (i) of subsection (2) of section
 245 1002.82, Florida Statutes, is amended, and paragraphs (s)
 246 through (x) are added to that subsection, to read:

247 1002.82 Office of Early Learning; powers and duties.—
 248 (2) The office shall:

249 (i) Enter into a memorandum of understanding with local
 250 licensing agencies and Develop, in coordination with the Child
 251 Care Services Program Office of the Department of Children and
 252 Families for inspections of school readiness program providers
 253 to monitor and verify compliance with s. 1002.88 and the health
 254 and safety checklist adopted by the office. The provider
 255 contract of a school readiness program provider that refuses
 256 permission for entry or inspection shall be terminated. The, and
 257 adopt a health and safety checklist may to be completed by
 258 license-exempt providers that does not exceed the requirements
 259 of s. 402.305 and the Child Care and Development Fund pursuant
 260 to 45 C.F.R. part 98.

261 (s) Develop and implement strategies to increase the supply
 262 and improve the quality of child care services for infants and
 263 toddlers, children with disabilities, children who receive care
 264 during nontraditional hours, children in underserved areas, and

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265 children in areas that have significant concentrations of
 266 poverty and unemployment.

267 (t) Establish preservice and inservice training
 268 requirements that address, at a minimum, school readiness child
 269 development standards, health and safety requirements, and
 270 social-emotional behavior intervention models, which may include
 271 positive behavior intervention and support models.

272 (u) Establish standards for emergency preparedness plans
 273 for school readiness program providers.

274 (v) Establish group sizes.

275 (w) Establish staff-to-children ratios that do not exceed
 276 the requirements of s. 402.302(8) or (11) or s. 402.305(4), as
 277 applicable, for school readiness program providers.

278 (x) Establish eligibility criteria, including limitations
 279 based on income and family assets, in accordance with s. 1002.87
 280 and federal law.

281 Section 11. Subsections (7) and (8) of section 1002.84,
 282 Florida Statutes, are amended to read:

283 1002.84 Early learning coalitions; school readiness powers
 284 and duties.—Each early learning coalition shall:

285 (7) Determine child eligibility pursuant to s. 1002.87 and
 286 provider eligibility pursuant to s. 1002.88. ~~At a minimum,~~ Child
 287 eligibility must be redetermined annually. ~~Redetermination must~~
 288 ~~also be conducted twice per year for an additional 50 percent of~~
 289 ~~a coalition's enrollment through a statistically valid random~~
 290 ~~sampling.~~ A coalition must document the reason ~~why~~ a child is no
 291 longer eligible for the school readiness program according to
 292 the standard codes prescribed by the office.

293 (8) Establish a parent sliding fee scale that provides for

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294 ~~requires~~ a parent copayment that is not a barrier to families
 295 ~~receiving to participate in the~~ school readiness program
 296 ~~services.~~ Providers are required to collect the parent's
 297 copayment. A coalition may, on a case-by-case basis, waive the
 298 copayment for an at-risk child or temporarily waive the
 299 copayment for a child whose family's income is at or below the
 300 federal poverty level and whose family experiences a natural
 301 disaster or an event that limits the parent's ability to pay,
 302 such as incarceration, placement in residential treatment, or
 303 becoming homeless, or an emergency situation such as a household
 304 fire or burglary, or while the parent is participating in
 305 parenting classes. A parent may not transfer school readiness
 306 program services to another school readiness program provider
 307 until the parent has submitted documentation from the current
 308 school readiness program provider to the early learning
 309 coalition stating that the parent has satisfactorily fulfilled
 310 the copayment obligation.

311 Section 12. Subsections (1), (4), (5), and (6) of section
 312 1002.87, Florida Statutes, are amended to read:

313 1002.87 School readiness program; eligibility and
 314 enrollment.—

315 (1) ~~Effective August 1, 2013, or upon reevaluation of~~
 316 ~~eligibility for children currently served, whichever is later,~~
 317 Each early learning coalition shall give priority for
 318 participation in the school readiness program as follows:

319 (a) Priority shall be given first to a child younger than
 320 13 years of age from a family that includes a parent who is
 321 receiving temporary cash assistance under chapter 414 and
 322 subject to the federal work requirements.

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323 (b) Priority shall be given next to an at-risk child
 324 younger than 9 years of age.

