

Tab 1	SB 730 by Margolis; Professional Guardians					
201494	A	S	FAV	CF, Ring	Delete L.21 - 46:	01/21 10:28 AM

Tab 2	SB 762 by Abruzzo; (Identical to H 0741) Public Records/Involuntary Assessment and Stabilization Petition					
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Tab 3	SB 1138 by Clemens; (Compare to H 0823) Ethical Marketing Practices for Substance Abuse Services					
448396	D	S	FAV	CF, Ring	Delete everything after	01/21 10:28 AM

Tab 4	SPB 7054 by CF; Agency for Persons with Disabilities					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Sobel, Chair
Senator Altman, Vice Chair

MEETING DATE: Wednesday, January 20, 2016

TIME: 4:00—6:00 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Sobel, Chair; Senator Altman, Vice Chair; Senators Dean, Detert, Garcia, Hutson, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 730 Margolis	Professional Guardians; Limiting a professional guardian's appointments to no more than 50 wards for which the professional guardian receives compensation; prohibiting a professional guardian from entering into any other contract for services or transacting additional business with a ward while serving as the ward's professional guardian, etc. CF 01/20/2016 Fav/CS JU FP	Fav/CS Yeas 4 Nays 0
2	SB 762 Abruzzo (Identical H 741)	Public Records/Involuntary Assessment and Stabilization Petition; Providing an exemption from public records requirements for a petition for involuntary assessment and stabilization of a substance abuse impaired person; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing for release of a petition to a guardian advocate, etc. CF 01/20/2016 Favorable GO RC	Favorable Yeas 5 Nays 0
3	SB 1138 Clemens (Compare H 823)	Ethical Marketing Practices for Substance Abuse Services; Prohibiting substance abuse treatment providers and operators of recovery residences from engaging in certain marketing practices; providing that the violation of the prohibition against certain unethical marketing practices by a provider or operator is a violation of the Florida Deceptive and Unfair Trade Practices Act; expanding the Florida Deceptive and Unfair Trade Practices Act to include protections for people with diagnosable substance abuse disorders and other disabling conditions and civil penalties for those who commit violations against such people, etc. CF 01/20/2016 Fav/CS AHS AP	Fav/CS Yeas 5 Nays 0

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7054	Agency for Persons with Disabilities; Repealing provisions relating to a program for the prevention and treatment of severe self-injurious behavior; adding client needs that qualify as extraordinary needs, which may result in the approval of an increase in a client's allocated funds; requiring the Agency for Persons with Disabilities to conduct a certain utilization review; providing for annual reviews for persons involuntarily committed to residential services, etc.	Submitted as Committee Bill Yeas 4 Nays 0

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 Children, Families, and Elder Affairs

BILL: CS/SB 730

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Margolis

SUBJECT: Professional Guardians

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			JU	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 730 limits the number of wards a professional guardian can serve to 50.

The bill has no fiscal impact to the state and has an effective date of July 1, 2016.

II. Present Situation:

Guardianship

Guardianship is a concept whereby a “guardian” acts for another, called a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.¹ For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.²

¹ See generally, s. 744.102(9), F.S.

² See generally, s. 744.102(12), F.S.

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.³ A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.⁴ The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.⁵ In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. A guardian must file with the court an initial guardianship report,⁶ an annual guardianship report,⁷ and an annual accounting of the ward's property.⁸ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.⁹

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." In the event of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.¹⁰

Professional Guardians

In Florida, a "professional guardian" means any guardian who has, at any time, rendered services to three or more wards as their guardian.¹¹ A professional guardian must register annually with the Statewide Public Guardianship Office.¹² Currently, there are 465 professional guardians who are registered with the Statewide Public Guardianship Office.¹³ Professional guardians must receive a minimum of 40 hours of instruction and training and a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.¹⁴

³ *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁴ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

⁵ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

⁶ Section 744.362, F.S.

⁷ Section 744.367, F.S.

⁸ Section 744.3678, F.S.

⁹ Section 744.368, F.S.

¹⁰ Section 744.446(4), F.S.

¹¹ Section 744.102(17), F.S.

¹² Section 744.1083(1) and (2), F.S.

¹³ Children and Families, and Elder Affairs Committee staff telephone conversation with the Department of Elder Affairs on March 9, 2015.

¹⁴ Section 744.1085(3), F.S.

A professional guardian is subject to a level 2 background check,¹⁵ an investigation of the guardian's credit history,¹⁶ and is required to demonstrate competency to act as a professional guardian by taking an examination approved by the DOEA.¹⁷ These requirements do not apply to a professional guardian or the employees of that professional guardian when that guardian is a:

- Trust company;
- State banking corporation;
- State savings association authorized and qualified to exercise fiduciary powers in this state; or
- National banking association or federal savings and loan association authorized and qualified to exercise fiduciary duties in this state.¹⁸

Public Guardianship Act

The Public Guardianship Act is codified in s. 744.701, F.S. The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.¹⁹ The executive director of the Statewide Public Guardianship Office, after consultation with the chief judge and other judges within the judicial circuit, may establish one or more offices of public guardian within a judicial circuit.²⁰ A public guardian may serve an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.²¹ A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.²² Public guardianship offices are located in all 20 judicial circuits in the state.²³

Determining Incapacity

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court. A petition may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the attorney for the alleged incapacitated person and served on all next of kin identified in the petition.²⁴

In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.²⁵ The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.²⁶ When an order determines that a person is incapable

¹⁵ Section 744.1085(5), F.S.

¹⁶ Section 744.1085(4), F.S.

¹⁷ Section 744.1085(6), F.S.

¹⁸ Section 744.1085(10), F.S.

¹⁹ Chapter 99-277 L.O.F.

²⁰ Section 744.703(1), F.S.

²¹ Section 744.704(1), F.S.

²² Section 744.102(17), F.S.

²³ Children, Families, and Elder Affairs Committee staff meeting with the Department of Elder Affairs on February 2, 2015.

²⁴ Section 744.331(1), F.S.

²⁵ Section 744.331(5)(c), F.S.

²⁶ Section 744.331(6), F.S.

of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.²⁷

If a petition for appointment of a guardian has been filed, an order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.²⁸ If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.²⁹

Court Proceedings

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.³⁰ At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.³¹

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.³² Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.³³

A ward has the right to be restored to capacity at the earliest possible time.³⁴ The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed. Immediately upon the filing of the suggestion of capacity, the court must appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.³⁵ All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the court.³⁶ If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.³⁷ The level of proof required to show capacity is not presently specified in the statute.

In a study and work group report by the Florida Developmental Disabilities Council, dated February 28, 2014, Palm Beach County court personnel performed a limited review of a random

²⁷ Section 744.331(6)(b), F.S.

²⁸ Section 744.344(3), F.S.

²⁹ Section 744.344(4), F.S.

³⁰ Section 744.372, F.S.

³¹ Section 744.3715, F.S.

³² Section 744.108(1), F.S.

³³ Section 744.108(8), F.S.

³⁴ Section 744.3215(1)(c), F.S.

³⁵ Section 744.464(2)(b), F.S.

³⁶ Section 744.464(2)(d), F.S.

³⁷ Section 744.464(2)(e), F.S.

sample of 76 guardianship files for persons over the age of 18. Among these, over two thirds were of persons having age-related disabilities. After reviewing those files, the senior auditor for the circuit “reported that there were no cases where the guardianship plan recommended the restoration of any rights” of the incapacitated persons.³⁸

Media Reports

Beginning on December 6, 2014, the Sarasota Herald Tribune published a series of articles titled “The Kindness of Strangers – Inside Elder Guardianship in Florida,” which detailed abuses occurring in guardianships. The paper examined guardianship court case files and conducted interviews with wards, family, and friends in the system.³⁹ The paper concluded that “Florida has cobbled together an efficient way to identify and care for helpless elders, using the probate court system to place them under guardianship.” However, critics say this system “often ignores basic individual rights” and most often “plays out in secret, with hearings and files typically closed to the public.”⁴⁰ The paper also concluded that “monitoring elders and tapping their assets is a growth business: In 2003, there were 23 registered professional guardians in Florida, according to the [DOEA]. Today there are more than 440 – an increase greater than 1,800 percent in 11 years.”⁴¹

2015 Legislation (Ch. 2015-83, HB 5)

In 2015, the Legislature passed and the Governor signed HB 5. The new law:

- Allows for appointment of the office of criminal conflict and civil regional counsel as emergency court monitors;
- Allows compensation for guardians and other certain individuals to be awarded by the court without expert testimony;
- Requires notice requirements for filing a petition for appointment of an emergency temporary guardian;
- Allows a for-profit corporate guardians existing under Florida law to act as a guardian if certain requirements are met; and
- Requires a court that does not use a rotation system for appointment of a professional guardian, to instead make specific findings of fact stating why the guardian was selected in the particular guardianship case.⁴²

³⁸ Florida Developmental Disabilities Council, *Restoration of Capacity Study and Work Group Report*, (February 28, 2014), available at <http://www.guardianship.org/IRL/Resources/Handouts/Charting%20a%20New%20Course%20Restoration%20Report.pdf> (last visited January 7, 2016).

³⁹ Barbara Peters Smith, *The Kindness of Strangers – Inside Elder Guardianship in Florida*, HERALD TRIBUNE (February 9, 2015), available at <http://guardianship.heraldtribune.com/> (last visited January 7, 2016).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Florida Senate, 2015 Bill Summary, *CS/CS/CS HB 5 – Guardianship Proceedings*, available at <http://www.flsenate.gov/Committees/billsummaries/2015/html/969> (last visited January 10, 2016).

III. Effect of Proposed Changes:

Section 1 creates s. 744.1087, F.S., to place limits on professional guardians. The bill limits the number of wards a professional guardian can serve to 50. The bill allows for this limit to be achieved after July 1, 2016 through attrition.

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:

Professional guardians would be limited to 50 wards per professional guardian. This would negatively impact the fees awarded to professional guardians.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains no enforcement mechanisms. If the professional guardians are members of the Florida Bar, the Bar could sanction attorneys acting as professional guardians who violate the provisions of the bill.

VIII. Statutes Affected:

This bill creates section 744.1087 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 Children, Families, and Elder Committee on January 20, 2016:

The CS removes the limit for banks and trust companies from having more than 50 wards per professional guardian. The CS removes the provisions that prohibited professional guardians from conducting additional business with the ward. This is currently prohibited by s. 744.446, F.S., relating to conflicts of interest.

- B. **Amendments:**

None.



201494

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/21/2016	.	
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The Committee on Children, Families, and Elder Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 21 - 46
and insert:
guardians.—A natural person may be appointed as a professional guardian for up to 50 wards for which he or she receives compensation. If, as of July 1, 2016, such guardian has more than 50 wards for which he or she receives compensation, the guardian may not be appointed additional wards for which he or she receives compensation until he or she has fewer than 50



201494

11 wards.

12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 Delete lines 10 - 14

16 and insert:

17 than 50 wards; providing an effective date.

By Senator Margolis

35-00381A-16

2016730__

A bill to be entitled

An act relating to professional guardians; creating s. 744.1087, F.S.; limiting a professional guardian's appointments to no more than 50 wards for which the professional guardian receives compensation; prohibiting a professional guardian that has more than 50 wards for which the professional guardian receives compensation from being appointed another ward after a certain date until the professional guardian has fewer than 50 wards; providing an exception; prohibiting a professional guardian from entering into any other contract for services or transacting additional business with a ward while serving as the ward's professional guardian; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 744.1087, Florida Statutes, is created to read:

744.1087 Maximum number of wards for professional guardians; limitations.—

(1) A natural person may be appointed as a professional guardian for up to 50 wards for which he or she receives compensation. If, as of July 1, 2016, such guardian has more than 50 wards for which he or she receives compensation, the guardian may not be appointed additional wards for which he or she receives compensation until he or she has fewer than 50 wards.

(2) A trust company, a banking corporation, a partnership,

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

35-00381A-16

2016730__

or an association may be appointed as the professional guardian for up to 50 wards per single employee who serves in the capacity of a professional guardian. If, as of July 1, 2016, a trust company, a banking corporation, a partnership, or an association has more than 50 wards per single employee who serves in the capacity of a professional guardian for which the entity receives compensation, the entity may not be appointed additional wards for which it receives compensation until the entity has fewer than 50 wards per single employee who serves in the capacity of a professional guardian for which it receives compensation.

(3) A professional guardian may be appointed wards in addition to the limits specified in this section if the services rendered to the additional wards are on a pro bono basis.

(4) A professional guardian may not enter into any other contract for services or transact additional business with the ward while serving as the ward's professional guardian.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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201494

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/21/2016	.	
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201494

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16 and insert:

17 than 50 wards; providing an effective date.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 730
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, January 20, 2016
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	1/20/2016 Amendment 201494 ¹		Ring					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay		
		Dean								
X		Detert								
X		Garcia								
		Hutson								
		Ring								
X		Altman, VICE CHAIR								
X		Sobel, CHAIR								
4	0									
Yea	Nay	TOTALS	FAV Yea	- Nay	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

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 Children, Families, and Elder Affairs

BILL: SB 762

INTRODUCER: Senator Abruzzo

SUBJECT: Public Records/Involuntary Assessment and Stabilization Petition

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

I. Summary:

SB 762 creates a new exemption from the public records inspection and access requirements of Art. I, s. 24(a) of the State Constitution and s. 199.07(1), F.S., for petitions for involuntary assessment and stabilization of a substance abuse impaired person filed pursuant to s.397.6815, F.S.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides for a retroactive application of the public record exemption.

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

II. Present Situation:

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁷

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed; however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST., art. I, s. 24(c).

not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.¹⁹

Section 397.301, F.S., creates the Hal. S. Marchman Alcohol and Other Drug Services Act (the “Marchman Act”). This act was created by the Legislature to provide assistance to substance abuse impaired persons through health and rehabilitative services. Currently, s.397.6811, F.S., allows a petition for involuntary assessment and stabilization to be filed by a person’s spouse or guardian, any relative, a private practitioner, the director of a licensed service provider or any three adults who have personal knowledge of the person’s substance abuse impairment. Allowing petitions filed under this part to be confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution protects a person’s personal health information and sensitive personal information which, if released, could cause unwarranted damage to the person’s reputation. Additionally, the knowledge that such information could be disclosed could have a chilling effect on the willingness of individuals to seek treatment.

III. Effect of Proposed Changes:

Section 1 amends s. 397.6815, F.S., to provide that petitions for involuntary assessment and stabilization filed with the court under this part are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released under the following circumstances:

- With the approval of the respondent, or other specified individuals, if necessary to ensure continuity of the respondent’s health care.
- Upon the court’s order for good cause.
- To the Department of Corrections if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

The bill provides for retroactive application of the public records exemption.²⁰ Additionally, the bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature.²¹

Section 2 provides a statement of public necessary as required by the State Constitution.²²

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁹ Section 119.15(7), F.S.

²⁰ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla.2001).

²¹ Section 119.15(3), F.S.

²² Section 24(c), Art. I of the State Constitution.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 397.6815 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 Abruzzo

25-00545-16

2016762__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 397.6815, F.S.; providing an exemption from public
 4 records requirements for a petition for involuntary
 5 assessment and stabilization of a substance abuse
 6 impaired person; providing exceptions; providing
 7 retroactive application; providing for future
 8 legislative review and repeal of the exemption under
 9 the Open Government Sunset Review Act; providing for
 10 release of a petition to a guardian advocate;
 11 providing a statement of public necessity; providing
 12 an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 397.6815, Florida Statutes, is amended
 17 to read:

18 397.6815 Involuntary assessment and stabilization;
 19 exemption; procedure.-

20 (1) A petition for involuntary assessment and stabilization
 21 filed with the court under this part is confidential and exempt
 22 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 23 and shall be released, in addition to the persons identified in
 24 paragraph (2) (a):

25 (a) To appropriate persons if necessary to ensure the
 26 continuity of the respondent's health care, upon approval by the
 27 respondent, the respondent's guardian, or, in the case of a
 28 minor, by the respondent's parent, guardian, legal custodian, or
 29 guardian advocate.

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00545-16

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30 (b) Upon court order for good cause. In determining whether
 31 there is good cause for disclosure, the court shall weigh the
 32 need for the information to be disclosed against the possible
 33 harm of disclosure to the respondent.

34 (c) To the Department of Corrections, without charge, upon
 35 request if the respondent is committed or is to be returned to
 36 the custody of the Department of Corrections from the Department
 37 of Children and Families.

38
 39 The exemption under this subsection applies to petitions filed
 40 with a court before, on, or after July 1, 2016. This subsection
 41 is subject to the Open Government Sunset Review Act in
 42 accordance with s. 119.15 and shall stand repealed on October 2,
 43 2021, unless reviewed and saved from repeal through reenactment
 44 by the Legislature.

45 (2) Upon receipt and filing of the petition for the
 46 involuntary assessment and stabilization of a substance abuse
 47 impaired person by the clerk of the court, the court shall
 48 ascertain whether the respondent is represented by an attorney,
 49 and if not, whether, on the basis of the petition, an attorney
 50 should be appointed; and shall:

51 (a) ~~(1)~~ Provide a copy of the petition and notice of hearing
 52 to the respondent; the respondent's parent, guardian, ~~or~~ legal
 53 custodian, or guardian advocate, in the case of a minor; the
 54 respondent's attorney, ~~if known~~; the petitioner; the
 55 respondent's spouse or guardian, if applicable; and such other
 56 persons as the court may direct pursuant to paragraph (1) (b),
 57 and have such petition and notice personally delivered to the
 58 respondent if he or she is a minor. The court shall also issue a

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00545-16

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59 summons to the person whose admission is sought and conduct a
60 hearing within 10 days; or

61 ~~(b)(2)~~ Without the appointment of an attorney and, relying
62 solely on the contents of the petition, enter an ex parte order
63 authorizing the involuntary assessment and stabilization of the
64 respondent. The court may order a law enforcement officer or
65 other designated agent of the court to take the respondent into
66 custody and deliver him or her to the nearest appropriate
67 licensed service provider.

68 Section 2. The Legislature finds that it is a public
69 necessity that a petition for involuntary assessment and
70 stabilization of a person impaired by substance abuse which is
71 filed pursuant to chapter 397, Florida Statutes, be confidential
72 and exempt from disclosure under s. 119.07(1), Florida Statutes,
73 and s. 24(a), Article I of the State Constitution. The personal
74 health of an individual and his or her alleged impairment by
75 substance abuse are intensely private matters. The content of
76 such a petition should not be made public merely because the
77 petition is filed with the court. Protecting the petition is
78 necessary to ensure the health care privacy rights of all
79 individuals. Making these petitions confidential and exempt from
80 disclosure will protect information of a sensitive personal
81 nature, the release of which could cause unwarranted damage to
82 the reputation of an individual. Further, the knowledge that
83 sensitive personal information is subject to disclosure could
84 have a chilling effect on the willingness of individuals to seek
85 substance abuse treatment services.

86 Section 3. This act shall take effect July 1, 2016.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 762
FINAL ACTION: Favorable
MEETING DATE: Wednesday, January 20, 2016
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
		Dean						
X		Detert						
X		Garcia						
		Hutson						
X		Ring						
X		Altman, VICE CHAIR						
X		Sobel, CHAIR						
5	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

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 Children, Families, and Elder Affairs

BILL: CS/SB 1138

INTRODUCER: Children, Families, and Elder Affairs and Senator Clemens

SUBJECT: Ethical Marketing Practices for Substance Abuse Services

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1138 creates a prohibition of unethical marketing practices by substance abuse treatment providers and operators of recovery residences. The bill provides that a violation of the unethical marketing practices is also a violation of the prohibition on patient brokering and subject to criminal penalties under s. 817.505, F.S.

Additionally, the bill provides that a violation of the prohibition against certain unethical marketing practices by a provider or operator is a violation of the Florida Deceptive and Unfair Trade Practices Act. Violations are subject to criminal penalties.

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

II. Present Situation:

Florida's Patient Brokering Act of 1996¹

Florida's Patient Brokering Act of 1996 (the "Brokering Act") is a criminal statute which makes it unlawful for any person, including any health care provider or health care facility, to offer, pay, solicit or receive any commission, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in exchange for

¹ Section 817.505, F.S.

patient referrals to a health care provider or health care facility.² The Brokering Act also prohibits any person, including any health care provider or health care facility, from aiding, abetting, advising or otherwise participating in a prohibited referral scheme.³ Violations of the Brokering Act are punishable as a third degree felony.⁴

Like the Florida Patient Self-Referral Act (the “Act”), the Brokering Act provides certain exceptions to the referral prohibition.⁵ Some of the exceptions include: payments to a health care provider or health care facility for professional consultation services;⁶ commissions, fees or other remuneration lawfully paid to insurance agents as provided under the insurance code;⁷ any discount, payment, waiver of payment or payment practice not prohibited by the Federal Anti-Kickback Statute (or regulations promulgated thereunder);⁸ and any payment, compensation or financial arrangement within a group practice as defined in the Act.⁹

Florida’s Anti-Kickback Statute¹⁰

Florida’s anti-kickback statute (“AKS”) prohibits any health care provider or any provider of health care services from offering, paying, soliciting or receiving a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.¹¹

“Kickback” is defined as remuneration or payment back pursuant to an investment interest, compensation arrangement, or otherwise, by or on behalf of a provider of health care services or items, to any person for a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary expense.¹²

Violation of this statute is considered a criminal violation and is punished under the terms of Florida’s Patient Brokering Act¹³

Florida’s Patient Self-Referral Act of 1992¹⁴

Florida’s Patient Self-Referral Act of 1992 (the “Act”) prohibits a health care provider from referring a patient for the provision of certain designated health services, or any other health care item or service, to an entity in which the health care provider is an investor or has an investment interest.¹⁵ The Act defines “designated health services” as: clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services and radiation therapy services.¹⁶

² Section 817.505(1)(a), F.S.

³ Section 817.505(1)(d), F.S.

⁴ Section 817.505(4), F.S.

⁵ Section 817.505(3), F.S.

⁶ Section 817.505(3)(c), F.S.

⁷ Section 817.505(3)(d), F.S.

⁸ Section 817.505(3)(a), F.S.

⁹ Section 817.505(3)(a), F.S.

¹⁰ Section 456.054, F.S.

¹¹ Section 456.054(2), F.S.

¹² Section 456.054(1), F.S.

¹³ Section 456.054(3), F.S.

¹⁴ Section 456.053, F.S.

¹⁵ Section 456.053(5)(a), F.S.

¹⁶ Section 456.053(3)(c), F.S.

The Act provides certain exceptions to the self-referral prohibition for orders, recommendations or plans of care that do not constitute a referral. Some of these exceptions include, services furnished by a sole provider or group practice; lithotripsy services by a urologist; services provided by an ambulatory surgery center licensed under Chapter 395; renal dialysis services and supplies by a nephrologist; and diagnostic-imaging services by a radiologist.¹⁷ There are civil penalties for violations of this statute.¹⁸

Florida's Fee-Splitting Statute (the "FSS") prohibits a physician from paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with another physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services (this includes, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies).¹⁹ Penalties for violating this statute include a fine and possible medical license revocation. There are civil penalties for violations of this statute.²⁰

Clinical Labs Rebates²¹

Section 483.245, F.S., prohibits any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any dialysis facility, physician, surgeon, organization, agency, or person, either directly or indirectly, for patients referred to a clinical laboratory licensed under Part I of Chapter 483, F.S.

In addition, s. 483.245, F.S., also prohibits a clinical laboratory from, directly or indirectly, providing through employees, contractors, an independent staffing company, lease agreement, or otherwise, personnel to perform any functions or duties in a physician's office, or any part of a physician's office, for any purpose whatsoever, including for the collection or handling of specimens, unless the laboratory and the physician's office are wholly owned and operated by the same entity. A clinical laboratory is also prohibited from leasing space within any part of a physician's office for any purpose, including for the purpose of establishing a collection station.²² There are civil penalties for violations of this statute.²³

Voluntary Certification of Recovery Residences and Recovery Residence Administrators

In June 2015, CS/CS/HB 21 (Substance Abuse Services) was signed into law creating ss. 397.487, 397.4871, and 397.4872, F.S., to establish voluntary certification programs and requirements for recovery residences and recovery residence administrators.²⁴

As it specifically relates to these voluntary certification programs, the term "recovery residence" means a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.²⁵

Additionally, a "recovery residence administrator" is defined to mean to the person responsible

¹⁷ Section 456.053(o)3, F.S.

¹⁸ Section 456.053((5)(f), F.S.

¹⁹ Section 458.331(1)(i), F.S.

²⁰ Section 458.331(1)(t)3, F.S.

²¹ Section 483.245, F.S.

²² Section 483.245(1), F.S.

²³ Section 483.245(2), F.S.

²⁴ Ch. 2015-100, L.O.F.

²⁵ Section 397.311(33), F.S.

for overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.²⁶

The Department of Children and Families (department) is required to approve at least one credentialing entity by December 1, 2015, for the development and administration of each certification program. To date, the department has approved the Florida Association of Recovery Residences to be a credentialing entity for the voluntary certification of recovery residences and the Florida Certification Board to be a credentialing entity for the voluntary certification of recovery residence administrators.

A certified recovery residence must be actively managed by a certified recovery residence administrator; however, a certified recovery residence administrator may actively manage no more than three recovery residences at any given time. In addition, all owners, directors and chief financial officers of a recovery residence, as well as individuals seeking certification as an administrator, are subject to Level 2 background screening as provided under Chapter 435, F.S. The department may exempt an individual from the disqualifying offenses of a Level 2 background screening²⁷ if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program.

Effective July 1, 2016, a service provider licensed under Chapter 397, F.S., may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 or the recovery residence is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence.

A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence" or a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under s. 397.487, F.S., or 397.4871, F.S. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 397.305, F.S., to update the legislative intent to provide that treatment and recovery support for individuals with substance abuse impairment are offered in an ethical and professional manner that includes ethical marketing practices.

Section 2 amends s. 397.311, F.S., to add and define new terms. A definition for disabling conditions is created to mean a diagnosable substance abuse disorder, serious mental illness, developmental disability, specific learning disability, or chronic physical illness or disability, or the co-occurrence of two or more of these conditions. This new definition also includes an educational deficiency that substantially affects a person's ability to read and comprehend the

²⁶ Section 397.311(34), F.S.

²⁷ The disqualifying offenses are listed in s. 435.04(2), F.S.

terms of a contractual agreement to which he or she is a party. This definition is inconsistent with the definition of “disability” under the Americans with Disabilities Act (ADA).

This section also adds and defines the term “marketing practices” and “substance abuse lead generator”.

Section 3 creates s. 397.335, F.S., to prohibit substance abuse treatment providers licensed under chapter 397 and operators of recovery residences from engaging in specific marketing practices considered unethical. Specifically, the bill prohibits substance abuse treatment providers and operators of recovery residences from engaging in the following marketing practices:

- Making false or misleading statements or providing false or misleading information about their products, goods, services, or geographical location in marketing or advertising materials or media or on their respective websites.
- Including on their respective websites coding that provides false information or surreptitiously directs the reader to another website.
- Soliciting or receiving a commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split-fee arrangement in return for an acceptance or acknowledgment of treatment from a health care provider, health care facility, or recovery residence. Referrals from recovery residences to another recovery residence are not applicable to this part.
- Entering into a marketing contract with a substance abuse lead generator that engages in marketing through a call center, unless the call center discloses certain information to the caller.

The bill also prohibits a substance abuse treatment provider licensed under Chapter 397, F.S., which is operating as an outpatient, a partial hospitalization or intensive outpatient program from offering a prospective patient free or reduced rent at a recovery residence to induce the prospective patient to choose it as the patient’s provider. The provider may not make a direct or an indirect payment to a recovery residence for a patient’s housing or other housing-related services.

A violation of this section is a violation of the Florida Deceptive and Unfair Trade Practices Act under Part II of Chapter 501, F.S. The Department of Children and Families is required to submit copies related to violations by entities licensed and regulated under Chapter 397 to the Department of Legal Affairs.

Additionally, a violation under this section for soliciting, receiving, or making an attempt to solicit or receive a commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split-fee arrangement in return for an acceptance or acknowledgment of treatment from a health care provider, health care facility, or recovery residence is considered patient brokering and subject to criminal penalties under s. 817.505, F.S.

As written, the terms “substance abuse treatment providers” and “operators of recovery residences” are not currently defined in Chapter 397, F.S., or in the bill. In addition, the term “recovery residence administrator” is currently defined in s. 397.311, F.S., as it specifically relates to the voluntary certification program for recovery residence administrators under s.

397.4871, F.S. Clarification is needed to determine whether the prohibition applies to all “operators of recovery residences” or only recovery residence administrators voluntarily certified pursuant to s. 397.4871, F.S., as well as whether the prohibition applies to “recovery residences” that are voluntarily certified pursuant to s. 397.487, F.S.

Section 4 amends s. 397.501, F.S., to provide each individual receiving treatment services in a residential treatment facility or living in a recovery residence the right to a safe living environment free from drugs, alcohol, harassment, abuse, and harm.

Section 5 amends s. 456.053, F.S., to add the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to the list of health care providers and providers of health care services to the definition of “Board” in this section.

Additionally, the term “recovery residence” is defined in this section to mean a residential dwelling unit or other form of group housing offered or advertised through any means of communication, by any person or entity, as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

The bill amends s. 456.053(5), F.S., which prohibits referrals and claims for payment and makes such action grounds for disciplinary action to include a substance abuse treatment provider licensed chapter 397 and operating as an outpatient, a partial hospitalization or intensive outpatient program.

Section 456.053(6), F.S., is also amended to provide an exemption to the prohibitions under this section of referrals made by a substance abuse treatment provider, health care service entities owned by such providers or in which the providers have a financial interest, or subsidiaries of those health care service entities to which such subsidiaries have a financial interest if the financial interest is clearly stated in writing to patients, clients, consumers and facility residences; on marketing and advertising materials and on a posted notice that can be easily read by patients in a common area at the substance abuse treatment facility.

Section 6 amends s. 501.2077, F.S., to add the definition of “disabling condition” as set forth in s. 397.311(12), F.S.

Section 7 amends s. 817.505(1), F.S., to add the definition of recovery residences to the section and to provide that it is unlawful for recovery residences to participate in patient brokering. However, referrals by recovery residences to recovery residences do not apply to this prohibition.

Section 8 amends s. 212.055, F.S., to correct a cross-reference.

Section 9 amends s. 397.416, F.S., to correct a cross-reference.

Section 10 amends s. 440.102, F.S., to correct a cross-reference.

Section 11 provides an effective date for the bill of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Substance abuse treatment providers and operators of recovery residences who engage in prohibited marketing practices in violation of s.397.335, F.S., may be in violation of patient brokering and subject to criminal penalties under s. 817.505, F.S. Substance abuse treatment providers and operators of recovery residences who are found to be in violation of prohibited marketing practices under s. 397.335, F.S., will also be in violation of the Florida Deceptive and Unfair Practices Act under s. 501.2077(2), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The new definition of “disabling condition” conflicts with the definition of “disabling” under the Americans with Disabilities Act (ADA). The ADA includes individuals with substance use disorders that are in recovery, as well as individuals participating in substance abuse treatment. However, “disability under the ADA excludes people who continue to abuse substances, or have been convicted or manufacture or distribution of a controlled substance.

VII. Related Issues:

Clarification is needed to determine whether the prohibition applies to all “operators of recovery residences” or only recovery residence administrators voluntarily certified pursuant to s. 397.4871, F.S., as well as whether the prohibition applies to “recovery residences” that are voluntarily certified pursuant to s. 397.487, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.305, 397.311, 397.501, 456.053, 501.2077, 817.505, 212.055, 397.416, and 440.102.

This bill creates section 397.355, 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 Children, Families, and Elder Affairs Committee on January 20, 2016:

- Provides that referrals from recovery residences to recovery residences are not included in the prohibition on patient brokering.
- Removes the requirement for civil penalties to be assessed for violations of the Florida Deceptive and Unfair Trade Practices Act. Directs the Department of Children and Families to submit copies of findings related to violations of this Act to the Department of Legal Affairs.

B. Amendments:

None.



448396

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/21/2016	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) is added to section 397.305,
Florida Statutes, to read:

397.305 Legislative findings, intent, and purpose.—

(10) It is the intent of the Legislature to ensure that
treatment and recovery support for individuals who are impaired
by substance abuse disorders are offered in an ethical and



448396

11 professional manner that includes the use of ethical marketing
12 practices to ensure the protection of this vulnerable
13 population.

14 Section 2. Present subsections (12) through (20) of section
15 397.311, Florida Statutes, are redesignated as subsections (13)
16 through (21), respectively, present subsection (21) of that
17 section is redesignated as subsection (23), present subsection
18 (23) of that section is redesignated as subsection (26), present
19 subsection (24) of that section is redesignated as subsection
20 (25), present subsections (25) through (42) of that section are
21 redesignated as subsections (27) through (44), respectively,
22 present subsections (43) through (45) of that section are
23 redesignated as subsections (46) through (48), respectively, and
24 new subsections (12), (24), and (45) are added to that section,
25 to read:

26 397.311 Definitions.—As used in this chapter, except part
27 VIII, the term:

28 (12) "Disabling condition" means:

29 (a) A diagnosable substance abuse disorder, serious mental
30 illness, developmental disability, specific learning disability,
31 or chronic physical illness or disability, or the co-occurrence
32 of two or more of these conditions.

33 (b) An educational deficiency that substantially affects a
34 person's ability to read and comprehend the terms of a
35 contractual agreement to which he or she is a party.

36 (24) "Marketing practices" means all statements made or
37 information disseminated to the public, whether oral, written,
38 printed, or otherwise, which are intended to market, advertise,
39 or entice an individual toward a particular substance abuse



448396

40 treatment or recovery support program licensed under this
41 chapter.

42 (45) "Substance abuse lead generator" means a call center
43 or similar marketing entity that is contractually engaged by a
44 substance abuse treatment provider licensed under this chapter
45 to identify and cultivate prospective patient interest in a
46 particular substance abuse treatment program or recovery
47 residence.

48 Section 3. Section 397.335, Florida Statutes, is created to
49 read:

50 397.335 Prohibition of unethical marketing practices.—The
51 Legislature recognizes that individuals with substance abuse
52 disorders have disabling conditions that put them at risk of
53 being vulnerable to fraudulent marketing practices. To protect
54 the health, safety, and welfare of this vulnerable population,
55 substance abuse treatment providers licensed under this chapter
56 and operators of recovery residences may not engage in the
57 following marketing practices:

58 (1) Making false or misleading statements or providing
59 false or misleading information about their products, goods,
60 services, or geographical location in their marketing,
61 advertising materials, or media or on their respective websites.

62 (2) Including on their respective websites coding that
63 provides false information or surreptitiously directs the reader
64 to another website.

65 (3) Soliciting or receiving a commission, benefit, bonus,
66 rebate, kickback, or bribe, directly or indirectly, in cash or
67 in kind, or engaging or making an attempt to engage in a split-
68 fee arrangement in return for a referral or an acceptance or



448396

69 acknowledgment of treatment from a health care provider, health
70 care facility, or recovery residence. A violation of this
71 subsection is a violation of the prohibition on patient
72 brokering and is subject to criminal penalties under s. 817.505.
73 This subsection does not apply to referrals from recovery
74 residences to other recovery residences.

75 (4) Entering into a marketing contract with a substance
76 abuse lead generator that engages in marketing through a call
77 center, unless the call center discloses the following to the
78 caller so that he or she can make an informed health care
79 decision:

80 (a) The substance abuse treatment programs it represents.

81 (b) Clear and concise instructions that allow the caller to
82 easily access a list of licensed substance abuse treatment
83 agencies, both public and private, on the department website.

84
85 A substance abuse treatment provider licensed under this chapter
86 which is operating as a partial hospitalization or an outpatient
87 program, including an intensive outpatient program, may not
88 offer a prospective patient free or reduced rent at a recovery
89 residence to induce the prospective patient to choose it as the
90 patient's provider and may not make a direct or an indirect
91 payment to a recovery residence for a patient's housing or other
92 housing-related services. A provider or operator that violates
93 this section commits a violation of the Florida Deceptive and
94 Unfair Trade Practices Act under s. 501.2077(2). The Department
95 of Children and Families shall submit copies of findings related
96 to violations by entities licensed and regulated under this
97 chapter to the Department of Legal Affairs.



448396

98 Section 4. Present subsections (9) and (10) of section
99 397.501, Florida Statutes, are redesignated as subsections (10)
100 and (11), respectively, and a new subsection (9) is added to
101 that section, to read:

102 397.501 Rights of individuals.—Individuals receiving
103 substance abuse services from any service provider are
104 guaranteed protection of the rights specified in this section,
105 unless otherwise expressly provided, and service providers must
106 ensure the protection of such rights.

107 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual
108 receiving treatment services in a residential treatment facility
109 or living in a recovery residence has the right to a safe living
110 environment free from drugs, alcohol, harassment, abuse, and
111 harm.

112 Section 5. Paragraphs (a) and (i) of subsection (3) of
113 section 456.053, Florida Statutes, are amended, present
114 paragraph (o) of that subsection is redesignated as paragraph
115 (q), present paragraph (p) of that subsection is redesignated as
116 paragraph (o), present paragraphs (q) and (r) of that subsection
117 are redesignated as paragraphs (r) and (s), respectively, a new
118 paragraph (p) is added to that subsection, paragraph (g) of
119 subsection (5) of that section is amended, a new paragraph (k)
120 is added to that subsection, and subsection (6) is added to that
121 section, to read:

122 456.053 Financial arrangements between referring health
123 care providers and providers of health care services.—

124 (3) DEFINITIONS.—For the purpose of this section, the word,
125 phrase, or term:

126 (a) "Board" means any of the following boards relating to



448396

127 the respective professions: the Board of Medicine as created in
128 s. 458.307; the Board of Osteopathic Medicine as created in s.
129 459.004; the Board of Chiropractic Medicine as created in s.
130 460.404; the Board of Podiatric Medicine as created in s.
131 461.004; the Board of Optometry as created in s. 463.003; the
132 Board of Pharmacy as created in s. 465.004; ~~and~~ the Board of
133 Dentistry as created in s. 466.004; and the Board of Clinical
134 Social Work, Marriage and Family Therapy, and Mental Health
135 Counseling as created in s. 491.004.

136 (i) "Health care provider" means any physician licensed
137 under chapter 458, chapter 459, chapter 460, or chapter 461, or
138 any health care provider licensed under chapter 463, ~~or~~ chapter
139 466, or chapter 491.

140 (p) "Recovery residence" means a residential dwelling unit
141 or other form of group housing that is offered or advertised
142 through any means, including oral, written, electronic, or
143 printed means, and by any person or entity as a residence that
144 provides a peer-supported, alcohol-free, and drug-free living
145 environment.