325 (c) Priority shall be given next to a child from birth to
 326 the beginning of the school year for which the child is eligible
 327 for admission to kindergarten in a public school under s.
 328 1003.21(1)(a)2. who is from a working family that is
 329 economically disadvantaged, and may include such child's
 330 eligible siblings, beginning with the school year in which the
 331 sibling is eligible for admission to kindergarten in a public
 332 school under s. 1003.21(1)(a)2. until the beginning of the
 333 school year in which the sibling is eligible to begin 6th grade,
 334 provided that the first priority for funding an eligible sibling
 335 is local revenues available to the coalition for funding direct
 336 services. ~~However, a child eligible under this paragraph ceases~~
 337 ~~to be eligible if his or her family income exceeds 200 percent~~
 338 ~~of the federal poverty level.~~

339 (d) Priority shall be given next to a child of a parent who
 340 transitions from the work program into employment as described
 341 in s. 445.032 from birth to the beginning of the school year for
 342 which the child is eligible for admission to kindergarten in a
 343 public school under s. 1003.21(1)(a)2.

344 (e) Priority shall be given next to an at-risk child who is
 345 at least 9 years of age but younger than 13 years of age. An at-
 346 risk child whose sibling is enrolled in the school readiness
 347 program within an eligibility priority category listed in
 348 paragraphs (a)-(c) shall be given priority over other children
 349 who are eligible under this paragraph.

350 (f) Priority shall be given next to a child who is younger
 351 than 13 years of age from a working family that is economically

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352 disadvantaged. A child who is eligible under this paragraph
 353 whose sibling is enrolled in the school readiness program under
 354 paragraph (c) shall be given priority over other children who
 355 are eligible under this paragraph. ~~However, a child eligible~~
 356 ~~under this paragraph ceases to be eligible if his or her family~~
 357 ~~income exceeds 200 percent of the federal poverty level.~~

358 (g) Priority shall be given next to a child of a parent who
 359 transitions from the work program into employment as described
 360 in s. 445.032 who is younger than 13 years of age.

361 (h) Priority shall be given next to a child who has special
 362 needs, has been determined eligible as a student with a
 363 disability, has a current individual education plan with a
 364 Florida school district, and is not younger than 3 years of age.
 365 A special needs child eligible under this paragraph remains
 366 eligible until the child is eligible for admission to
 367 kindergarten in a public school under s. 1003.21(1)(a)2.

368 (i) Notwithstanding paragraphs (a)-(d), priority shall be
 369 given last to a child who otherwise meets one of the eligibility
 370 criteria in paragraphs (a)-(d) but who is also enrolled
 371 concurrently in the federal Head Start Program and the Voluntary
 372 Prekindergarten Education Program.

373 (4) The parent of a child enrolled in the school readiness
 374 program must notify the coalition or its designee within 10 days
 375 after any change in employment status, income, or family size or
 376 failure to maintain attendance at a job training or educational
 377 program in accordance with program requirements. ~~Upon~~
 378 ~~notification by the parent, the child's eligibility must be~~
 379 ~~reevaluated.~~

380 (5) A child whose eligibility priority category requires

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381 the child to be from a working family ceases to be eligible for
 382 the school readiness program if a parent with whom the child
 383 resides does not reestablish employment or resume attendance at
 384 a job training or educational program within 90 ~~60~~ days after
 385 becoming unemployed or ceasing to attend a job training or
 386 educational program.

387 (6) Eligibility for each child must be reevaluated
 388 annually. Upon reevaluation, a child may not continue to receive
 389 school readiness program services if he or she has ceased to be
 390 eligible under this section. A child who is ineligible due to a
 391 parent's job loss or cessation of job training or education
 392 shall continue to receive school readiness program services for
 393 at least 3 months to enable the parent to obtain employment.

394 Section 13. Paragraphs (c), (d), and (e) of subsection (1)
 395 of section 1002.88, Florida Statutes, are amended to read:

396 1002.88 School readiness program provider standards;
 397 eligibility to deliver the school readiness program.—

398 (1) To be eligible to deliver the school readiness program,
 399 a school readiness program provider must:

400 (c) Provide basic health and safety of its premises and
 401 facilities and compliance with requirements for age-appropriate
 402 immunizations of children enrolled in the school readiness
 403 program.

404 1. For a provider that is licensed child care facility, a
 405 large family child care home, or a licensed family day care
 406 home, compliance with s. 402.305, s. 402.3131, or s. 402.313 and
 407 this subsection, as verified pursuant to s. 402.311, satisfies
 408 this requirement.

409 2. For a provider that is a registered family day care home

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410 ~~or is not subject to licensure or registration by the Department~~
 411 ~~of Children and Families, compliance with this subsection, as~~
 412 ~~verified pursuant to s. 402.311, satisfies this requirement.~~
 413 ~~Upon such verification, the provider For a public or nonpublic~~
 414 ~~school, compliance with s. 402.3025 or s. 1003.22 satisfies this~~
 415 ~~requirement. A faith-based child care provider, an informal~~
 416 ~~child care provider, or a nonpublic school, exempt from~~
 417 ~~licensure under s. 402.316 or s. 402.3025, shall annually post~~
 418 ~~complete the health and safety checklist adopted by the office,~~
 419 ~~post the checklist prominently on its premises in plain sight~~
 420 ~~for visitors and parents, and shall annually submit the~~
 421 ~~checklist it annually to its local early learning coalition.~~

422 (d) Provide an appropriate group size and staff-to-children
 423 ratio, pursuant to s. 402.305(4) or s. 402.302(8) or (11), as
 424 applicable, and as verified pursuant to s. 402.311.

425 (e) Employ child care personnel, as defined in s.
 426 402.302(3), who have satisfied the screening requirements of
 427 chapter 402 and fulfilled the training requirements of the
 428 office Provide a healthy and safe environment pursuant to s.
 429 402.305(5), (6), and (7), as applicable, and as verified
 430 pursuant to s. 402.311.

431 Section 14. Paragraph (b) of subsection (6) and subsection
 432 (7) of section 1002.89, Florida Statutes, are amended to read:
 433 1002.89 School readiness program; funding.—

434 (6) Costs shall be kept to the minimum necessary for the
 435 efficient and effective administration of the school readiness
 436 program with the highest priority of expenditure being direct
 437 services for eligible children. However, no more than 5 percent
 438 of the funds described in subsection (5) may be used for

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439 administrative costs and no more than 22 percent of the funds
 440 described in subsection (5) may be used in any fiscal year for
 441 any combination of administrative costs, quality activities, and
 442 nondirect services as follows:

443 (b) Activities to improve the quality of child care as
 444 described in 45 C.F.R. s. 98.51, which must ~~shall~~ be limited to
 445 the following:

446 1. Developing, establishing, expanding, operating, and
 447 coordinating resource and referral programs specifically related
 448 to the provision of comprehensive consumer education to parents
 449 and the public to promote informed child care choices specified
 450 in 45 C.F.R. s. 98.33 regarding participation in the school
 451 readiness program and parental choice.

452 2. Awarding grants and providing financial support to
 453 school readiness program providers and their staff to assist
 454 them in meeting applicable state requirements for child care
 455 performance standards, implementing developmentally appropriate
 456 curricula and related classroom resources that support
 457 curricula, providing literacy supports, and providing continued
 458 professional development and training. Any grants awarded
 459 pursuant to this subparagraph shall comply with ~~the requirements~~
 460 ~~of~~ ss. 215.971 and 287.058.

461 3. Providing training, ~~and~~ technical assistance, and
 462 financial support to ~~for~~ school readiness program providers and
 463 their staff, and parents on standards, child screenings, child
 464 assessments, child development research and best practices,
 465 developmentally appropriate curricula, character development,
 466 teacher-child interactions, age-appropriate discipline
 467 practices, health and safety, nutrition, first aid,

581-02943-16

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468 cardiopulmonary resuscitation, the recognition of communicable
469 diseases, and child abuse detection, ~~and~~ prevention, and
470 reporting.

471 4. Providing from among the funds provided for the
472 activities described in subparagraphs 1.-3., adequate funding
473 for infants and toddlers as necessary to meet federal
474 requirements related to expenditures for quality activities for
475 infant and toddler care.

476 5. Improving the monitoring of compliance with, and
477 enforcement of, applicable state and local requirements as
478 described in and limited by 45 C.F.R. s. 98.40.

479 6. Responding to Warm-Line requests by providers and
480 parents ~~related to school readiness program children~~, including
481 providing developmental and health screenings to school
482 readiness program children.

483 (7) Funds appropriated for the school readiness program may
484 not be expended for the purchase or improvement of land; for the
485 purchase, construction, or permanent improvement of any building
486 or facility; or for the purchase of buses. However, funds may be
487 expended for minor remodeling and upgrading of child care
488 facilities which is necessary for the administration of the
489 program and to ensure that providers meet state and local child
490 care standards, including applicable health and safety
491 requirements.