146 (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as
147 provided in this section:

148 (g) A violation of this section by a health care provider
149 constitutes ~~shall constitute~~ grounds for disciplinary action ~~to~~
150 ~~be taken~~ by the applicable board pursuant to s. 458.331(2), s.
151 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), ~~or~~ s.
152 466.028(2), or s. 491.009(2). Any hospital licensed under
153 chapter 395 found in violation of this section is ~~shall be~~
154 subject to s. 395.0185(2). A substance abuse treatment provider
155 licensed under chapter 397 found in violation of this section is



448396

156 subject to the penalties imposed under ss. 397.415 and 397.461.

157 (k) A substance abuse treatment provider licensed under
158 chapter 397 which is operating as a partial hospitalization or
159 an outpatient program, including an intensive outpatient
160 program, may not offer a prospective patient free or reduced
161 rent at a recovery residence to induce the prospective patient
162 to choose it as the patient's provider.

163 (6) EXCEPTIONS TO PROHIBITED REFERRALS.—The prohibitions in
164 paragraphs (5) (a) and (b) do not apply to referrals made by
165 substance abuse treatment providers licensed under chapter 397,
166 any health care service entities owned by such providers or in
167 which such providers have a financial interest, or subsidiaries
168 of those health care service entities, to recovery residences or
169 laboratory testing services in which any of such providers,
170 entities or subsidiaries have a financial interest if the
171 financial interest is clearly stated:

172 (a) In writing to patients, clients, consumers, and
173 facility residents.

174 (b) On marketing or advertising materials, including any
175 information disseminated to the public, whether oral, written,
176 printed, or otherwise, which is intended to market or advertise
177 substance abuse treatment services or recovery support.

178 (c) On a posted notice that can be easily read by patients
179 in a common area at the substance abuse treatment facility in
180 which the referring provider has a financial interest.

181 Section 6. Section 501.2077, Florida Statutes, is amended
182 to read:

183 501.2077 Violations involving senior citizen, person who
184 has a disabling condition ~~disability~~, military servicemember, or



448396

185 the spouse or dependent child of a military servicemember; civil
186 penalties; presumption.—

187 (1) As used in this section, the term:

188 (a) "Disabling condition" means:

189 1. A diagnosable substance abuse disorder, serious mental
190 illness, developmental disability, specific learning disability,
191 or chronic physical illness or disability, or the co-occurrence
192 of two or more of these conditions.

193 2. An educational deficiency that substantially affects a
194 person's ability to read and comprehend the terms of a
195 contractual agreement to which he or she is a party.

196 (b) "Major life activities" means functions associated with
197 the normal activities of independent daily living, such as
198 caring for one's self, performing manual tasks, walking, seeing,
199 hearing, speaking, breathing, learning, and working.

200 ~~(b) "Mental or educational impairment" means:~~

201 ~~1. A mental or psychological disorder or specific learning~~
202 ~~disability.~~

203 ~~2. An educational deficiency that substantially affects a~~
204 ~~person's ability to read and comprehend the terms of any~~
205 ~~contractual agreement entered into.~~

206 (c) "Military servicemember" means a person who is on
207 active duty in, or a veteran of, the United States Armed Forces.

208 1. "Active duty" has the same meaning as provided in s.
209 250.01.

210 2. "Veteran" has the same meaning as provided in s. 1.01.

211 (d) "Person who has a disabling condition ~~disability~~" means
212 a person who has a mental or educational impairment that
213 substantially limits one or more major life activities.



448396

214 (e) "Senior citizen" means a person who is 60 years of age
215 or older.

216 (2) A person who is willfully using, or has willfully used,
217 a method, act, or practice in violation of this part which
218 victimizes or attempts to victimize a senior citizen or a person
219 who has a disabling condition ~~disability~~ is liable for a civil
220 penalty of not more than \$15,000 for each such violation if she
221 or he knew or should have known that her or his conduct was
222 unfair or deceptive.

223 (3) A person who is willfully using, or has willfully used,
224 a method, act, or practice in violation of this part directed at
225 a military servicemember or the spouse or dependent child of a
226 military servicemember is liable for a civil penalty of not more
227 than \$15,000 for each such violation if she or he knew or should
228 have known that her or his conduct was unfair or deceptive.

229 (4) An order of restitution or reimbursement based on a
230 violation of this part committed against a senior citizen, a
231 person who has a disabling condition ~~disability~~, a military
232 servicemember, or the spouse or dependent child of a military
233 servicemember has priority over the imposition of civil
234 penalties for such violations pursuant to this section.

235 (5) Civil penalties collected pursuant to this section
236 shall be deposited into the Legal Affairs Revolving Trust Fund
237 of the Department of Legal Affairs and allocated solely to the
238 Department of Legal Affairs for the purpose of preparing and
239 distributing consumer education materials, programs, and
240 seminars to benefit senior citizens, persons who have a
241 disabling condition ~~disability~~, and military servicemembers or
242 to further enforcement efforts.



448396

243 Section 7. Subsection (1) of section 817.505, Florida
244 Statutes, is amended, and paragraph (d) is added to subsection
245 (2) of that section, to read:

246 817.505 Patient brokering prohibited; exceptions;
247 penalties.—

248 (1) It is unlawful for any person, including any health
249 care provider, ~~or~~ health care facility, or recovery residence,
250 to:

251 (a) Offer or pay any commission, bonus, rebate, kickback,
252 or bribe, directly or indirectly, in cash or in kind, or engage
253 in any split-fee arrangement, in any form whatsoever, to induce
254 the referral of patients or patronage to or from a health care
255 provider, ~~or~~ health care facility, or recovery residence;

256 (b) Solicit or receive any commission, benefit, bonus,
257 rebate, kickback, or bribe, directly or indirectly, in cash or
258 in kind, or engage in any split-fee arrangement, in any form
259 whatsoever, in return for referring patients or patronage to or
260 from a health care provider, ~~or~~ health care facility, or
261 recovery residence;

262 (c) Solicit or receive any commission, benefit, bonus,
263 rebate, kickback, or bribe, directly or indirectly, in cash or
264 in kind, or engage in any split-fee arrangement, in any form
265 whatsoever, in return for the acceptance or acknowledgment of
266 treatment from a health care provider, ~~or~~ health care facility,
267 or recovery residence; or

268 (d) Aid, abet, advise, or otherwise participate in the
269 conduct prohibited under paragraph (a), paragraph (b), or
270 paragraph (c).

271



448396

272 This subsection does not apply to referrals from recovery
273 residences to other recovery residences.

274 (2) For the purposes of this section, the term:

275 (d) "Recovery residence" means a residential dwelling unit
276 or other form of group housing that is offered or advertised
277 through any means, including oral, written, electronic, or
278 printed means, and by any person or entity as a residence that
279 provides a peer-supported, alcohol-free, and drug-free living
280 environment.

281 Section 8. Paragraph (e) of subsection (5) of section
282 212.055, Florida Statutes, is amended to read:

283 212.055 Discretionary sales surtaxes; legislative intent;
284 authorization and use of proceeds.—It is the legislative intent
285 that any authorization for imposition of a discretionary sales
286 surtax shall be published in the Florida Statutes as a
287 subsection of this section, irrespective of the duration of the
288 levy. Each enactment shall specify the types of counties
289 authorized to levy; the rate or rates which may be imposed; the
290 maximum length of time the surtax may be imposed, if any; the
291 procedure which must be followed to secure voter approval, if
292 required; the purpose for which the proceeds may be expended;
293 and such other requirements as the Legislature may provide.
294 Taxable transactions and administrative procedures shall be as
295 provided in s. 212.054.

296 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
297 s. 125.011(1) may levy the surtax authorized in this subsection
298 pursuant to an ordinance either approved by extraordinary vote
299 of the county commission or conditioned to take effect only upon
300 approval by a majority vote of the electors of the county voting



301 in a referendum. In a county as defined in s. 125.011(1), for
302 the purposes of this subsection, "county public general
303 hospital" means a general hospital as defined in s. 395.002
304 which is owned, operated, maintained, or governed by the county
305 or its agency, authority, or public health trust.

306 (e) A governing board, agency, or authority shall be
307 chartered by the county commission upon this act becoming law.
308 The governing board, agency, or authority shall adopt and
309 implement a health care plan for indigent health care services.
310 The governing board, agency, or authority shall consist of no
311 more than seven and no fewer than five members appointed by the
312 county commission. The members of the governing board, agency,
313 or authority shall be at least 18 years of age and residents of
314 the county. No member may be employed by or affiliated with a
315 health care provider or the public health trust, agency, or
316 authority responsible for the county public general hospital.
317 The following community organizations shall each appoint a
318 representative to a nominating committee: the South Florida
319 Hospital and Healthcare Association, the Miami-Dade County
320 Public Health Trust, the Dade County Medical Association, the
321 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
322 County. This committee shall nominate between 10 and 14 county
323 citizens for the governing board, agency, or authority. The
324 slate shall be presented to the county commission and the county
325 commission shall confirm the top five to seven nominees,
326 depending on the size of the governing board. Until such time as
327 the governing board, agency, or authority is created, the funds
328 provided for in subparagraph (d)2. shall be placed in a
329 restricted account set aside from other county funds and not



448396

330 disbursed by the county for any other purpose.

331 1. The plan shall divide the county into a minimum of four
332 and maximum of six service areas, with no more than one
333 participant hospital per service area. The county public general
334 hospital shall be designated as the provider for one of the
335 service areas. Services shall be provided through participants'
336 primary acute care facilities.

337 2. The plan and subsequent amendments to it shall fund a
338 defined range of health care services for both indigent persons
339 and the medically poor, including primary care, preventive care,
340 hospital emergency room care, and hospital care necessary to
341 stabilize the patient. For the purposes of this section,
342 "stabilization" means stabilization as defined in s. 397.311(43)
343 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
344 may include services rendered by physicians, clinics, community
345 hospitals, and alternative delivery sites, as well as at least
346 one regional referral hospital per service area. The plan shall
347 provide that agreements negotiated between the governing board,
348 agency, or authority and providers shall recognize hospitals
349 that render a disproportionate share of indigent care, provide
350 other incentives to promote the delivery of charity care to draw
351 down federal funds where appropriate, and require cost
352 containment, including, but not limited to, case management.
353 From the funds specified in subparagraphs (d)1. and 2. for
354 indigent health care services, service providers shall receive
355 reimbursement at a Medicaid rate to be determined by the
356 governing board, agency, or authority created pursuant to this
357 paragraph for the initial emergency room visit, and a per-member
358 per-month fee or capitation for those members enrolled in their



448396

359 service area, as compensation for the services rendered
360 following the initial emergency visit. Except for provisions of
361 emergency services, upon determination of eligibility,
362 enrollment shall be deemed to have occurred at the time services
363 were rendered. The provisions for specific reimbursement of
364 emergency services shall be repealed on July 1, 2001, unless
365 otherwise reenacted by the Legislature. The capitation amount or
366 rate shall be determined prior to program implementation by an
367 independent actuarial consultant. ~~In no event shall such~~
368 Reimbursement rates may not exceed the Medicaid rate. The plan
369 must also provide that any hospitals owned and operated by
370 government entities on or after the effective date of this act
371 must, as a condition of receiving funds under this subsection,
372 afford public access equal to that provided under s. 286.011 as
373 to any meeting of the governing board, agency, or authority the
374 subject of which is budgeting resources for the retention of
375 charity care, as that term is defined in the rules of the Agency
376 for Health Care Administration. The plan shall also include
377 innovative health care programs that provide cost-effective
378 alternatives to traditional methods of service and delivery
379 funding.

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

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



448396

388 5. At the end of each fiscal year, the governing board,
389 agency, or authority shall prepare an audit that reviews the
390 budget of the plan, and the delivery of services, and quality of
391 services, and makes recommendations to increase the plan's
392 efficiency. The audit shall take into account participant
393 hospital satisfaction with the plan and assess the amount of
394 poststabilization patient transfers requested, and accepted or
395 denied, by the county public general hospital.

396 Section 9. Section 397.416, Florida Statutes, is amended to
397 read:

398 397.416 Substance abuse treatment services; qualified
399 professional.—Notwithstanding any other provision of law, a
400 person who was certified through a certification process
401 recognized by the former Department of Health and Rehabilitative
402 Services before January 1, 1995, may perform the duties of a
403 qualified professional with respect to substance abuse treatment
404 services as defined in this chapter, and need not meet the
405 certification requirements contained in s. 397.311(32) ~~s.~~
406 ~~397.311(30)~~.

407 Section 10. Paragraphs (d) and (g) of subsection (1) of
408 section 440.102, Florida Statutes, are amended to read:

409 440.102 Drug-free workplace program requirements.—The
410 following provisions apply to a drug-free workplace program
411 implemented pursuant to law or to rules adopted by the Agency
412 for Health Care Administration:

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

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



448396

417 provides confidential, timely, and expert identification,
418 assessment, and resolution of employee drug abuse.

419 (g) "Employee assistance program" means an established
420 program capable of providing expert assessment of employee
421 personal concerns; confidential and timely identification
422 services with regard to employee drug abuse; referrals of
423 employees for appropriate diagnosis, treatment, and assistance;
424 and followup services for employees who participate in the
425 program or require monitoring after returning to work. If, in
426 addition to the above activities, an employee assistance program
427 provides diagnostic and treatment services, these services shall
428 in all cases be provided by service providers pursuant to s.
429 397.311(41) ~~s. 397.311(39)~~.

430 Section 11. This act shall take effect July 1, 2016.

431

432 ===== T I T L E A M E N D M E N T =====

433 And the title is amended as follows:

434 Delete everything before the enacting clause
435 and insert:

436 A bill to be entitled

437 An act relating to ethical marketing practices for
438 substance abuse services; amending s. 397.305, F.S.;
439 providing legislative intent; amending s. 397.311,
440 F.S.; defining terms; creating s. 397.335, F.S.;
441 prohibiting substance abuse treatment providers and
442 operators of recovery residences from engaging in
443 certain marketing practices; providing applicability;
444 providing that the violation of the prohibition
445 against certain unethical marketing practices by a



448396

446 provider or operator is a violation of the Florida
447 Deceptive and Unfair Trade Practices Act; requiring
448 the Department of Children and Families to submit
449 certain findings to the Department of Legal Affairs;
450 amending s. 397.501, F.S.; providing a right to a safe
451 living environment for certain individuals; amending
452 s. 456.053, F.S.; defining terms; providing
453 applicability; providing penalties for violations of
454 prohibitions against certain referrals; prohibiting a
455 substance abuse treatment provider from making certain
456 offers; providing an exemption to the prohibition
457 against referrals; amending s. 501.2077, F.S.;
458 defining the term "disabling condition"; expanding the
459 Florida Deceptive and Unfair Trade Practices Act to
460 include protections for people with diagnosable
461 substance abuse disorders and other disabling
462 conditions and civil penalties for those who commit
463 violations against such people; revising definitions;
464 amending s. 817.505, F.S.; adding recovery residences
465 as entities prohibited from patient brokering;
466 providing that it is unlawful for a person to solicit
467 or receive benefits under certain circumstances;
468 providing applicability; defining the term "recovery
469 residence"; amending ss. 212.055, 397.416, and
470 440.102, F.S.; conforming cross-references; providing
471 an effective date.

By Senator Clemens

27-00416C-16

20161138__

A bill to be entitled

An act relating to ethical marketing practices for substance abuse services; amending s. 397.305, F.S.; providing legislative intent; amending s. 397.311, F.S.; defining terms; creating s. 397.335, F.S.; prohibiting substance abuse treatment providers and operators of recovery residences from engaging in certain marketing practices; providing criminal and civil penalties for engaging in such practices; providing that the violation of the prohibition against certain unethical marketing practices by a provider or operator is a violation of the Florida Deceptive and Unfair Trade Practices Act; providing for the deposit of civil penalties into a certain trust fund; amending s. 397.501, F.S.; providing a right to a safe living environment for certain individuals; amending s. 456.053, F.S.; defining terms; providing applicability; providing penalties for violations of prohibitions against certain referrals; prohibiting a substance abuse treatment provider from making certain offers; providing an exemption to the prohibition against referrals; amending s. 501.2077, F.S.; defining the term "disabling condition"; expanding the Florida Deceptive and Unfair Trade Practices Act to include protections for people with diagnosable substance abuse disorders and other disabling conditions and civil penalties for those who commit violations against such people; revising definitions; amending s. 817.505, F.S.; adding recovery residences as entities prohibited from patient brokering; providing that it is unlawful for a person to solicit or receive benefits under certain

Page 1 of 17

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27-00416C-16

20161138__

circumstances; defining the term "recovery residence"; amending ss. 212.055, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) is added to section 397.305, Florida Statutes, to read:

397.305 Legislative findings, intent, and purpose.—

(10) It is the intent of the Legislature to ensure that treatment and recovery support for individuals who are impaired by substance abuse disorders are offered in an ethical and professional manner that includes the use of ethical marketing practices to ensure the protection of this vulnerable population.

Section 2. Present subsections (12) through (20) of section 397.311, Florida Statutes, are redesignated as subsections (13) through (21), respectively, present subsection (21) of that section is redesignated as subsection (23), present subsection (23) of that section is redesignated as subsection (26), present subsection (24) of that section is redesignated as subsection (25), present subsections (25) through (42) of that section are redesignated as subsections (27) through (44), respectively, present subsections (43) through (45) of that section are redesignated as subsections (46) through (48), respectively, and new subsections (12), (24), and (45) are added to that section, to read:

397.311 Definitions.—As used in this chapter, except part

Page 2 of 17

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27-00416C-16

20161138__

62 VIII, the term:

63 (12) "Disabling condition" means:

64 (a) A diagnosable substance abuse disorder, serious mental
 65 illness, developmental disability, specific learning disability,
 66 or chronic physical illness or disability, or the co-occurrence
 67 of two or more of these conditions.

68 (b) An educational deficiency that substantially affects a
 69 person's ability to read and comprehend the terms of a
 70 contractual agreement to which he or she is a party.

71 (24) "Marketing practices" means all statements made or
 72 information disseminated to the public, whether oral, written,
 73 printed, or otherwise, which are intended to market, advertise,
 74 or entice an individual toward a particular substance abuse
 75 treatment or recovery support program licensed under this
 76 chapter.

77 (45) "Substance abuse lead generator" means a call center
 78 or similar marketing entity that is contractually engaged by a
 79 substance abuse treatment provider licensed under this chapter
 80 to identify and cultivate prospective patient interest in a
 81 particular substance abuse treatment program or recovery
 82 residence.

83 Section 3. Section 397.335, Florida Statutes, is created to
 84 read:

85 397.335 Prohibition of unethical marketing practices.—The
 86 Legislature recognizes that individuals with substance abuse
 87 disorders have disabling conditions that put them at risk of
 88 being vulnerable to fraudulent marketing practices. To protect
 89 the health, safety, and welfare of this vulnerable population,
 90 substance abuse treatment providers licensed under this chapter

Page 3 of 17

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27-00416C-16

20161138__

91 and operators of recovery residences may not engage in the
 92 following marketing practices:

93 (1) Making false or misleading statements or providing
 94 false or misleading information about their products, goods,
 95 services, or geographical location in their marketing,
 96 advertising materials, or media or on their respective websites.

97 (2) Including on their respective websites coding that
 98 provides false information or surreptitiously directs the reader
 99 to another website.

100 (3) Soliciting, receiving, or making an attempt to solicit
 101 or receive a commission, benefit, bonus, rebate, kickback, or
 102 bribe, directly or indirectly, in cash or in kind, or engaging
 103 or making an attempt to engage in a split-fee arrangement in
 104 return for a referral or an acceptance or acknowledgment of
 105 treatment from a health care provider, health care facility, or
 106 recovery residence. A violation of this subsection is a
 107 violation of the prohibition on patient brokering and is subject
 108 to criminal penalties under s. 817.505.