492 Section 15. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7058
Bill Number (if applicable)

Meeting Date _____

Amendment Barcode (if applicable) _____

Topic CCDBG

Name JESSICA SCHER

Job Title Director, Public Policy

Address 3250 SW 3rd Ave

Phone 305 322 6143

Street

Miami FL 33109

City

State

Zip

Email schery@unitedway-miami.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing United Way of Miami-Dade

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

February 17, 2016

Senator Tom Lee, Chair
Committee on Appropriations
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Lee:

This letter is to request that I be excused from the Committee on Appropriations meeting on February 18, 2016. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

A handwritten signature in blue ink that reads "Tom Lee".

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

February 15, 2016

Senator Tom Lee
418 Senate Office Building
Tallahassee, FL 32399-100

Dear Senator Lee,

I am requesting to be excused from the Appropriations meeting scheduled for February 18th due to a trip to visit my son in Idaho. .

Thank you in advance for considering this request to be excused from the Children Families and Elder Affairs meeting scheduled for February 18th due to this conflict. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

A handwritten signature in cursive that reads "Tom Lee".

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations
Banking and Insurance
Environmental Preservation and Conservation
Ethics and Elections

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight, *Alternating Chair*

SENATOR CHRISTOPHER L. SMITH
31st District

February 17, 2016

The Honorable Senator Tom Lee, Chair
Appropriations
418 Senate Office Building
404 S Monroe Street
Tallahassee FL 32399

SENATE APPROPRIATIONS
RECEIVED
16 FEB 17 PM 4: 18
OFFICE OF THE CLERK
STAFF DIR. STAFF

Dear Chairman Lee:

I respectfully ask, to be excused from the Appropriations Committee meeting that is scheduled for Thursday February 18, 2016 at 1:00 p.m. I will be traveling to Washington D.C. on Thursday morning to attend meetings.

Thank you in advance for your consideration.

Sincerely,

Senator Christopher L. Smith, District 31

Cc: Appropriations. The Capitol 201

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 2/18/2016 1:07:48 PM

Ends: 2/18/2016 2:37:50 PM

Length: 01:30:03

1:07:57 PM Sen. Lee (Chair)
1:08:02 PM S 580
1:08:40 PM Sen. Grimsley
1:08:47 PM Joe Anne Hart, Director of Governmental Affairs, Florida Dental Association (waives in support)
1:09:49 PM S 676
1:09:53 PM Sen. Grimsley
1:11:04 PM Am. 243646
1:11:14 PM Sen. Grimsley
1:11:54 PM Jon Johnson, Consultant, (waives in support)
1:11:57 PM Allison Carvajal, Consultant, Florida Nurse Practitioner Network (waives in support)
1:12:07 PM Martha DeCastro, Vice President for Nursing, Florida Hospital Association (waives in support)
1:12:10 PM Am. 243646 (cont.)
1:12:24 PM S 676 (cont.)
1:12:29 PM Barbara Lumpkin, Consultant, Baptist Health South Florida
1:13:55 PM A. Carvajal (waives in support)
1:13:57 PM M. DeCastro (waives in support)
1:14:07 PM Stephen R. Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
1:14:09 PM Jeff Scott, Florida Medical Association (waives in support)
1:14:11 PM Ron Watson, Lobbyist, Florida CHAIN (waives in support)
1:14:15 PM Melody Arnold, Governmental Affairs Manager, Florida Healthcare Association (waives in support)
1:14:23 PM Chris Floyd, Consultant, Florida Association of Nurse Practitioners (waives in support)
1:14:25 PM Susan Salahshor, Lead Physician Assistant Abdominal Transplant, Florida Academy of Physician Assistant (waives in support)
1:15:27 PM S 1176
1:15:35 PM Sen. Diaz de la Portilla
1:17:04 PM S 806
1:17:10 PM Sen. Legg
1:17:50 PM Amy Maquire, Vice President, Government, Community, and Corporate Relations, All Childrens Hospital
John Hopkins Medicine (waives in support)
1:18:48 PM S 834
1:18:53 PM Sen. Detert
1:19:45 PM Tanya Cooper, Director of Governmental Relations, Department of Education (waives in support)
1:20:33 PM S 894
1:20:37 PM Sen. Detert
1:22:19 PM Am. 237190
1:22:25 PM Sen. Detert
1:22:50 PM T. Cooper (waives in support)
1:22:51 PM S 894 (cont.)
1:23:46 PM S 7058
1:23:47 PM Sen. Legg
1:23:55 PM Am. 447038
1:23:57 PM Sen. Legg
1:24:51 PM S 7058 (cont.)
1:24:55 PM Jessica Scher, Director of Public Policy, United Way of Miami-Dade (waives in support)
1:25:50 PM S 708
1:26:15 PM PCS 726460
1:26:20 PM Sen. Braynon
1:28:00 PM Sen. Gaetz
1:28:39 PM Sen. Braynon
1:28:50 PM Sen. Gaetz
1:28:58 PM Sen. Braynon
1:29:06 PM Sen. Gaetz

1:29:35 PM Sen. Braynon
1:29:49 PM Sen. Gaetz
1:30:35 PM Am. 482384
1:30:37 PM Sen. Braynon
1:30:47 PM Sen. Gaetz
1:31:12 PM Sen. Braynon
1:31:37 PM S 708 (cont.)
1:32:31 PM S 122
1:32:36 PM Sen. Bradley
1:34:28 PM Barney Bishop III, Innocence Project of Florida (waives in support)
1:35:06 PM Sen. Bradley
1:35:48 PM S 1426
1:35:52 PM Sen. Stargel
1:36:21 PM Debbie Mortham, Advocacy Director, Foundation for Florida's Future (waives in support)
1:36:30 PM Andrea Messina, Executive Director, Florida School Boards Association (waives in support)
1:36:36 PM Sandra Maldonado-Ross, Teacher, students with special needs (waives in support)
1:37:28 PM S 12
1:37:29 PM Sen. Garcia
1:37:40 PM PCS 821992
1:37:44 PM Sen. Garcia
1:39:27 PM Am. 654058
1:39:36 PM Dan Hendrickson, Chair Advocacy Committee, Big Bend Mental Health Coalition, National Alliance on Mental Illness Tallahassee (waives in support)
1:39:42 PM Corinne Mixon, Lobbyist, Florida Mental Health Counselors Association (waives in support)
1:39:52 PM S 12 (cont.)
1:39:56 PM Judge Steven Leifman, Chair, Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts
1:41:27 PM Ron Watson, Lobbyist, Florida Mental Health Counselors Association (waives in support)
1:41:36 PM Mark Fontaine, Executive Director, Florida Alcohol & Drug Abuse Association (waives in support)
1:41:45 PM Natalie Kelly, Executive Director, Florida Association of Managing Entities (waives in support)
1:41:50 PM Barney Bishop III, President & Chief Executive Officer, Florida Smart Justice Alliance (waives in support)
1:41:51 PM Melanie Brown Woofter, Senior Medicaid Policy Director, Florida Council Community Mental Health (waives in support)
1:42:00 PM Laura Youmans, Florida Association of Counties (waives in support)
1:42:04 PM Thad Lowrey, Vice President Governmental Relations, Operation PAR (waives in support)
1:42:15 PM Sen. Garcia
1:44:00 PM S 684
1:44:16 PM PCS 434300
1:44:21 PM Sen. Gaetz
1:44:57 PM Natalie King, Sunshine State Athletic Conference (waives in support)
1:44:58 PM S. Maldonado-Ross (waives in support)
1:45:08 PM D. Mortham (waives in support)
1:45:18 PM S 684 (cont.)
1:46:16 PM S 800
1:46:22 PM PCS 380416
1:46:34 PM Sen. Brandes
1:47:39 PM Bob Harris, DeVry University, City College (waives in support)
1:47:44 PM Curtis Austin, Executive Director, Florida Association of Postsecondary Schools and Colleges (waives in support)
1:48:40 PM S 992
1:48:49 PM PCS 841824
1:48:50 PM Sen. Brandes
1:50:21 PM Sen. Hukill
1:50:45 PM Sen. Brandes
1:51:10 PM Sen. Hukill
1:51:13 PM Sen. Brandes
1:51:28 PM Am. 432618
1:51:33 PM Sen. Brandes
1:51:48 PM Am. 702190
1:51:53 PM Sen. Brandes
1:52:21 PM S 992 (cont.)
1:52:22 PM Elizabeth Boyd, Director, Legislative Affairs, Chief Financial Officer Atwater (waives in support)