109 (4) Predatory practices, including soliciting prospective
 110 patients with substance abuse conditions at community or support
 111 group meetings or treatment programs.

112 (5) Entering into a marketing contract with a substance
 113 abuse lead generator that engages in marketing through a call
 114 center, unless the call center discloses the following to the
 115 caller so that he or she can make an informed health care
 116 decision:

117 (a) The substance abuse treatment programs it represents.

118 (b) Clear and concise instructions that allow the caller to
 119 easily access a list of licensed substance abuse treatment

Page 4 of 17

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27-00416C-16

20161138__

120 agencies, both public and private, on the department website.

121

122 A substance abuse treatment provider licensed under this chapter
 123 which is operating as a partial hospitalization or intensive
 124 outpatient program may not offer a prospective patient free or
 125 reduced rent at a recovery residence to entice the prospective
 126 patient to choose it as the patient's provider and may not make
 127 a direct or an indirect payment to a recovery residence for a
 128 patient's housing or other housing-related services. A provider
 129 or operator that violates this section commits a violation of
 130 the Florida Deceptive and Unfair Trade Practices Act under s.
 131 501.2077(2) and is subject to a civil penalty of not more than
 132 \$5,000 for each willful violation. A provider or operator that
 133 willfully uses, or has willfully used, a method, act, or
 134 practice in violation of this section which victimizes or
 135 attempts to victimize a person with a disabling condition is
 136 liable for a civil penalty of not more than \$15,000 for each
 137 violation if the provider or operator knew or should have known
 138 that such conduct was unfair or deceptive. Civil penalties
 139 collected under this section must be deposited in the Substance
 140 Abuse Impairment Provider Licensing Trust Fund to partially fund
 141 the implementation and administration of this section.

142 Section 4. Present subsections (9) and (10) of section
 143 397.501, Florida Statutes, are redesignated as subsections (10)
 144 and (11), respectively, and a new subsection (9) is added to
 145 that section, to read:

146 397.501 Rights of individuals.—Individuals receiving
 147 substance abuse services from any service provider are
 148 guaranteed protection of the rights specified in this section,

27-00416C-16

20161138__

149 unless otherwise expressly provided, and service providers must
 150 ensure the protection of such rights.

151 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual
 152 receiving treatment services in a residential treatment facility
 153 or living in a recovery residence has the right to a safe living
 154 environment free from drugs, alcohol, harassment, abuse, and
 155 harm.

156 Section 5. Paragraphs (a) and (i) of subsection (3) of
 157 section 456.053, Florida Statutes, are amended, present
 158 paragraph (o) of that subsection is redesignated as paragraph
 159 (q), present paragraph (p) of that subsection is redesignated as
 160 paragraph (o), present paragraphs (q) and (r) of that subsection
 161 are redesignated as paragraphs (r) and (s), respectively, a new
 162 paragraph (p) is added to that subsection, paragraph (g) of
 163 subsection (5) of that section is amended, a new paragraph (k)
 164 is added to that subsection, and subsection (6) is added to that
 165 section, to read:

166 456.053 Financial arrangements between referring health
 167 care providers and providers of health care services.—

168 (3) DEFINITIONS.—For the purpose of this section, the word,
 169 phrase, or term:

170 (a) "Board" means any of the following boards relating to
 171 the respective professions: the Board of Medicine as created in
 172 s. 458.307; the Board of Osteopathic Medicine as created in s.
 173 459.004; the Board of Chiropractic Medicine as created in s.
 174 460.404; the Board of Podiatric Medicine as created in s.
 175 461.004; the Board of Optometry as created in s. 463.003; the
 176 Board of Pharmacy as created in s. 465.004; ~~and~~ the Board of
 177 Dentistry as created in s. 466.004; and the Board of Clinical

27-00416C-16

20161138__

178 Social Work, Marriage and Family Therapy, and Mental Health
 179 Counseling as created in s. 491.004.

180 (i) "Health care provider" means any physician licensed
 181 under chapter 458, chapter 459, chapter 460, or chapter 461, or
 182 any health care provider licensed under chapter 463, ~~or~~ chapter
 183 466, or chapter 491.

184 (p) "Recovery residence" means a residential dwelling unit
 185 or other form of group housing that is offered or advertised by
 186 a person or entity through any form of communication, including
 187 oral, written, electronic, or print media, as a residence that
 188 provides a peer-supported, alcohol-free, and drug-free living
 189 environment.

190 (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as
 191 provided in this section:

192 (g) A violation of this section by a health care provider
 193 constitutes ~~shall constitute~~ grounds for disciplinary action ~~to~~
 194 ~~be taken~~ by the applicable board pursuant to s. 458.331(2), s.
 195 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), ~~or~~ s.
 196 466.028(2), or s. 491.009(2). Any hospital licensed under
 197 chapter 395 found in violation of this section is ~~shall be~~
 198 subject to s. 395.0185(2). A substance abuse treatment provider
 199 licensed under chapter 397 found in violation of this section is
 200 subject to the penalties imposed under ss. 397.415 and 397.461.

201 (k) A substance abuse treatment provider licensed under
 202 chapter 397 which is operating as a partial hospitalization or
 203 intensive outpatient program may not offer a prospective patient
 204 free or reduced rent at a recovery residence to entice the
 205 prospective patient to choose it as the patient's provider.

206 (6) EXCEPTIONS TO PROHIBITED REFERRALS.—The prohibitions in

Page 7 of 17

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27-00416C-16

20161138__

207 paragraphs (5) (a) and (b) do not apply to referrals made by
 208 substance abuse treatment providers licensed under chapter 397,
 209 any health care service entities owned by such providers or in
 210 which such providers have a financial interest, or subsidiaries
 211 of those health care service entities, to recovery residences or
 212 laboratory testing services in which any of such providers,
 213 entities or subsidiaries have a financial interest if the
 214 financial interest is clearly stated:

215 (a) In writing to patients, clients, consumers, and
 216 facility residents.

217 (b) On marketing or advertising materials, including any
 218 information disseminated to the public, whether oral, written,
 219 printed, or otherwise, which is intended to market or advertise
 220 substance abuse treatment services or recovery support.

221 (c) On a posted notice that can be easily read by patients
 222 in a common area at the substance abuse treatment facility in
 223 which the referring provider has a financial interest.

224 Section 6. Section 501.2077, Florida Statutes, is amended
 225 to read:

226 501.2077 Violations involving senior citizen, person who
 227 has a disabling condition ~~disability~~, military servicemember, or
 228 the spouse or dependent child of a military servicemember; civil
 229 penalties; presumption.—

230 (1) As used in this section, the term:

231 (a) "Disabling condition" means:

232 1. A diagnosable substance abuse disorder, serious mental
 233 illness, developmental disability, specific learning disability,
 234 or chronic physical illness or disability, or the co-occurrence
 235 of two or more of these conditions.

Page 8 of 17

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27-00416C-16

20161138__

236 2. An educational deficiency that substantially affects a
 237 person's ability to read and comprehend the terms of a
 238 contractual agreement to which he or she is a party.
 239 (b) "Major life activities" means functions associated with
 240 the normal activities of independent daily living, such as
 241 caring for one's self, performing manual tasks, walking, seeing,
 242 hearing, speaking, breathing, learning, and working.
 243 ~~(b) "Mental or educational impairment" means-~~
 244 ~~1. A mental or psychological disorder or specific learning~~
 245 ~~disability.~~
 246 ~~2. An educational deficiency that substantially affects a~~
 247 ~~person's ability to read and comprehend the terms of any~~
 248 ~~contractual agreement entered into.~~
 249 (c) "Military servicemember" means a person who is on
 250 active duty in, or a veteran of, the United States Armed Forces.
 251 1. "Active duty" has the same meaning as provided in s.
 252 250.01.
 253 2. "Veteran" has the same meaning as provided in s. 1.01.
 254 (d) "Person who has a disabling condition disability" means
 255 a person who has a mental or educational impairment that
 256 substantially limits one or more major life activities.
 257 (e) "Senior citizen" means a person who is 60 years of age
 258 or older.
 259 (2) A person who is willfully using, or has willfully used,
 260 a method, act, or practice in violation of this part which
 261 victimizes or attempts to victimize a senior citizen or a person
 262 who has a disabling condition disability is liable for a civil
 263 penalty of not more than \$15,000 for each such violation if she
 264 or he knew or should have known that her or his conduct was

Page 9 of 17

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27-00416C-16

20161138__

265 unfair or deceptive.
 266 (3) A person who is willfully using, or has willfully used,
 267 a method, act, or practice in violation of this part directed at
 268 a military servicemember or the spouse or dependent child of a
 269 military servicemember is liable for a civil penalty of not more
 270 than \$15,000 for each such violation if she or he knew or should
 271 have known that her or his conduct was unfair or deceptive.
 272 (4) An order of restitution or reimbursement based on a
 273 violation of this part committed against a senior citizen, a
 274 person who has a disabling condition disability, a military
 275 servicemember, or the spouse or dependent child of a military
 276 servicemember has priority over the imposition of civil
 277 penalties for such violations pursuant to this section.
 278 (5) Civil penalties collected pursuant to this section
 279 shall be deposited into the Legal Affairs Revolving Trust Fund
 280 of the Department of Legal Affairs and allocated solely to the
 281 Department of Legal Affairs for the purpose of preparing and
 282 distributing consumer education materials, programs, and
 283 seminars to benefit senior citizens, persons who have a
 284 disabling condition disability, and military servicemembers or
 285 to further enforcement efforts.
 286 Section 7. Subsection (1) of section 817.505, Florida
 287 Statutes, is amended, and paragraph (d) is added to subsection
 288 (2) of that section, to read:
 289 817.505 Patient brokering prohibited; exceptions;
 290 penalties.-
 291 (1) It is unlawful for any person, including any health
 292 care provider, ~~or~~ health care facility, or recovery residence,
 293 to:

Page 10 of 17

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27-00416C-16

20161138__

294 (a) Offer or pay any commission, bonus, rebate, kickback,
 295 or bribe, directly or indirectly, in cash or in kind, or engage
 296 in any split-fee arrangement, in any form whatsoever, to induce
 297 the referral of patients or patronage to or from a health care
 298 provider, ~~or~~ health care facility, or recovery residence;

299 (b) Solicit or receive any commission, benefit, bonus,
 300 rebate, kickback, or bribe, directly or indirectly, in cash or
 301 in kind, or engage in any split-fee arrangement, in any form
 302 whatsoever, in return for referring patients or patronage to or
 303 from a health care provider, ~~or~~ health care facility, or
 304 recovery residence;

305 (c) Solicit or receive any commission, benefit, bonus,
 306 rebate, kickback, or bribe, directly or indirectly, in cash or
 307 in kind, or engage in any split-fee arrangement, in any form
 308 whatsoever, in return for the acceptance or acknowledgment of
 309 treatment from a health care provider, ~~or~~ health care facility,
 310 or recovery residence; or

311 (d) Aid, abet, advise, or otherwise participate in the
 312 conduct prohibited under paragraph (a), paragraph (b), or
 313 paragraph (c).

314 (2) For the purposes of this section, the term:

315 (d) "Recovery residence" means a residential dwelling unit
 316 or other form of group housing that is offered or advertised by
 317 a person or entity through any form of communication, including
 318 oral, written, electronic, or print media, as a residence that
 319 provides a peer-supported, alcohol-free, and drug-free living
 320 environment.

321 Section 8. Paragraph (e) of subsection (5) of section
 322 212.055, Florida Statutes, is amended to read:

Page 11 of 17

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27-00416C-16

20161138__

323 212.055 Discretionary sales surtaxes; legislative intent;
 324 authorization and use of proceeds.—It is the legislative intent
 325 that any authorization for imposition of a discretionary sales
 326 surtax shall be published in the Florida Statutes as a
 327 subsection of this section, irrespective of the duration of the
 328 levy. Each enactment shall specify the types of counties
 329 authorized to levy; the rate or rates which may be imposed; the
 330 maximum length of time the surtax may be imposed, if any; the
 331 procedure which must be followed to secure voter approval, if
 332 required; the purpose for which the proceeds may be expended;
 333 and such other requirements as the Legislature may provide.
 334 Taxable transactions and administrative procedures shall be as
 335 provided in s. 212.054.

336 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
 337 s. 125.011(1) may levy the surtax authorized in this subsection
 338 pursuant to an ordinance either approved by extraordinary vote
 339 of the county commission or conditioned to take effect only upon
 340 approval by a majority vote of the electors of the county voting
 341 in a referendum. In a county as defined in s. 125.011(1), for
 342 the purposes of this subsection, "county public general
 343 hospital" means a general hospital as defined in s. 395.002
 344 which is owned, operated, maintained, or governed by the county
 345 or its agency, authority, or public health trust.

346 (e) A governing board, agency, or authority shall be
 347 chartered by the county commission upon this act becoming law.
 348 The governing board, agency, or authority shall adopt and
 349 implement a health care plan for indigent health care services.
 350 The governing board, agency, or authority shall consist of no
 351 more than seven and no fewer than five members appointed by the

Page 12 of 17

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27-00416C-16

20161138__

352 county commission. The members of the governing board, agency,
 353 or authority shall be at least 18 years of age and residents of
 354 the county. No member may be employed by or affiliated with a
 355 health care provider or the public health trust, agency, or
 356 authority responsible for the county public general hospital.
 357 The following community organizations shall each appoint a
 358 representative to a nominating committee: the South Florida
 359 Hospital and Healthcare Association, the Miami-Dade County
 360 Public Health Trust, the Dade County Medical Association, the
 361 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
 362 County. This committee shall nominate between 10 and 14 county
 363 citizens for the governing board, agency, or authority. The
 364 slate shall be presented to the county commission and the county
 365 commission shall confirm the top five to seven nominees,
 366 depending on the size of the governing board. Until such time as
 367 the governing board, agency, or authority is created, the funds
 368 provided for in subparagraph (d)2. shall be placed in a
 369 restricted account set aside from other county funds and not
 370 disbursed by the county for any other purpose.

371 1. The plan shall divide the county into a minimum of four
 372 and maximum of six service areas, with no more than one
 373 participant hospital per service area. The county public general
 374 hospital shall be designated as the provider for one of the
 375 service areas. Services shall be provided through participants'
 376 primary acute care facilities.

377 2. The plan and subsequent amendments to it shall fund a
 378 defined range of health care services for both indigent persons
 379 and the medically poor, including primary care, preventive care,
 380 hospital emergency room care, and hospital care necessary to

27-00416C-16

20161138__

381 stabilize the patient. For the purposes of this section,
 382 "stabilization" means stabilization as defined in s. 397.311(43)
 383 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
 384 may include services rendered by physicians, clinics, community
 385 hospitals, and alternative delivery sites, as well as at least
 386 one regional referral hospital per service area. The plan shall
 387 provide that agreements negotiated between the governing board,
 388 agency, or authority and providers shall recognize hospitals
 389 that render a disproportionate share of indigent care, provide
 390 other incentives to promote the delivery of charity care to draw
 391 down federal funds where appropriate, and require cost
 392 containment, including, but not limited to, case management.
 393 From the funds specified in subparagraphs (d)1. and 2. for
 394 indigent health care services, service providers shall receive
 395 reimbursement at a Medicaid rate to be determined by the
 396 governing board, agency, or authority created pursuant to this
 397 paragraph for the initial emergency room visit, and a per-member
 398 per-month fee or capitation for those members enrolled in their
 399 service area, as compensation for the services rendered
 400 following the initial emergency visit. Except for provisions of
 401 emergency services, upon determination of eligibility,
 402 enrollment shall be deemed to have occurred at the time services
 403 were rendered. The provisions for specific reimbursement of
 404 emergency services shall be repealed on July 1, 2001, unless
 405 otherwise reenacted by the Legislature. The capitation amount or
 406 rate shall be determined prior to program implementation by an
 407 independent actuarial consultant. ~~In no event shall such~~
 408 Reimbursement rates may not exceed the Medicaid rate. The plan
 409 must also provide that any hospitals owned and operated by

27-00416C-16

20161138__

410 government entities on or after the effective date of this act
 411 must, as a condition of receiving funds under this subsection,
 412 afford public access equal to that provided under s. 286.011 as
 413 to any meeting of the governing board, agency, or authority the
 414 subject of which is budgeting resources for the retention of
 415 charity care, as that term is defined in the rules of the Agency
 416 for Health Care Administration. The plan shall also include
 417 innovative health care programs that provide cost-effective
 418 alternatives to traditional methods of service and delivery
 419 funding.

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

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

428 5. At the end of each fiscal year, the governing board,
 429 agency, or authority shall prepare an audit that reviews the
 430 budget of the plan, and the delivery of services, and quality of
 431 services, and makes recommendations to increase the plan's
 432 efficiency. The audit shall take into account participant
 433 hospital satisfaction with the plan and assess the amount of
 434 poststabilization patient transfers requested, and accepted or
 435 denied, by the county public general hospital.

436 Section 9. Section 397.416, Florida Statutes, is amended to
 437 read:

438 397.416 Substance abuse treatment services; qualified

Page 15 of 17

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27-00416C-16

20161138__

439 professional.—Notwithstanding any other provision of law, a
 440 person who was certified through a certification process
 441 recognized by the former Department of Health and Rehabilitative
 442 Services before January 1, 1995, may perform the duties of a
 443 qualified professional with respect to substance abuse treatment
 444 services as defined in this chapter, and need not meet the
 445 certification requirements contained in s. 397.311(32) ~~s.~~
 446 ~~397.311(30)~~.

447 Section 10. Paragraphs (d) and (g) of subsection (1) of
 448 section 440.102, Florida Statutes, are amended to read:

449 440.102 Drug-free workplace program requirements.—The
 450 following provisions apply to a drug-free workplace program
 451 implemented pursuant to law or to rules adopted by the Agency
 452 for Health Care Administration:

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

455 (d) "Drug rehabilitation program" means a service provider,
 456 established pursuant to s. 397.311(41) ~~s. 397.311(39)~~, that
 457 provides confidential, timely, and expert identification,
 458 assessment, and resolution of employee drug abuse.

459 (g) "Employee assistance program" means an established
 460 program capable of providing expert assessment of employee
 461 personal concerns; confidential and timely identification
 462 services with regard to employee drug abuse; referrals of
 463 employees for appropriate diagnosis, treatment, and assistance;
 464 and followup services for employees who participate in the
 465 program or require monitoring after returning to work. If, in
 466 addition to the above activities, an employee assistance program
 467 provides diagnostic and treatment services, these services shall

Page 16 of 17

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27-00416C-16

20161138__

468 in all cases be provided by service providers pursuant to s.

469 397.311(41) ~~s. 397.311(39)~~.

470 Section 11. This act shall take effect July 1, 2016.



448396

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/21/2016	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) is added to section 397.305,
Florida Statutes, to read:

397.305 Legislative findings, intent, and purpose.—

(10) It is the intent of the Legislature to ensure that
treatment and recovery support for individuals who are impaired
by substance abuse disorders are offered in an ethical and



448396

11 professional manner that includes the use of ethical marketing
12 practices to ensure the protection of this vulnerable
13 population.

14 Section 2. Present subsections (12) through (20) of section
15 397.311, Florida Statutes, are redesignated as subsections (13)
16 through (21), respectively, present subsection (21) of that
17 section is redesignated as subsection (23), present subsection
18 (23) of that section is redesignated as subsection (26), present
19 subsection (24) of that section is redesignated as subsection
20 (25), present subsections (25) through (42) of that section are
21 redesignated as subsections (27) through (44), respectively,
22 present subsections (43) through (45) of that section are
23 redesignated as subsections (46) through (48), respectively, and
24 new subsections (12), (24), and (45) are added to that section,
25 to read:

26 397.311 Definitions.—As used in this chapter, except part
27 VIII, the term:

28 (12) "Disabling condition" means:

29 (a) A diagnosable substance abuse disorder, serious mental
30 illness, developmental disability, specific learning disability,
31 or chronic physical illness or disability, or the co-occurrence
32 of two or more of these conditions.

33 (b) An educational deficiency that substantially affects a
34 person's ability to read and comprehend the terms of a
35 contractual agreement to which he or she is a party.

36 (24) "Marketing practices" means all statements made or
37 information disseminated to the public, whether oral, written,
38 printed, or otherwise, which are intended to market, advertise,
39 or entice an individual toward a particular substance abuse



448396

40 treatment or recovery support program licensed under this
41 chapter.

42 (45) "Substance abuse lead generator" means a call center
43 or similar marketing entity that is contractually engaged by a
44 substance abuse treatment provider licensed under this chapter
45 to identify and cultivate prospective patient interest in a
46 particular substance abuse treatment program or recovery
47 residence.

48 Section 3. Section 397.335, Florida Statutes, is created to
49 read:

50 397.335 Prohibition of unethical marketing practices.—The
51 Legislature recognizes that individuals with substance abuse
52 disorders have disabling conditions that put them at risk of
53 being vulnerable to fraudulent marketing practices. To protect
54 the health, safety, and welfare of this vulnerable population,
55 substance abuse treatment providers licensed under this chapter
56 and operators of recovery residences may not engage in the
57 following marketing practices:

58 (1) Making false or misleading statements or providing
59 false or misleading information about their products, goods,
60 services, or geographical location in their marketing,
61 advertising materials, or media or on their respective websites.

62 (2) Including on their respective websites coding that
63 provides false information or surreptitiously directs the reader
64 to another website.

65 (3) Soliciting or receiving a commission, benefit, bonus,
66 rebate, kickback, or bribe, directly or indirectly, in cash or
67 in kind, or engaging or making an attempt to engage in a split-
68 fee arrangement in return for a referral or an acceptance or



448396

69 acknowledgment of treatment from a health care provider, health
70 care facility, or recovery residence. A violation of this
71 subsection is a violation of the prohibition on patient
72 brokering and is subject to criminal penalties under s. 817.505.
73 This subsection does not apply to referrals from recovery
74 residences to other recovery residences.

75 (4) Entering into a marketing contract with a substance
76 abuse lead generator that engages in marketing through a call
77 center, unless the call center discloses the following to the
78 caller so that he or she can make an informed health care
79 decision:

80 (a) The substance abuse treatment programs it represents.

81 (b) Clear and concise instructions that allow the caller to
82 easily access a list of licensed substance abuse treatment
83 agencies, both public and private, on the department website.

84
85 A substance abuse treatment provider licensed under this chapter
86 which is operating as a partial hospitalization or an outpatient
87 program, including an intensive outpatient program, may not
88 offer a prospective patient free or reduced rent at a recovery
89 residence to induce the prospective patient to choose it as the
90 patient's provider and may not make a direct or an indirect
91 payment to a recovery residence for a patient's housing or other
92 housing-related services. A provider or operator that violates
93 this section commits a violation of the Florida Deceptive and
94 Unfair Trade Practices Act under s. 501.2077(2). The Department
95 of Children and Families shall submit copies of findings related
96 to violations by entities licensed and regulated under this
97 chapter to the Department of Legal Affairs.



448396

98 Section 4. Present subsections (9) and (10) of section
99 397.501, Florida Statutes, are redesignated as subsections (10)
100 and (11), respectively, and a new subsection (9) is added to
101 that section, to read:

102 397.501 Rights of individuals.—Individuals receiving
103 substance abuse services from any service provider are
104 guaranteed protection of the rights specified in this section,
105 unless otherwise expressly provided, and service providers must
106 ensure the protection of such rights.

107 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual
108 receiving treatment services in a residential treatment facility
109 or living in a recovery residence has the right to a safe living
110 environment free from drugs, alcohol, harassment, abuse, and
111 harm.

112 Section 5. Paragraphs (a) and (i) of subsection (3) of
113 section 456.053, Florida Statutes, are amended, present
114 paragraph (o) of that subsection is redesignated as paragraph
115 (q), present paragraph (p) of that subsection is redesignated as
116 paragraph (o), present paragraphs (q) and (r) of that subsection
117 are redesignated as paragraphs (r) and (s), respectively, a new
118 paragraph (p) is added to that subsection, paragraph (g) of
119 subsection (5) of that section is amended, a new paragraph (k)
120 is added to that subsection, and subsection (6) is added to that
121 section, to read:

122 456.053 Financial arrangements between referring health
123 care providers and providers of health care services.—

124 (3) DEFINITIONS.—For the purpose of this section, the word,
125 phrase, or term:

126 (a) "Board" means any of the following boards relating to



448396

127 the respective professions: the Board of Medicine as created in
128 s. 458.307; the Board of Osteopathic Medicine as created in s.
129 459.004; the Board of Chiropractic Medicine as created in s.
130 460.404; the Board of Podiatric Medicine as created in s.
131 461.004; the Board of Optometry as created in s. 463.003; the
132 Board of Pharmacy as created in s. 465.004; ~~and~~ the Board of
133 Dentistry as created in s. 466.004; and the Board of Clinical
134 Social Work, Marriage and Family Therapy, and Mental Health
135 Counseling as created in s. 491.004.

136 (i) "Health care provider" means any physician licensed
137 under chapter 458, chapter 459, chapter 460, or chapter 461, or
138 any health care provider licensed under chapter 463, ~~or~~ chapter
139 466, or chapter 491.

140 (p) "Recovery residence" means a residential dwelling unit
141 or other form of group housing that is offered or advertised
142 through any means, including oral, written, electronic, or
143 printed means, and by any person or entity as a residence that
144 provides a peer-supported, alcohol-free, and drug-free living
145 environment.

146 (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as
147 provided in this section:

148 (g) A violation of this section by a health care provider
149 constitutes ~~shall constitute~~ grounds for disciplinary action ~~to~~
150 ~~be taken~~ by the applicable board pursuant to s. 458.331(2), s.
151 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), ~~or~~ s.
152 466.028(2), or s. 491.009(2). Any hospital licensed under
153 chapter 395 found in violation of this section is ~~shall be~~
154 subject to s. 395.0185(2). A substance abuse treatment provider
155 licensed under chapter 397 found in violation of this section is



448396

156 subject to the penalties imposed under ss. 397.415 and 397.461.

157 (k) A substance abuse treatment provider licensed under
158 chapter 397 which is operating as a partial hospitalization or
159 an outpatient program, including an intensive outpatient
160 program, may not offer a prospective patient free or reduced
161 rent at a recovery residence to induce the prospective patient
162 to choose it as the patient's provider.

163 (6) EXCEPTIONS TO PROHIBITED REFERRALS.—The prohibitions in
164 paragraphs (5) (a) and (b) do not apply to referrals made by
165 substance abuse treatment providers licensed under chapter 397,
166 any health care service entities owned by such providers or in
167 which such providers have a financial interest, or subsidiaries
168 of those health care service entities, to recovery residences or
169 laboratory testing services in which any of such providers,
170 entities or subsidiaries have a financial interest if the
171 financial interest is clearly stated:

172 (a) In writing to patients, clients, consumers, and
173 facility residents.

174 (b) On marketing or advertising materials, including any
175 information disseminated to the public, whether oral, written,
176 printed, or otherwise, which is intended to market or advertise
177 substance abuse treatment services or recovery support.

178 (c) On a posted notice that can be easily read by patients
179 in a common area at the substance abuse treatment facility in
180 which the referring provider has a financial interest.

181 Section 6. Section 501.2077, Florida Statutes, is amended
182 to read:

183 501.2077 Violations involving senior citizen, person who
184 has a disabling condition ~~disability~~, military servicemember, or



448396

185 the spouse or dependent child of a military servicemember; civil
186 penalties; presumption.—

187 (1) As used in this section, the term:

188 (a) "Disabling condition" means:

189 1. A diagnosable substance abuse disorder, serious mental
190 illness, developmental disability, specific learning disability,
191 or chronic physical illness or disability, or the co-occurrence
192 of two or more of these conditions.

193 2. An educational deficiency that substantially affects a
194 person's ability to read and comprehend the terms of a
195 contractual agreement to which he or she is a party.

196 (b) "Major life activities" means functions associated with
197 the normal activities of independent daily living, such as
198 caring for one's self, performing manual tasks, walking, seeing,
199 hearing, speaking, breathing, learning, and working.

200 ~~(b) "Mental or educational impairment" means:~~

201 ~~1. A mental or psychological disorder or specific learning~~
202 ~~disability.~~

203 ~~2. An educational deficiency that substantially affects a~~
204 ~~person's ability to read and comprehend the terms of any~~
205 ~~contractual agreement entered into.~~

206 (c) "Military servicemember" means a person who is on
207 active duty in, or a veteran of, the United States Armed Forces.

208 1. "Active duty" has the same meaning as provided in s.
209 250.01.

210 2. "Veteran" has the same meaning as provided in s. 1.01.

211 (d) "Person who has a disabling condition ~~disability~~" means
212 a person who has a mental or educational impairment that
213 substantially limits one or more major life activities.



448396

214 (e) "Senior citizen" means a person who is 60 years of age
215 or older.

216 (2) A person who is willfully using, or has willfully used,
217 a method, act, or practice in violation of this part which
218 victimizes or attempts to victimize a senior citizen or a person
219 who has a disabling condition ~~disability~~ is liable for a civil
220 penalty of not more than \$15,000 for each such violation if she
221 or he knew or should have known that her or his conduct was
222 unfair or deceptive.

223 (3) A person who is willfully using, or has willfully used,
224 a method, act, or practice in violation of this part directed at
225 a military servicemember or the spouse or dependent child of a
226 military servicemember is liable for a civil penalty of not more
227 than \$15,000 for each such violation if she or he knew or should
228 have known that her or his conduct was unfair or deceptive.

229 (4) An order of restitution or reimbursement based on a
230 violation of this part committed against a senior citizen, a
231 person who has a disabling condition ~~disability~~, a military
232 servicemember, or the spouse or dependent child of a military
233 servicemember has priority over the imposition of civil
234 penalties for such violations pursuant to this section.

235 (5) Civil penalties collected pursuant to this section
236 shall be deposited into the Legal Affairs Revolving Trust Fund
237 of the Department of Legal Affairs and allocated solely to the
238 Department of Legal Affairs for the purpose of preparing and
239 distributing consumer education materials, programs, and
240 seminars to benefit senior citizens, persons who have a
241 disabling condition ~~disability~~, and military servicemembers or
242 to further enforcement efforts.



243 Section 7. Subsection (1) of section 817.505, Florida
244 Statutes, is amended, and paragraph (d) is added to subsection
245 (2) of that section, to read:

246 817.505 Patient brokering prohibited; exceptions;
247 penalties.—

248 (1) It is unlawful for any person, including any health
249 care provider, ~~or~~ health care facility, or recovery residence,
250 to:

251 (a) Offer or pay any commission, bonus, rebate, kickback,
252 or bribe, directly or indirectly, in cash or in kind, or engage
253 in any split-fee arrangement, in any form whatsoever, to induce
254 the referral of patients or patronage to or from a health care
255 provider, ~~or~~ health care facility, or recovery residence;

256 (b) Solicit or receive any commission, benefit, bonus,
257 rebate, kickback, or bribe, directly or indirectly, in cash or
258 in kind, or engage in any split-fee arrangement, in any form
259 whatsoever, in return for referring patients or patronage to or
260 from a health care provider, ~~or~~ health care facility, or
261 recovery residence;

262 (c) Solicit or receive any commission, benefit, bonus,
263 rebate, kickback, or bribe, directly or indirectly, in cash or
264 in kind, or engage in any split-fee arrangement, in any form
265 whatsoever, in return for the acceptance or acknowledgment of
266 treatment from a health care provider, ~~or~~ health care facility,
267 or recovery residence; or

268 (d) Aid, abet, advise, or otherwise participate in the
269 conduct prohibited under paragraph (a), paragraph (b), or
270 paragraph (c).

271



448396

272 This subsection does not apply to referrals from recovery
273 residences to other recovery residences.

274 (2) For the purposes of this section, the term:

275 (d) "Recovery residence" means a residential dwelling unit
276 or other form of group housing that is offered or advertised
277 through any means, including oral, written, electronic, or
278 printed means, and by any person or entity as a residence that
279 provides a peer-supported, alcohol-free, and drug-free living
280 environment.

281 Section 8. Paragraph (e) of subsection (5) of section
282 212.055, Florida Statutes, is amended to read:

283 212.055 Discretionary sales surtaxes; legislative intent;
284 authorization and use of proceeds.—It is the legislative intent
285 that any authorization for imposition of a discretionary sales
286 surtax shall be published in the Florida Statutes as a
287 subsection of this section, irrespective of the duration of the
288 levy. Each enactment shall specify the types of counties
289 authorized to levy; the rate or rates which may be imposed; the
290 maximum length of time the surtax may be imposed, if any; the
291 procedure which must be followed to secure voter approval, if
292 required; the purpose for which the proceeds may be expended;
293 and such other requirements as the Legislature may provide.
294 Taxable transactions and administrative procedures shall be as
295 provided in s. 212.054.

296 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
297 s. 125.011(1) may levy the surtax authorized in this subsection
298 pursuant to an ordinance either approved by extraordinary vote
299 of the county commission or conditioned to take effect only upon
300 approval by a majority vote of the electors of the county voting



301 in a referendum. In a county as defined in s. 125.011(1), for
302 the purposes of this subsection, "county public general
303 hospital" means a general hospital as defined in s. 395.002
304 which is owned, operated, maintained, or governed by the county
305 or its agency, authority, or public health trust.

306 (e) A governing board, agency, or authority shall be
307 chartered by the county commission upon this act becoming law.
308 The governing board, agency, or authority shall adopt and
309 implement a health care plan for indigent health care services.
310 The governing board, agency, or authority shall consist of no
311 more than seven and no fewer than five members appointed by the
312 county commission. The members of the governing board, agency,
313 or authority shall be at least 18 years of age and residents of
314 the county. No member may be employed by or affiliated with a
315 health care provider or the public health trust, agency, or
316 authority responsible for the county public general hospital.
317 The following community organizations shall each appoint a
318 representative to a nominating committee: the South Florida
319 Hospital and Healthcare Association, the Miami-Dade County
320 Public Health Trust, the Dade County Medical Association, the
321 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
322 County. This committee shall nominate between 10 and 14 county
323 citizens for the governing board, agency, or authority. The
324 slate shall be presented to the county commission and the county
325 commission shall confirm the top five to seven nominees,
326 depending on the size of the governing board. Until such time as
327 the governing board, agency, or authority is created, the funds
328 provided for in subparagraph (d)2. shall be placed in a
329 restricted account set aside from other county funds and not



448396

330 disbursed by the county for any other purpose.

331 1. The plan shall divide the county into a minimum of four
332 and maximum of six service areas, with no more than one
333 participant hospital per service area. The county public general
334 hospital shall be designated as the provider for one of the
335 service areas. Services shall be provided through participants'
336 primary acute care facilities.

337 2. The plan and subsequent amendments to it shall fund a
338 defined range of health care services for both indigent persons
339 and the medically poor, including primary care, preventive care,
340 hospital emergency room care, and hospital care necessary to
341 stabilize the patient. For the purposes of this section,
342 "stabilization" means stabilization as defined in s. 397.311(43)
343 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
344 may include services rendered by physicians, clinics, community
345 hospitals, and alternative delivery sites, as well as at least
346 one regional referral hospital per service area. The plan shall
347 provide that agreements negotiated between the governing board,
348 agency, or authority and providers shall recognize hospitals
349 that render a disproportionate share of indigent care, provide
350 other incentives to promote the delivery of charity care to draw
351 down federal funds where appropriate, and require cost
352 containment, including, but not limited to, case management.
353 From the funds specified in subparagraphs (d)1. and 2. for
354 indigent health care services, service providers shall receive
355 reimbursement at a Medicaid rate to be determined by the
356 governing board, agency, or authority created pursuant to this
357 paragraph for the initial emergency room visit, and a per-member
358 per-month fee or capitation for those members enrolled in their



448396

359 service area, as compensation for the services rendered
360 following the initial emergency visit. Except for provisions of
361 emergency services, upon determination of eligibility,
362 enrollment shall be deemed to have occurred at the time services
363 were rendered. The provisions for specific reimbursement of
364 emergency services shall be repealed on July 1, 2001, unless
365 otherwise reenacted by the Legislature. The capitation amount or
366 rate shall be determined prior to program implementation by an
367 independent actuarial consultant. ~~In no event shall such~~
368 Reimbursement rates may not exceed the Medicaid rate. The plan
369 must also provide that any hospitals owned and operated by
370 government entities on or after the effective date of this act
371 must, as a condition of receiving funds under this subsection,
372 afford public access equal to that provided under s. 286.011 as
373 to any meeting of the governing board, agency, or authority the
374 subject of which is budgeting resources for the retention of
375 charity care, as that term is defined in the rules of the Agency
376 for Health Care Administration. The plan shall also include
377 innovative health care programs that provide cost-effective
378 alternatives to traditional methods of service and delivery
379 funding.

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

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



448396

388 5. At the end of each fiscal year, the governing board,
389 agency, or authority shall prepare an audit that reviews the
390 budget of the plan, and the delivery of services, and quality of
391 services, and makes recommendations to increase the plan's
392 efficiency. The audit shall take into account participant
393 hospital satisfaction with the plan and assess the amount of
394 poststabilization patient transfers requested, and accepted or
395 denied, by the county public general hospital.

396 Section 9. Section 397.416, Florida Statutes, is amended to
397 read:

398 397.416 Substance abuse treatment services; qualified
399 professional.—Notwithstanding any other provision of law, a
400 person who was certified through a certification process
401 recognized by the former Department of Health and Rehabilitative
402 Services before January 1, 1995, may perform the duties of a
403 qualified professional with respect to substance abuse treatment
404 services as defined in this chapter, and need not meet the
405 certification requirements contained in s. 397.311(32) ~~s.~~
406 ~~397.311(30)~~.

407 Section 10. Paragraphs (d) and (g) of subsection (1) of
408 section 440.102, Florida Statutes, are amended to read:

409 440.102 Drug-free workplace program requirements.—The
410 following provisions apply to a drug-free workplace program
411 implemented pursuant to law or to rules adopted by the Agency
412 for Health Care Administration:

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

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



448396

417 provides confidential, timely, and expert identification,
418 assessment, and resolution of employee drug abuse.

419 (g) "Employee assistance program" means an established
420 program capable of providing expert assessment of employee
421 personal concerns; confidential and timely identification
422 services with regard to employee drug abuse; referrals of
423 employees for appropriate diagnosis, treatment, and assistance;
424 and followup services for employees who participate in the
425 program or require monitoring after returning to work. If, in
426 addition to the above activities, an employee assistance program
427 provides diagnostic and treatment services, these services shall
428 in all cases be provided by service providers pursuant to s.
429 397.311(41) ~~s. 397.311(39)~~.