1:53:19 PM S 994
1:53:20 PM Sen. Negron
1:54:46 PM Audrey Brown, President & Chief Executive Officer, Florida Association of Health Plans
1:57:50 PM Sen. Negron
1:58:12 PM A. Brown
1:58:14 PM Sen. Negron
1:58:36 PM A. Brown
1:59:09 PM Sen. Negron
1:59:47 PM A. Brown
2:00:17 PM Sen. Negron
2:00:43 PM A. Brown
2:01:23 PM Sen. Negron
2:02:07 PM A. Brown
2:02:13 PM Lena Juarez, Molina Healthcare (waives in support)
2:02:18 PM Joe Anne Hart, Director of Governmental Affairs, Florida Dental Association (waives in support)
2:02:39 PM Sen. Hays
2:03:01 PM Sen. Flores
2:03:41 PM Sen. Gaetz
2:05:34 PM Sen. Latvala
2:06:11 PM Sen. Negron
2:08:14 PM S 394
2:08:16 PM Sen. Hays
2:09:04 PM Jennifer Green, President, Florida Institute of Certified Public Accountants
2:10:30 PM David Mica Jr., Director of Legislative Affairs, Department of Business & Professional Regulation (waives in support)
2:11:30 PM S 444
2:11:32 PM Sen. Montford
2:11:59 PM Andrew Ketchel, Director of Legislative Affairs, Department of Environmental Protection (waives in support)
2:12:55 PM S 922
2:12:59 PM PCS 622386
2:13:06 PM Sen. Montford
2:13:38 PM A. Ketchel (waives in support)
2:14:33 PM S 422
2:14:41 PM Sen. Benacquisto
2:15:24 PM Chris Nuland, Consultant, Florida Chapter of the American College of Physicians (waives in support)
2:15:36 PM S. Winn (waives in support)
2:15:39 PM M. Fontaine (waives in support)
2:15:44 PM B. Bishop III (waives in support)
2:15:56 PM Larry Gonzalez, General Counsel, Florida Society of Health-System Pharmacists (waives in support)
2:17:00 PM S 636
2:17:07 PM Sen. Benacquisto
2:17:59 PM Am. 763638
2:18:07 PM Sen. Benacquisto
2:18:19 PM S 636 (cont.)
2:18:24 PM Ron Draa, Director of External Affairs, Department of Law Enforcement (waives in support)
2:18:29 PM Theresa Prichard, Director of Advocacy, Florida Council Against Sexual Violence (waives in support)
2:18:37 PM Tim Stanfield, Florida Police Chiefs Association (waives in support)
2:18:40 PM Ron Book, Lauren's Kids
2:18:41 PM Sen. Benacquisto
2:19:39 PM S 966
2:19:42 PM Sen. Benacquisto
2:21:06 PM Elizabeth Boyd, Director of Legislative Affairs, Chief Financial Officer Atwater (waives in support)
2:21:14 PM Belinda Miller, Chief of Staff, Office of Insurance Regulation (waives in support)
2:21:36 PM Sen. Gaetz
2:22:50 PM Sen. Benacquisto
2:24:44 PM S 1584
2:24:53 PM Sen. Montford
2:26:02 PM Sheldon Gusky, Executive Director, Florida Public Defender Association, Inc. (waives in support)
2:26:07 PM D. Hendrickson (waives in support)
2:27:01 PM S 548
2:27:17 PM PCS 517060

2:27:18 PM Sen. Richter
2:27:50 PM Beth A. Vecchioli, Senior Policy Advisor, Stewart Title Guaranty Co. (waives in support)
2:27:55 PM Douglas A. Mang, First American Title Insurance (waives in support)
2:28:02 PM John La Joie, Senior Operations Counsel, First American Title Insurance Company (waives in support)
2:28:03 PM Alex Overhoff, Executive Director, Florida Land Title Association (waives in support)
2:28:51 PM S 1026
2:28:55 PM PCS 356798
2:29:05 PM Sen. Simmons
2:30:45 PM Natalie King, Vice President, Sunshine State Athletics Conference (waives in support)
2:30:49 PM Ron Book, Florida High School Athletics Association (waives in support)
2:33:01 PM S 1118
2:33:05 PM Sen. Simmons
2:34:50 PM Brad Nail, Risk Manager, Uber
2:36:18 PM Roger Chapin, Vice President, Meaus (waives in support)
2:36:24 PM Ellyn Bogdanoff, Florida Taxi Association (waives in support)
2:36:25 PM Louis Minardi, President, Florida Taxicab Association (waives in support)
2:36:33 PM John Camillo, President, Yellow Cab of Broward/Leon (waives in support)
2:36:38 PM S 1118 (cont.)
2:37:50 PM
2:37:50 PM
2:37:50 PM
2:37:50 PM
2:37:50 PM
2:37:50 PM