430 Section 11. This act shall take effect July 1, 2016.

431
432 ===== T I T L E A M E N D M E N T =====

433 And the title is amended as follows:

434 Delete everything before the enacting clause
435 and insert:

436 A bill to be entitled

437 An act relating to ethical marketing practices for
438 substance abuse services; amending s. 397.305, F.S.;
439 providing legislative intent; amending s. 397.311,
440 F.S.; defining terms; creating s. 397.335, F.S.;
441 prohibiting substance abuse treatment providers and
442 operators of recovery residences from engaging in
443 certain marketing practices; providing applicability;
444 providing that the violation of the prohibition
445 against certain unethical marketing practices by a



448396

446 provider or operator is a violation of the Florida
447 Deceptive and Unfair Trade Practices Act; requiring
448 the Department of Children and Families to submit
449 certain findings to the Department of Legal Affairs;
450 amending s. 397.501, F.S.; providing a right to a safe
451 living environment for certain individuals; amending
452 s. 456.053, F.S.; defining terms; providing
453 applicability; providing penalties for violations of
454 prohibitions against certain referrals; prohibiting a
455 substance abuse treatment provider from making certain
456 offers; providing an exemption to the prohibition
457 against referrals; amending s. 501.2077, F.S.;

458 defining the term "disabling condition"; expanding the
459 Florida Deceptive and Unfair Trade Practices Act to
460 include protections for people with diagnosable
461 substance abuse disorders and other disabling
462 conditions and civil penalties for those who commit
463 violations against such people; revising definitions;
464 amending s. 817.505, F.S.; adding recovery residences
465 as entities prohibited from patient brokering;
466 providing that it is unlawful for a person to solicit
467 or receive benefits under certain circumstances;
468 providing applicability; defining the term "recovery
469 residence"; amending ss. 212.055, 397.416, and
470 440.102, F.S.; conforming cross-references; providing
471 an effective date.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1138
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, January 20, 2016
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	1/20/2016 Amendment 448396					
			Yea	Nay	Yea	Nay	Yea	Nay
		Dean						
X		Detert						
X		Garcia						
		Hutson						
X		Ring						
X		Altman, VICE CHAIR						
X		Sobel, CHAIR						
5	0	TOTALS	FAV	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

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 Children, Families, and Elder Affairs

BILL: SB 7054

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Agency for Persons with Disabilities

DATE: January 21, 2016 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Crosier</u>	<u>Hendon</u>	_____	CA Submitted as a Committee Bill

I. Summary:

SB 7054 creates and amends certain statutes to provide the Agency for Persons with Disabilities (“agency” or “APD”) the ability to assign priority of clients to the waiting list; allow family members of active duty service members to receive waiver services; conduct utilization reviews; allow contractors to use agency data management systems; perform annual reviews of persons involuntarily admitted to residential services and allows for the use of video and audio monitoring of the comprehensive transitional education programs facilities.

The bill allows certain individuals to receive waiver services if the parent or legal guardian is an active-duty military service member and at the time of transfer to this state, the individual was receiving waiver-based services in another state. The bill provides that individuals that are 18 but not yet 22 and staying in extended foster care are eligible to receive foster care services and waiver services. The bill directs persons or entities under contract with the agency to use the agency data management systems to document service provision to clients. The bill clarifies the process used in development of a client’s iBudget and adds transportation as a service that can be considered for an increase when determining the allocation of funds to the client’s iBudget.

Additionally, the bill directs the agency to conduct utilization review activities in both public and private intermediate care facilities as necessary to meet the requirements of the approved Medicaid state plan and federal law. The bill provides that persons involuntarily admitted to residential services by court order shall have such admission orders reviewed annually by a qualified evaluator employed by the agency. Such reviews shall consider the appropriateness of placement, treatment, habilitation, and rehabilitation in the residential setting.

The bill revises the purposes of comprehensive transitional education programs, authorizes the agency to approve the admission or readmission of individuals to the program and provides for video and audio recording and monitoring of common areas and program activities in the facilities. The bill would allow the establishment of a residential facilities that meets with local land use and zoning requirements that does not exceed a capacity of 15 persons.

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

II. Present Situation:

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.¹

Individuals who meet Medicaid eligibility requirements, including individuals who have Down syndrome², may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities administered by APD or in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

The HCBS waiver, known as iBudget Florida, offers 27 supports and services to assist individuals to live in their community. Such services are not covered under the regular Medicaid program. Examples of services provided include residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.³ Services provided through the HCBS waiver enable children and adults to live in the community in their own home, a family home, or in a licensed residential setting, thereby avoiding institutionalization.

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400. ICF/DD's are considered institutional placements and provide intermediate nursing care.

Home- and Community-Based Services Waiver (iBudget Florida)

The iBudget Florida HCBS waiver program was developed in response to legislative proviso requiring a plan for an individual budgeting approach for improving the management of the waiver program.⁴ iBudget Florida involves the use of an algorithm, or formula, to set individuals' funding allocations for waiver services. The statute provides for individuals to receive additional funding in addition to that allocated through the algorithm under certain conditions (such as if they have a temporary or permanent change in need, or an extraordinary

¹ s. 393.063(9), F.S.

² s. 393.0662(1), F.S., provides eligibility for individuals with a diagnosis of Down syndrome.

³ Agency for Persons with Disabilities, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2015-16, November 2015.

⁴ Agency for Persons with Disabilities, Report to the Legislature on the Agency's Plan for Implementing Individual Budgeting "iBudget Florida" (February 1 2010), available at <http://apd.myflorida.com/ibudget/rules-regs.htm> (last accessed Dec. 15, 2015).

need that the algorithm does not address)⁵ The agency phased in the implementation of iBudget Florida, with the final areas transitioned from the previous tiered waiver system on July 1, 2013.⁶

However, the iBudget Florida program has been the subject of litigation. In September 2014, in response to a ruling by the 1st District Court of Appeal that that the program's rules were invalid, APD reset approximately 14,000 individuals' budget allocations to higher amounts.⁷ APD began rulemaking to adopt new rules to replace the invalid ones.⁸ The agency, in conjunction with stakeholders, reviewed the algorithm used in the program and has filed for the adoption of rules providing a revised algorithm and related funding calculation methods.⁹ iBudget statutes were amended by the 2015-16 implementing bill to allow additional funding beyond that allocated by the algorithm for transportation to a waiver-funded adult day training program or to employment under certain conditions.¹⁰

Waiver Enrollment Prioritization

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.¹¹ The majority of waiver enrollees live in a family home with a parent, relative, or guardian. The Legislature appropriated \$994,793,906 for Fiscal Year 2015-2016 to provide services through the HCBS waiver program, including federal match of \$601,153,957.¹² However, this funding is insufficient to serve all persons desiring waiver services. To enable the agency to remain within legislative appropriations, waiver enrollment is limited. Accordingly, APD maintains a waiting list for waiver services. Prioritization for the wait list is provided in s. 393.065(5), F.S., and also in the FY 15-16 implementing bill.¹³ Those Medicaid eligible persons on the waiting list continue to receive Medicaid services.

Waiting list prioritization statutory language has been changed in the past two legislative sessions via the implementing bill. For example, Chapter 2015-222, Laws of Florida, allows:

- Youth with developmental disabilities who are in extended foster care to be served by both the waiver and the child welfare system. The implementing bill also specified the services that APD and the community-based care lead agencies shall provide such enrollees. Since July 1, 2015, 30 individuals in extended foster care have enrolled on the waiver.
- Individuals who are receiving home and community-based waiver services in other states to be enrolled on the waiver if their parent/guardian is on active duty and transfers to Florida. This bill language was also in the FY 14-15 implementing bill. Since July 1, 2014, 10 individuals have enrolled on the waiver pursuant to this section.¹⁴

⁵ s. 393.0662, F.S.

⁶ *Supra*, note 3.

⁷ Agency for Persons with Disabilities, iBudget Florida, <http://apd.myflorida.com/ibudget/> (last visited December 15, 2015).

⁸ Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.

⁹ These rules have been challenged as well. DOAH Case No. 15-005803RP.

¹⁰ s. 21, Ch. 2015-222, Laws of Florida.

¹¹ E-mail from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities. RE: Requested information for bill analysis for APD agency bill (Dec. 14, 2015). On file with Children, Families and Seniors Subcommittee.

¹² Line 251, Ch. 2015-221, Laws of Florida.

¹³ s. 20, Ch. 2015-222, Laws of Florida.

¹⁴ *Supra*, note 11.

Client Data Management System

The Legislature re-appropriated \$1.5 million and appropriated \$1.359 million in funding in FY 2015-16 for the development of a client data management system to provide electronic verification of service delivery to recipients by providers, electronic billings for waiver services, and electronic processing of claims.¹⁵ APD must also meet federal requirements for administering the iBudget HCBS waiver, such as tracking, measuring, reporting, and providing quality improvement processes for 32 specific program performance measures in order to ensure the program funding can continue. The federal Center for Medicaid and Medicare Services further requires the state maintain a quality improvement system that requires data collection, data analysis, and reporting. However, APD currently relies heavily on manual processes and disparate systems to collect, analyze, and report data consistently, which is inefficient and error-prone.

APD anticipates providers will begin using the system during FY 2016-2017. Providers will need standard software and technology in order to log into the system.¹⁶

Direct Service Provider Staff Training and Professional Development

Pursuant to the waiver agreement with the federal government, APD must coordinate, develop, and provide specialized training for providers and their employees to promote health and wellbeing of individuals served.¹⁷ These requirements are currently included in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. For example, the handbook outlines required basic training and required in-service training and continuing education for direct service providers on topics such as person-centered planning, maintaining health and safety, reporting to the abuse hotline, and first aid. Providers of certain services such as supported employment or supported living are required to take additional preservice certification training. Training is typically offered several ways, such as through the internet, DVD, and live classroom training.¹⁸

Utilization Review of Intermediate Care Facilities for the Developmentally Disabled

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400.¹⁹ There are approximately 2,866 private and public ICF beds in Florida.²⁰ Residents of these facilities need assistance with disability as well as nursing care.

¹⁵ SB 2500A, line 265.

¹⁶ Agency for Persons with Disabilities, Agency Analysis of 2016 Act Relating to the Agency for Persons with Disabilities.

¹⁷ *Id.*

¹⁸ Rule 59G-13.070, F.A.C. Handbook may be accessed at <http://apd.myflorida.com/ibudget/>

¹⁹ *Supra*, note 19.

²⁰ *Id.*

ICF/DD's are considered institutional placements rather than community placements. Accordingly, the federal government requires routine utilization reviews for individuals in ICF/DD's to ensure that individuals are not inappropriately institutionalized. Utilization reviews must be conducted by a group of professionals referred to as the Utilization Review Committee, which must include at least one physician and one individual knowledgeable in the treatment of intellectual disabilities.

The Medicaid state plan approved by the federal government provides that APD conduct utilization reviews. APD performs this function through an interagency agreement with AHCA.²¹

Involuntary admission to residential services.

When the court receives a petition for such involuntary admission, the courts have the jurisdiction to conduct a hearing and enter an order that a person with a developmental disability requiring involuntary admission to residential services receive care, treatment, habilitation, and rehabilitation services provided by the agency.²² When the court receives a petition for such involuntary admission, the agency and an examining committee (comprised of at least three disinterested experts in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities) must examine the person and provide a written report for the court. The report must explicitly document the extent that the person meets the criteria for involuntary admission.²³

A person charged with a felony and found to be incompetent to proceed due to an intellectual disability shall be committed to the agency. The agency is to provide appropriate training for the person. The court may order the person into a forensic facility designated by the agency for persons with intellectual disability or autism.

The person who has the intellectual disability must be represented by counsel at all stages of the judicial proceeding and, if the person is indigent and cannot afford counsel, a public defender must be appointed at least 20 days before the scheduled hearing.²⁴ The person must be physically present throughout the entire proceeding; however, if the person's attorney believes that the person's presence at the hearing is not in their best interest, their presence may be waived by the court once the court has seen the person and the hearing has commenced.²⁵

The court that enters the initial order for involuntary admission to residential services has continuing jurisdiction to enter orders to ensure the person is receiving adequate care, treatment, habilitation, and rehabilitation services.²⁶ The committing court may order a conditional release of the person based on an approved plan for providing community-based training. If at any time it is determined in a court hearing that the person on conditional release no longer requires court supervision follow-up care, the court shall terminate its jurisdiction and discharge the person.

²¹ *Id.*

²² s. 393.11(1), F.S.

²³ s. 393.11(4),(5), F.S.

²⁴ s. 393.11(6), F.S.

²⁵ s. 393.11(7), F.S.

²⁶ s. 393.11(11), F.S.

At any time and without notice, a person involuntarily admitted into residential services, or the person's parent or legal guardian, is entitled to file a petition for a writ of habeas corpus to question the cause, legality, and appropriateness of the involuntary admission.²⁷

Comprehensive transitional education program

Advoserv, a private provider, currently operates Carlton Palms, the only provider of comprehensive transitional education programs in Florida. This program is a group of jointly operating centers which provides educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.²⁸ All services are to be temporary and delivered in a structured residential setting with the primary goal of incorporating the principle of self-determination in establishing permanent residence not associated with the comprehensive transitional education program.²⁹

Carlton Palms Education Center, operating in Lake County, is the comprehensive transitional education program provider for the agency as established in s. 393.18, F.S. As of December 31, 2015, the program currently serves 151 agency clients and 40 out-of-state clients. The total number of residents with maladaptive behaviors being provided with services may not exceed the licensed capacity of 120 residents.³⁰ Advoser holds two licenses for the provision of these programs which allows it to provide services for 240 individuals.

III. Effect of Proposed Changes:

Section 1 amends s. 393.063, F.S., updates current definitions and adds new terms.

Section 2 repeals s. 393.0641, F.S., which provided a program for the prevention and treatment of clients exhibiting severe self-injurious behavior. The agency currently serves individuals with self-injurious behaviors in the community in licensed homes that are specifically for intensive behavior issues. These services are funded under the iBudget waiver program.

Section 3 amends s. 393.065, F.S., to provide prioritization in Category 2 of the agency's home and community-based waiver of individuals with developmental disabilities in extended foster care to be served by both the agency and the community-based care organization. Specifically, the agency is to provide waiver services, including residential habilitation that supports individuals living in congregate settings, and the community-based care organization is to fund room and board at the prevailing foster care rate as well as provide case management and related services.

This section also specifies that after individuals formerly on the waiting list are enrolled in the waiver, individuals remaining on the waiting list are not substantially affected by agency action and not entitled to a hearing under s.393.125, F.S., or administrative proceedings under chapter 120, F.S.

²⁷ s. 393.11(13), F.S.

²⁸ s. 393.18, F.S.

²⁹ *Id.*

³⁰ s. 393.18(4), Note (4), F.S.

Section 4 amends s. 393.066, F.S., to require persons or entities under contract with the agency to use agency data management systems to document service provision to agency clients. Providers need to have the hardware and software necessary to use these systems, as established by the agency. Such contractors must also ensure any staff directly serving clients to meet agency requirements for training and professional development.

Section 5 amends s. 393.0662, F.S., to make permanent the Fiscal Year 2015-16 appropriations implementing bill language that adds transportation needs to the list of circumstances which may qualify individuals to receive additional funding beyond that calculated through the algorithm. The bill provides that the agency may grant a funding increase to individuals whose iBudget allocation is insufficient to pay for transportation services to a waiver-funded adult day training program or employment services and who have no other reasonable transportation options. This section also directs the agency to work with the Agency for Health Care Administration to amend the current home and community-based waiver to improve services for eligible and enrolled clients and to improve the delivery of services to persons with a dual diagnosis of a developmental disability and a mental health diagnosis.

Section 6 creates s. 393.0679, F.S., to require the agency to conduct utilization reviews in intermediate care facilities for individuals with developmental disabilities, both public and private, and requires the intermediate care facilities to cooperate with these reviews, including requests for information, documentation, and inspection. This will ensure that Florida continues to meet federal requirements for conducting utilization reviews pursuant to the approved Medicaid state plan.

Section 7 amends s. 393.11, F.S. to include a person with autism as a person who may require involuntary admission to residential services provided by the agency under this part.

Section 393.11(14), F.S., is created to provide a framework for an annual review of a court's order of person for involuntary admission to residential services. Reviews are required annually by a qualified evaluator under contract with the agency. The review shall consider whether the person continues to meet the criteria for involuntary admission for residential services. If the person is determined to meet the criteria, the court shall determine whether the person is in the most appropriate and least restrictive setting. The court must also determine whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting. The bill provides for notice requirements of the hearing to the appropriate state's attorney, if applicable, and the person's attorney and guardian or guardian advocate, if one is appointed.

Section 8 repeals s. 26 of chapter 2015-222, Laws of Florida, which requires that amendments made by the implementing bill to s. 393.18, F.S., expires July 1, 2016, and shall revert to text in existence on June 30, 2015, except for amendments enacted other than by the implementing bill are to be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of this text which expire pursuant to this section.

Section 9 reenacts and amends s. 393.18, F.S., to provide that the comprehensive transitional education program serve individuals who have developmental disabilities, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental

disability and mental illness. The bill provides that the clinical director of such program must hold a doctorate degree with a primary focus in behavior analysis, be a certified behavior analyst and have at least 1 year of experience in providing behavior analysis services for individuals with developmental disabilities.

Additionally, the bill requires the comprehensive transitional education program to include components of intensive treatment and education, intensive training and education, and transition services to avoid regression to more restrictive environments while preparing individuals for independent living. Any educational components of the program, including individual education plans, must be integrated with the local school district to the extent possible.

Beginning July 1, 2016, the agency may approve proposed admission or readmission of individuals into the comprehensive transitional education program for up to 2 years. The agency may allow an individual to live in this setting for a longer period of time subject to a clinical review conducted by the agency. To improve resident and staff safety, programs must provide continuous recorded video and audio monitoring in all residential common areas which recordings must be maintained for at least 60 days. The programs must operate and maintain video and audio monitoring systems that allows authorized agency staff to monitor program activities in real time from off-site locations.

The agency is authorized to license a facility that provides residential services for children with developmental disabilities and intensive behavioral problems as defined by the agency and, as of July 1, 2010, serve children who were served by the child welfare system and who have an open case in the State Automated Child Welfare Information System. The facility must be in compliance with all program criteria and local land use and zoning requirements and may not exceed a capacity of 15 children.

Section 10 amends s. 393.501, F.S., to clarify that rules adopted by the agency regarding comprehensive transitional education programs meet certain criteria.

Section 11 amends s. 383.141, F.S., to correct cross-references.

Section 12 amends s. 1002.385, F.S., to correct cross-references.

Section 13 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:

Direct care providers may see increased costs to provide data to the new agency client data management system. It is unknown what training and career development requirements or hardware and software requirements the agency will establish, or the extent to which providers will have to acquire hardware and software to meet those requirements. Providing utilization data is often a condition for contracting with the state.

C. Government Sector Impact:

The agency may experience increased costs of conducting additional involuntary commitment reviews. This cost is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections 393.063, 303.065, 393.066, 303.0662, 393.11, 393.18, 393.501, 383.141, and 1002.385.

This bill creates the following sections of the Florida Statutes: 393.0679, and 393.11(14)

This bill repeals the following section 393.0641, of the Florida Statutes and Section 26 of chapter 2015-222, Laws of Florida

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.

FOR CONSIDERATION By the Committee on Children, Families, and Elder Affairs

586-02099-16

20167054pb

1 A bill to be entitled
 2 An act relating to the Agency for Persons with
 3 Disabilities; amending s. 393.063, F.S.; revising and
 4 defining terms; repealing s. 393.0641, F.S., relating
 5 to a program for the prevention and treatment of
 6 severe self-injurious behavior; amending s. 393.065,
 7 F.S.; providing for the assignment of priority to
 8 clients waiting for waiver services; requiring an
 9 agency to allow a certain individual to receive such
 10 services if the individual's parent or legal guardian
 11 is an active-duty military service member; requiring
 12 the agency to send an annual letter to clients and
 13 their guardians or families; providing that certain
 14 agency action does not establish a right to a hearing
 15 or an administrative proceeding; amending s. 393.066,
 16 F.S.; providing for the use of an agency data
 17 management system; providing requirements for persons
 18 or entities under contract with the agency; amending
 19 s. 393.0662, F.S.; adding client needs that qualify as
 20 extraordinary needs, which may result in the approval
 21 of an increase in a client's allocated funds; revising
 22 duties of the Agency for Health Care Administration
 23 relating to the iBudget system; creating s. 393.0679,
 24 F.S.; requiring the Agency for Persons with
 25 Disabilities to conduct a certain utilization review;
 26 requiring certain intermediate care facilities to
 27 comply with certain requests and inspections by the
 28 agency; amending s. 393.11, F.S.; providing for annual
 29 reviews for persons involuntarily committed to
 30 residential services; requiring the agency to contract
 31 with a qualified evaluator; providing requirements for

Page 1 of 35

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586-02099-16

20167054pb

32 annual reviews; requiring a hearing to be held to
 33 consider the results of an annual review; requiring
 34 the agency to provide a copy of the review to certain
 35 persons; defining a term; repealing s. 26 of chapter
 36 2015-222, Laws of Florida; abrogating the scheduled
 37 expiration of an amendment to s. 393.18, F.S., and the
 38 scheduled reversion of the text of that section;
 39 reenacting and amending s. 393.18, F.S.; revising the
 40 purposes of comprehensive transitional education
 41 programs; providing qualification requirements for the
 42 clinical director of a comprehensive transitional
 43 education program; revising the organization and
 44 operation of components of a program; providing for
 45 the integration of educational components with the
 46 local school district; authorizing the agency to
 47 approve the admission or readmission of an individual
 48 to a program; providing for video and audio recording
 49 and monitoring of common areas and program activities
 50 and facilities; providing for licensure of such
 51 programs; amending s. 393.501, F.S.; conforming
 52 provisions to changes made by the act; amending ss.
 53 383.141 and 1002.385, F.S.; conforming cross
 54 references; providing an effective date.

56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. Section 393.063, Florida Statutes, is amended to
 59 read:
 60 393.063 Definitions.—For the purposes of this chapter, the

Page 2 of 35

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586-02099-16

20167054pb

61 term:

62 ~~(2)(4)~~ "Agency" means the Agency for Persons with
63 Disabilities.

64 ~~(1)(2)~~ "Adult day training" means training services that
65 ~~which~~ take place in a nonresidential setting, separate from the
66 home or facility in which the client resides, and are intended
67 to support the participation of clients in daily, meaningful,
68 and valued routines of the community. Such training, and may be
69 provided in include work-like settings that do not meet the
70 definition of supported employment.

71 (3) "Algorithm" means the mathematical formula developed by
72 the agency based upon statistically valid relationships between
73 the need for services and selected health and social
74 characteristics which is used to calculate a potential amount of
75 financial support through the home and community-based services
76 Medicaid waiver program.

77 (4) "Allocation methodology" means the process for
78 determining the iBudget allocation for an individual which
79 considers:

80 (a) The algorithm amount applicable to an individual based
81 on a formal assessment instrument used by the agency pursuant to
82 s. 393.0661(1)(a); and

83 (b) Any needs identified by the agency during the client
84 review process which cannot be accommodated within the funding
85 determined by the algorithm and are provided for in s.
86 393.0662(1)(b).

87 ~~(5)(3)~~ "Autism" means a pervasive, neurologically based
88 developmental disability of extended duration which causes
89 severe learning, communication, and behavior disorders with age

586-02099-16

20167054pb

90 of onset during infancy or childhood. Individuals with autism
91 exhibit impairment in reciprocal social interaction, impairment
92 in verbal and nonverbal communication and imaginative ability,
93 and a markedly restricted repertoire of activities and
94 interests.

95 ~~(6)(4)~~ "Cerebral palsy" means a group of disabling symptoms
96 of extended duration which results from damage to the developing
97 brain that may occur before, during, or after birth and that
98 results in the loss or impairment of control over voluntary
99 muscles. For the purposes of this definition, cerebral palsy
100 does not include those symptoms or impairments resulting solely
101 from a stroke.

102 ~~(7)(5)~~ "Client" means any person determined eligible by the
103 agency for services under this chapter.

104 ~~(8)(6)~~ "Client advocate" means a friend or relative of the
105 client, or of the client's immediate family, who advocates for
106 the best interests of the client in any proceedings under this
107 chapter in which the client or his or her family has the right
108 or duty to participate.

109 ~~(9)(7)~~ "Comprehensive assessment" means the process used to
110 determine eligibility for services under this chapter.

111 ~~(10)(8)~~ "Comprehensive transitional education program"
112 means the program established in s. 393.18.

113 ~~(12)(9)~~ "Developmental disability" means a disorder or
114 syndrome that is attributable to intellectual disability,
115 cerebral palsy, autism, spina bifida, Down syndrome, or Prader-
116 Willi syndrome; that manifests before the age of 18; and that
117 constitutes a substantial handicap that can reasonably be
118 expected to continue indefinitely.

586-02099-16

20167054pb

119 (11)~~(10)~~ "Developmental disabilities center" means a state-
 120 owned and state-operated facility, formerly known as a "Sunland
 121 Center," providing for the care, habilitation, and
 122 rehabilitation of clients with developmental disabilities.

123 (13)~~(11)~~ "Direct service provider" means a person 18 years
 124 of age or older who has direct face-to-face contact with a
 125 client while providing services to the client or has access to a
 126 client's living areas or to a client's funds or personal
 127 property.

128 (14)~~(12)~~ "Domicile" means the place where a client legally
 129 resides and, which ~~place~~ is his or her permanent home. Domicile
 130 may be established as provided in s. 222.17. Domicile may not be
 131 established in Florida by a minor who has no parent domiciled in
 132 Florida, or by a minor who has no legal guardian domiciled in
 133 Florida, or by any alien not classified as a resident alien.

134 (15)~~(13)~~ "Down syndrome" means a disorder caused by the
 135 presence of an extra chromosome 21.

136 (16)~~(14)~~ "Express and informed consent" means consent
 137 voluntarily given in writing with sufficient knowledge and
 138 comprehension of the subject matter to enable the person giving
 139 consent to make a knowing decision without any element of force,
 140 fraud, deceit, duress, or other form of constraint or coercion.

141 (17)~~(15)~~ "Family care program" means the program
 142 established in s. 393.068.

143 (18)~~(16)~~ "Foster care facility" means a residential
 144 facility licensed under this chapter which provides a family
 145 living environment including supervision and care necessary to
 146 meet the physical, emotional, and social needs of its residents.
 147 The capacity of such a facility may not be more than three

586-02099-16

20167054pb

148 residents.

149 (19)~~(17)~~ "Group home facility" means a residential facility
 150 licensed under this chapter which provides a family living
 151 environment including supervision and care necessary to meet the
 152 physical, emotional, and social needs of its residents. The
 153 capacity of such a facility shall be at least 4 but not more
 154 than 15 residents.

155 (20) "Guardian" has the same meaning as in s. 744.102.

156 (21)~~(18)~~ "Guardian advocate" means a person appointed by a
 157 written order of the court to represent a person with
 158 developmental disabilities under s. 393.12.

159 (22)~~(19)~~ "Habilitation" means the process by which a client
 160 is assisted in acquiring and maintaining ~~to acquire and maintain~~
 161 those life skills that ~~which~~ enable the client to cope more
 162 effectively with the demands of his or her condition and
 163 environment and to raise the level of his or her physical,
 164 mental, and social efficiency. It includes, but is not limited
 165 to, programs of formal structured education and treatment.

166 (23)~~(20)~~ "High-risk child" means, for the purposes of this
 167 chapter, a child from 3 to 5 years of age with one or more of
 168 the following characteristics:

169 (a) A developmental delay in cognition, language, or
 170 physical development.

171 (b) A child surviving a catastrophic infectious or
 172 traumatic illness known to be associated with developmental
 173 delay, when funds are specifically appropriated.

174 (c) A child with a parent or guardian with developmental
 175 disabilities who requires assistance in meeting the child's
 176 developmental needs.

586-02099-16

20167054pb

177 (d) A child who has a physical or genetic anomaly
178 associated with developmental disability.

179 (24) "Initial support plan" means the first support plan
180 that identifies the needs of the individual for supports and
181 services prior to enrollment in the iBudget waiver.

182 (25)-(21) "Intellectual disability" means significantly
183 subaverage general intellectual functioning existing
184 concurrently with deficits in adaptive behavior which manifests
185 before the age of 18 and can reasonably be expected to continue
186 indefinitely. For the purposes of this definition, the term:

187 (a) "Adaptive behavior" means the effectiveness or degree
188 with which an individual meets the standards of personal
189 independence and social responsibility expected of his or her
190 age, cultural group, and community.

191 (b) "Significantly subaverage general intellectual
192 functioning" means performance that is two or more standard
193 deviations from the mean score on a standardized intelligence
194 test specified in the rules of the agency.

195
196 For purposes of the application of the criminal laws and
197 procedural rules of this state to matters relating to pretrial,
198 trial, sentencing, and any matters relating to the imposition
199 and execution of the death penalty, the terms "intellectual
200 disability" or "intellectually disabled" are interchangeable
201 with and have the same meaning as the terms "mental retardation"
202 or "retardation" and "mentally retarded" as defined in this
203 section before July 1, 2013.

204 (26)-(22) "Intermediate care facility for the
205 developmentally disabled" or "ICF/DD" means a residential

Page 7 of 35

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586-02099-16

20167054pb

206 facility licensed and certified under part VIII of chapter 400.

207 (27)-(23) "Medical/dental services" means medically
208 necessary services that are provided or ordered for a client by
209 a person licensed under chapter 458, chapter 459, or chapter
210 466. Such services may include, but are not limited to,
211 prescription drugs, specialized therapies, nursing supervision,
212 hospitalization, dietary services, prosthetic devices, surgery,
213 specialized equipment and supplies, adaptive equipment, and
214 other services as required to prevent or alleviate a medical or
215 dental condition.

216 (28)-(24) "Personal care services" means individual
217 assistance with or supervision of essential activities of daily
218 living for self-care, including ambulation, bathing, dressing,
219 eating, grooming, and toileting, and other similar services that
220 are incidental to the care furnished and essential to the
221 health, safety, and welfare of the client if no one else is
222 available to perform those services.

223 (29)-(25) "Prader-Willi syndrome" means an inherited
224 condition typified by neonatal hypotonia with failure to thrive,
225 hyperphagia or an excessive drive to eat which leads to obesity
226 usually at 18 to 36 months of age, mild to moderate intellectual
227 disability, hypogonadism, short stature, mild facial
228 dysmorphism, and a characteristic neurobehavior.

229 (30)-(26) "Relative" means an individual who is connected by
230 affinity or consanguinity to the client and who is 18 years of
231 age or older.

232 (31)-(27) "Resident" means a person who has a developmental
233 disability and resides at a residential facility, whether or not
234 such person is a client of the agency.

Page 8 of 35

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586-02099-16

20167054pb

235 (32) "Resident alien" means a person who is not a citizen
 236 of the United States but who currently resides in the United
 237 States and is classified under Title 8 of the Code of Federal
 238 Regulations as either a permanent resident, permanent resident
 239 alien, lawful permanent resident, resident alien permit holder,
 240 or green card holder.

241 (33)~~(28)~~ "Residential facility" means a facility providing
 242 room and board and personal care for persons who have
 243 developmental disabilities.

244 (34)~~(29)~~ "Residential habilitation" means supervision and
 245 training with the acquisition, retention, or improvement in
 246 skills related to activities of daily living, such as personal
 247 hygiene skills, homemaking skills, and the social and adaptive
 248 skills necessary to enable the individual to reside in the
 249 community.

250 (35)~~(30)~~ "Residential habilitation center" means a
 251 community residential facility licensed under this chapter which
 252 provides habilitation services. The capacity of such a facility
 253 may not be fewer than nine residents. After October 1, 1989, new
 254 residential habilitation centers may not be licensed and the
 255 licensed capacity for any existing residential habilitation
 256 center may not be increased.

257 (36)~~(31)~~ "Respite service" means appropriate, short-term,
 258 temporary care that is provided to a person who has a
 259 developmental disability in order to meet the planned or
 260 emergency needs of the person or the family or other direct
 261 service provider.

262 (37)~~(32)~~ "Restraint" means a physical device, method, or
 263 drug used to control dangerous behavior.

Page 9 of 35

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586-02099-16

20167054pb

264 (a) A physical restraint is any manual method or physical
 265 or mechanical device, material, or equipment attached or
 266 adjacent to an individual's body so that he or she cannot easily
 267 remove the restraint and which restricts freedom of movement or
 268 normal access to one's body.

269 (b) A drug used as a restraint is a medication used to
 270 control the person's behavior or to restrict his or her freedom
 271 of movement and is not a standard treatment for the person's
 272 medical or psychiatric condition. Physically holding a person
 273 during a procedure to forcibly administer psychotropic
 274 medication is a physical restraint.

275 (c) Restraint does not include physical devices, such as
 276 orthopedically prescribed appliances, surgical dressings and
 277 bandages, supportive body bands, or other physical holding
 278 necessary for routine physical examinations and tests; for
 279 purposes of orthopedic, surgical, or other similar medical
 280 treatment; to provide support for the achievement of functional
 281 body position or proper balance; or to protect a person from
 282 falling out of bed.

283 (38)~~(33)~~ "Seclusion" means the involuntary isolation of a
 284 person in a room or area from which the person is prevented from
 285 leaving. The prevention may be by physical barrier or by a staff
 286 member who is acting in a manner, or who is physically situated,
 287 so as to prevent the person from leaving the room or area. For
 288 the purposes of this chapter, the term does not mean isolation
 289 due to the medical condition or symptoms of the person.

290 (39)~~(34)~~ "Self-determination" means an individual's freedom
 291 to exercise the same rights as all other citizens, authority to
 292 exercise control over funds needed for one's own support,

Page 10 of 35

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586-02099-16

20167054pb

293 including prioritizing these funds when necessary,
 294 responsibility for the wise use of public funds, and self-
 295 advocacy to speak and advocate for oneself in order to gain
 296 independence and ensure that individuals with a developmental
 297 disability are treated equally.

298 ~~(40)(35)~~ "Specialized therapies" means those treatments or
 299 activities prescribed by and provided by an appropriately
 300 trained, licensed, or certified professional or staff person and
 301 may include, but are not limited to, physical therapy, speech
 302 therapy, respiratory therapy, occupational therapy, behavior
 303 therapy, physical management services, and related specialized
 304 equipment and supplies.

305 ~~(41)(36)~~ "Spina bifida" means, ~~for purposes of this~~
 306 ~~chapter~~, a person with a medical diagnosis of spina bifida
 307 cystica or myelomeningocele.

308 ~~(42)(37)~~ "Support coordinator" means a person who is
 309 designated by the agency to assist individuals and families in
 310 identifying their capacities, needs, and resources, as well as
 311 finding and gaining access to necessary supports and services;
 312 coordinating the delivery of supports and services; advocating
 313 on behalf of the individual and family; maintaining relevant
 314 records; and monitoring and evaluating the delivery of supports
 315 and services to determine the extent to which they meet the
 316 needs and expectations identified by the individual, family, and
 317 others who participated in the development of the support plan.

318 ~~(43)(38)~~ "Supported employment" means employment located or
 319 provided in an integrated work setting, with earnings paid on a
 320 commensurate wage basis, and for which continued support is
 321 needed for job maintenance.

586-02099-16

20167054pb

322 ~~(44)(39)~~ "Supported living" means a category of
 323 individually determined services designed and coordinated in
 324 such a manner as to provide assistance to adult clients who
 325 require ongoing supports to live as independently as possible in
 326 their own homes, to be integrated into the community, and to
 327 participate in community life to the fullest extent possible.

328 ~~(45)(40)~~ "Training" means a planned approach to assisting a
 329 client to attain or maintain his or her maximum potential and
 330 includes services ranging from sensory stimulation to
 331 instruction in skills for independent living and employment.

332 ~~(46)(41)~~ "Treatment" means the prevention, amelioration, or
 333 cure of a client's physical and mental disabilities or
 334 illnesses.

335 Section 2. Section 393.0641, Florida Statutes, is repealed.

336 Section 3. Subsections (3) and (5) of section 393.065,
 337 Florida Statutes, are amended, present subsections (6) and (7)
 338 of that section are amended and redesignated as subsections (7)
 339 and (9), respectively, and new subsections (6) and (8) are added
 340 to that section, to read:

341 393.065 Application and eligibility determination.—

342 (3) The agency shall notify each applicant, in writing, of
 343 its eligibility decision. Any applicant determined by the agency
 344 to be ineligible for ~~developmental~~ services has the right to
 345 appeal this decision pursuant to ss. 120.569 and 120.57.

346 ~~(5) Except as otherwise directed by law, beginning July 1,~~
 347 ~~2010,~~ The agency shall assign and provide priority to clients
 348 waiting for waiver services in the following order:

349 (a) Category 1, which includes clients deemed to be in
 350 crisis as described in rule, shall be given first priority in

586-02099-16

20167054pb

351 moving from the waiting list to the waiver.

352 (b) Category 2, which includes: ~~which includes children~~

353 1. Individuals on the waiting list ~~wait~~ list who are from the
 354 child welfare system with an open case in the Department of
 355 Children and Families' statewide automated child welfare
 356 information system and are:

357 a. Transitioning out of the child welfare system at the
 358 finalization of an adoption, a reunification with family
 359 members, a permanent placement with a relative, or a
 360 guardianship with a nonrelative; or

361 b. At least 18 years old, but not yet 22 years old, and
 362 need both waiver services and extended foster care services.
 363 These individuals may receive both waiver services and services
 364 under s. 39.6251 but services may not duplicate services
 365 available through the Medicaid state plan.

366 2. Individuals on the waiting list who are at least 18
 367 years old but not yet 22 years old and who withdrew consent to
 368 remain in the extended foster care system pursuant to s.
 369 39.6251(5)(c).

370 3. Individuals who are at least 18 years old but not yet 22
 371 years old and are eligible under sub-subparagraph 1.b. The
 372 agency shall provide waiver services, including residential
 373 habilitation, to these individuals. The community-based care
 374 lead agency shall fund room and board at the rate established in
 375 s. 409.145(4) and provide case management and related services
 376 as defined in s. 409.986(3)(e).

377 (c) Category 3, which includes, but is not required to be
 378 limited to, clients:

379 1. Whose caregiver has a documented condition that is

Page 13 of 35

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586-02099-16

20167054pb

380 expected to render the caregiver unable to provide care within
 381 the next 12 months and for whom a caregiver is required but no
 382 alternate caregiver is available;

383 2. At substantial risk of incarceration or court commitment
 384 without supports;

385 3. Whose documented behaviors or physical needs place them
 386 or their caregiver at risk of serious harm and other supports
 387 are not currently available to alleviate the situation; or

388 4. Who are identified as ready for discharge within the
 389 next year from a state mental health hospital or skilled nursing
 390 facility and who require a caregiver but for whom no caregiver
 391 is available or whose caregiver is unable to provide the care
 392 needed.

393 (d) Category 4, which includes, but is not required to be
 394 limited to, clients whose caregivers are 70 years of age or
 395 older and for whom a caregiver is required but no alternate
 396 caregiver is available.

397 (e) Category 5, which includes, but is not required to be
 398 limited to, clients who are expected to graduate within the next
 399 12 months from secondary school and need support to obtain a
 400 meaningful day activity, ~~or~~ maintain competitive employment, or
 401 to pursue an accredited program of postsecondary education to
 402 which they have been accepted.

403 (f) Category 6, which includes clients 21 years of age or
 404 older who do not meet the criteria for category 1, category 2,
 405 category 3, category 4, or category 5.

406 (g) Category 7, which includes clients younger than 21
 407 years of age who do not meet the criteria for category 1,
 408 category 2, category 3, or category 4.

Page 14 of 35

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586-02099-16

20167054pb

409
410 Within categories 3, 4, 5, 6, and 7, the agency shall maintain a
411 ~~waiting wait~~ list of clients placed in the order of the date
412 that the client is determined eligible for waiver services.

413 (6) The agency shall allow an individual who meets the
414 eligibility requirements under subsection (1) to receive home
415 and community-based services in this state if the individual's
416 parent or legal guardian is an active-duty military service
417 member and if at the time of the service member's transfer to
418 this state, the individual was receiving home and community-
419 based services in another state.

420 (7)(6) The client, the client's guardian, or the client's
421 family must ensure that accurate, up-to-date contact information
422 is provided to the agency at all times. Notwithstanding s.
423 393.0651, the agency shall send an annual letter requesting
424 updated information from the client, the client's guardian, or
425 the client's family. The agency shall remove from the ~~waiting~~
426 ~~wait~~ list any individual who cannot be located using the contact
427 information provided to the agency, fails to meet eligibility
428 requirements, or becomes domiciled outside the state.

429 (8) Agency action that selects individuals to receive
430 waiver services pursuant to this section does not establish a
431 right to a hearing or an administrative proceeding under chapter
432 120 for individuals remaining on the waiting list.

433 (9)(7) The agency and the Agency for Health Care
434 Administration may adopt rules specifying application
435 procedures, criteria associated with ~~the waiting list wait list~~
436 categories, procedures for administering the ~~waiting wait~~ list,
437 including tools for prioritizing waiver enrollment within

Page 15 of 35

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586-02099-16

20167054pb

438 ~~categories,~~ and eligibility criteria as needed to administer
439 this section.

440 Section 4. Subsection (2) of section 393.066, Florida
441 Statutes, is amended to read:

442 393.066 Community services and treatment.—

443 (2) Necessary ~~All~~ services ~~needed~~ shall be purchased,
444 rather than instead of provided directly by the agency, when the
445 purchase of services such arrangement is more cost-efficient
446 than providing them having these services provided directly. All
447 purchased services must be approved by the agency. Persons or
448 entities under contract with the agency to provide services
449 shall use agency data management systems to document service
450 provision to clients. Contracted persons and entities shall meet
451 the minimum hardware and software technical requirements
452 established by the agency for the use of such systems. Such
453 persons or entities shall also meet any requirements established
454 by the agency for training and professional development of staff
455 providing direct services to clients.

456 Section 5. Section 393.0662, Florida Statutes, is amended
457 to read:

458 393.0662 Individual budgets for delivery of home and
459 community-based services; iBudget system established.—The
460 Legislature finds that improved financial management of the
461 existing home and community-based Medicaid waiver program is
462 necessary to avoid deficits that impede the provision of
463 services to individuals who are on the waiting list for
464 enrollment in the program. The Legislature further finds that
465 clients and their families should have greater flexibility to
466 choose the services that best allow them to live in their

Page 16 of 35

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586-02099-16 20167054pb

467 community within the limits of an established budget. Therefore,
 468 the Legislature intends that the agency, in consultation with
 469 the Agency for Health Care Administration, shall manage develop
 470 ~~and implement a comprehensive redesign of~~ the service delivery
 471 system using individual budgets as the basis for allocating the
 472 funds appropriated for the home and community-based services
 473 Medicaid waiver program among eligible enrolled clients. The
 474 service delivery system that uses individual budgets shall be
 475 called the iBudget system.

476 (1) The agency shall administer ~~establish~~ an individual
 477 budget, referred to as an iBudget, for each individual served by
 478 the home and community-based services Medicaid waiver program.
 479 The funds appropriated to the agency shall be allocated through
 480 the iBudget system to eligible, Medicaid-enrolled clients. For
 481 the iBudget system, eligible clients shall include individuals
 482 with ~~a diagnosis of Down syndrome or~~ a developmental disability
 483 as defined in s. 393.063. The iBudget system shall ~~be designed~~
 484 ~~to~~ provide for: enhanced client choice within a specified
 485 service package; appropriate assessment strategies; an efficient
 486 consumer budgeting and billing process that includes
 487 reconciliation and monitoring components; a ~~redefined~~
 488 support coordinators that avoids potential conflicts of
 489 interest; a flexible and streamlined service review process; and
 490 a methodology and process that ensures the equitable allocation
 491 of available funds ~~to each client~~ based on the client's level of
 492 need, as determined by the ~~variables in the~~ allocation
 493 methodology algorithm.

494 (a) In developing each client's iBudget, the agency shall
 495 use the allocation ~~an allocation algorithm~~ and methodology as

586-02099-16 20167054pb

496 ~~defined in s. 393.063(4). The algorithm shall use variables that~~
 497 ~~have been determined by the agency to have a statistically~~
 498 ~~validated relationship to the client's level of need for~~
 499 ~~services provided through the home and community-based services~~
 500 ~~Medicaid waiver program. The algorithm and methodology may~~
 501 ~~consider individual characteristics, including, but not limited~~
 502 ~~to, a client's age and living situation, information from a~~
 503 ~~formal assessment instrument that the agency determines is valid~~
 504 ~~and reliable, and information from other assessment processes.~~

505 (b) The allocation methodology shall determine ~~provide~~ the
 506 ~~algorithm that determines~~ the amount of funds allocated to a
 507 client's iBudget. The agency may approve an increase in the
 508 amount of funds allocated, ~~as determined by the algorithm,~~ based
 509 on a ~~the~~ client having one or more of the following needs that
 510 cannot be accommodated within the funding ~~as~~ determined by the
 511 algorithm and having no other resources, supports, or services
 512 available to meet the need:

513 1. An extraordinary need that would place the health and
 514 safety of the client, the client's caregiver, or the public in
 515 immediate, serious jeopardy unless the increase is approved.
 516 However, the presence of an extraordinary need in and of itself
 517 does not warrant an increase in the amount of funds allocated to
 518 a client's iBudget. An extraordinary need may include, but is
 519 not limited to:

520 a. The client's age and living situation, a change in
 521 living situation, the loss of or a change in the client's
 522 caregiver arrangement, or a documented need based on a
 523 behavioral or psychological assessment;

524 b.a. A documented history of significant, potentially life-

586-02099-16 20167054pb

525 threatening behaviors, such as recent attempts at suicide,
526 arson, nonconsensual sexual behavior, or self-injurious behavior
527 requiring medical attention;

528 ~~c.b.~~ A complex medical condition that requires active
529 intervention by a licensed nurse on an ongoing basis that cannot
530 be taught or delegated to a nonlicensed person;

531 ~~d.e.~~ A chronic comorbid condition. As used in this
532 subparagraph, the term "comorbid condition" means a medical
533 condition existing simultaneously but independently with another
534 medical condition in a patient; or

535 ~~e.d.~~ A need for total physical assistance with activities
536 such as eating, bathing, toileting, grooming, and personal
537 hygiene.

538

539 ~~However, the presence of an extraordinary need alone does not~~
540 ~~warrant an increase in the amount of funds allocated to a~~
541 ~~client's iBudget as determined by the algorithm.~~

542 2. A significant need for one-time or temporary support or
543 services that, if not provided, would place the health and
544 safety of the client, the client's caregiver, or the public in
545 serious jeopardy, ~~unless the increase is approved.~~ A significant
546 need may include, but is not limited to, the provision of
547 environmental modifications, durable medical equipment, services
548 to address the temporary loss of support from a caregiver, or
549 special services or treatment for a serious temporary condition
550 when the service or treatment is expected to ameliorate the
551 underlying condition. As used in this subparagraph, the term
552 "temporary" means a period of fewer than 12 continuous months.
553 However, the presence of such significant need for one-time or

586-02099-16 20167054pb

554 temporary supports or services alone does not warrant an
555 increase in the amount of funds allocated to a client's iBudget
556 ~~as determined by the algorithm.~~

557 3. A significant increase in the need for services after
558 the beginning of the service plan year that would place the
559 health and safety of the client, the client's caregiver, or the
560 public in serious jeopardy because of substantial changes in the
561 client's circumstances, including, but not limited to, permanent
562 or long-term loss or incapacity of a caregiver, loss of services
563 authorized under the state Medicaid plan due to a change in age,
564 or a significant change in medical or functional status which
565 requires the provision of additional services on a permanent or
566 long-term basis that cannot be accommodated within the client's
567 current iBudget. As used in this subparagraph, the term "long-
568 term" means a period of 12 or more continuous months. However,
569 such significant increase in need for services of a permanent or
570 long-term nature alone does not in and of itself warrant an
571 increase in the amount of funds allocated to a client's iBudget
572 as determined by the algorithm.

573 4. A significant need for transportation services to a
574 waiver-funded adult day training program or to waiver-funded
575 employment services when such need cannot be accommodated within
576 a client's iBudget as determined by the algorithm without
577 affecting the health and safety of the client, if public
578 transportation is not an option due to the unique needs of the
579 client or other transportation resources are not reasonably
580 available.

581

582 The agency shall reserve portions of the appropriation for the

586-02099-16

20167054pb

583 home and community-based services Medicaid waiver program for
584 adjustments required pursuant to this paragraph and may use the
585 services of an independent actuary in determining the amount of
586 the portions to be reserved.

587 ~~(c) A client's iBudget shall be the total of the amount~~
588 ~~determined by the algorithm and any additional funding provided~~
589 ~~pursuant to paragraph (b).~~ A client's annual expenditures for
590 home and community-based ~~services~~ Medicaid waiver services may
591 not exceed the limits of his or her iBudget. The total of all
592 clients' projected annual iBudget expenditures may not exceed
593 the agency's appropriation for waiver services.

594 (2) The Agency for Health Care Administration, in
595 consultation with the agency, shall seek federal approval to
596 amend current waivers, request a new waiver, and amend contracts
597 as necessary to manage the iBudget system, to improve services
598 for eligible and enrolled clients, and to improve the delivery
599 of services implement the iBudget system to serve eligible,
600 enrolled clients through the home and community-based services
601 Medicaid waiver program and the Consumer-Directed Care Plus
602 Program to persons with a dual diagnosis of a developmental
603 disability and a mental health diagnosis.

604 ~~(3) The agency shall transition all eligible, enrolled~~
605 ~~clients to the iBudget system. The agency may gradually phase in~~
606 ~~the iBudget system.~~

607 ~~(a) While the agency phases in the iBudget system, the~~
608 ~~agency may continue to serve eligible, enrolled clients under~~
609 ~~the four-tiered waiver system established under s. 393.065 while~~
610 ~~those clients await transitioning to the iBudget system.~~

611 ~~(b) The agency shall design the phase-in process to ensure~~

Page 21 of 35

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586-02099-16

20167054pb

612 ~~that a client does not experience more than one-half of any~~
613 ~~expected overall increase or decrease to his or her existing~~
614 ~~annualized cost plan during the first year that the client is~~
615 ~~provided an iBudget due solely to the transition to the iBudget~~
616 ~~system.~~

617 ~~(3)~~(4) A client must use all available services authorized
618 under the state Medicaid plan, school-based services, private
619 insurance and other benefits, and any other resources that may
620 be available to the client before using funds from his or her
621 iBudget to pay for support and services.

622 ~~(5) The service limitations in s. 393.0661(3)(f)1., 2., and~~
623 ~~3. do not apply to the iBudget system.~~

624 ~~(4)~~(6) Rates for any or all services established under
625 rules of the Agency for Health Care Administration must ~~shall~~ be
626 designated as the maximum rather than a fixed amount for
627 individuals who receive an iBudget, except for services
628 specifically identified in those rules that the agency
629 determines are not appropriate for negotiation, which may
630 include, but are not limited to, residential habilitation
631 services.

632 ~~(5)~~(7) The agency shall ensure that clients and caregivers
633 have access to training and education that ~~to~~ inform them about
634 the iBudget system and enhance their ability for self-direction.
635 Such training and education must ~~shall~~ be offered in a variety
636 of formats and, at a minimum, must ~~shall~~ address the policies
637 and processes of the iBudget system and ~~the~~ roles and
638 responsibilities of consumers, caregivers, waiver support
639 coordinators, providers, and the agency, and must provide
640 information available to help the client make decisions

Page 22 of 35

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586-02099-16

20167054pb

641 regarding the iBudget system, and examples of support and
642 resources available in the community.

643 ~~(6)-(8)~~ The agency shall collect data to evaluate the
644 implementation and outcomes of the iBudget system.

645 ~~(7)-(9)~~ The agency and the Agency for Health Care
646 Administration may adopt rules specifying the allocation
647 algorithm and methodology; criteria and processes for clients to
648 access reserved funds for extraordinary needs, temporarily or
649 permanently changed needs, and one-time needs; and processes and
650 requirements for selection and review of services, development
651 of support and cost plans, and management of the iBudget system
652 as needed to administer this section.

653 Section 6. Section 393.0679, Florida Statutes, is created
654 to read:

655 393.0679 Utilization review.—The agency shall conduct
656 utilization review activities in intermediate care facilities
657 for individuals with developmental disabilities, both public and
658 private, as necessary to meet the requirements of the approved
659 Medicaid state plan and federal law, and such facilities shall
660 comply with any requests for information and documentation made
661 by the agency and permit any agency inspections in connection
662 with such activities.

663 Section 7. Subsection (1), paragraphs (a) and (b) of
664 subsection (4), paragraphs (b), (e), (f), (g), and (h) of
665 subsection (5), subsection (6), paragraph (d) of subsection (7),
666 subsection (10), and paragraph (b) of subsection (12) of section
667 393.11, Florida Statutes, are amended, and subsection (14) is
668 added to that section, to read:

669 393.11 Involuntary admission to residential services.—

Page 23 of 35

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586-02099-16

20167054pb

670 (1) JURISDICTION.—If a person has an intellectual
671 disability or autism and requires involuntary admission to
672 residential services provided by the agency, the circuit court
673 of the county in which the person resides has jurisdiction to
674 conduct a hearing and enter an order involuntarily admitting the
675 person in order for the person to receive the care, treatment,
676 habilitation, and rehabilitation that the person needs. For the
677 purpose of identifying intellectual disability or autism,
678 diagnostic capability shall be established by the agency. Except
679 as otherwise specified, the proceedings under this section are
680 governed by the Florida Rules of Civil Procedure.

681 (4) AGENCY PARTICIPATION.—

682 (a) Upon receiving the petition, the court shall
683 immediately order the ~~developmental services program of the~~
684 agency to examine the person being considered for involuntary
685 admission to residential services.

686 (b) Following examination, the agency shall file a written
687 report with the court at least 10 working days before the date
688 of the hearing. The report must be served on the petitioner, the
689 person who has the intellectual disability or autism, and the
690 person's attorney at the time the report is filed with the
691 court.

692 (5) EXAMINING COMMITTEE.—

693 (b) The court shall appoint at least three disinterested
694 experts who have demonstrated to the court an expertise in the
695 diagnosis, evaluation, and treatment of persons who have
696 intellectual disabilities or autism. The committee must include
697 at least one licensed and qualified physician, one licensed and
698 qualified psychologist, and one qualified professional who, at a

Page 24 of 35

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586-02099-16

20167054pb

699 minimum, has a master's degree in social work, special
700 education, or vocational rehabilitation counseling, to examine
701 the person and to testify at the hearing on the involuntary
702 admission to residential services.

703 (e) The committee shall prepare a written report for the
704 court. The report must explicitly document the extent that the
705 person meets the criteria for involuntary admission. The report,
706 and expert testimony, must include, but not be limited to:

707 1. The degree of the person's intellectual disability or
708 autism and whether, using diagnostic capabilities established by
709 the agency, the person is eligible for agency services;

710 2. Whether, because of the person's degree of intellectual
711 disability or autism, the person:

712 a. Lacks sufficient capacity to give express and informed
713 consent to a voluntary application for services pursuant to s.
714 393.065 and lacks basic survival and self-care skills to such a
715 degree that close supervision and habilitation in a residential
716 setting is necessary and, if not provided, would result in a
717 threat of substantial harm to the person's well-being; or

718 ~~b. Lacks basic survival and self-care skills to such a~~
719 ~~degree that close supervision and habilitation in a residential~~
720 ~~setting is necessary and if not provided would result in a real~~
721 ~~and present threat of substantial harm to the person's well-~~
722 ~~being; or~~

723 ~~d.e.~~ Is likely to physically injure others if allowed to
724 remain at liberty.

725 3. The purpose to be served by residential care;

726 4. A recommendation on the type of residential placement
727 which would be the most appropriate and least restrictive for

586-02099-16

20167054pb

728 the person; and

729 5. The appropriate care, habilitation, and treatment.

730 (f) The committee shall file the report with the court at
731 least 10 working days before the date of the hearing. The report
732 must be served on the petitioner, the person who has the
733 intellectual disability or autism, the person's attorney at the
734 time the report is filed with the court, and the agency.

735 (g) Members of the examining committee shall receive a
736 reasonable fee to be determined by the court. The fees shall be
737 paid from the general revenue fund of the county in which the
738 person who has the intellectual disability or autism resided
739 when the petition was filed.

740 ~~(h) The agency shall develop and prescribe by rule one or~~
741 ~~more standard forms to be used as a guide for members of the~~
742 ~~examining committee.~~

743 (6) COUNSEL; GUARDIAN AD LITEM.—

744 (a) The person who has the intellectual disability or
745 autism must be represented by counsel at all stages of the
746 judicial proceeding. If the person is indigent and cannot afford
747 counsel, the court shall appoint a public defender at least 20
748 working days before the scheduled hearing. The person's counsel
749 shall have full access to the records of the service provider
750 and the agency. In all cases, the attorney shall represent the
751 rights and legal interests of the person, regardless of who
752 initiates the proceedings or pays the attorney ~~attorney's~~ fee.

753 (b) If the attorney, during the course of his or her
754 representation, reasonably believes that the person who has the
755 intellectual disability or autism cannot adequately act in his
756 or her own interest, the attorney may seek the appointment of a

586-02099-16

20167054pb

757 guardian ad litem. A prior finding of incompetency is not
758 required before a guardian ad litem is appointed pursuant to
759 this section.

760 (7) HEARING.—

761 (d) The person who has the intellectual disability or
762 autism must be physically present throughout the entire
763 proceeding. If the person's attorney believes that the person's
764 presence at the hearing is not in his or her best interest, the
765 person's presence may be waived once the court has seen the
766 person and the hearing has commenced.

767 (10) COMPETENCY.—

768 (a) The issue of competency is separate and distinct from a
769 determination of the appropriateness of involuntary admission to
770 residential services due to intellectual disability or autism.

771 (b) The issue of the competency of a person who has an
772 intellectual disability or autism for purposes of assigning
773 guardianship shall be determined in a separate proceeding
774 according to the procedures and requirements of chapter 744. The
775 issue of the competency of a person who has an intellectual
776 disability or autism for purposes of determining whether the
777 person is competent to proceed in a criminal trial shall be
778 determined in accordance with chapter 916.

779 (12) APPEAL.—

780 (b) The filing of an appeal by the person who has an
781 intellectual disability or autism stays admission of the person
782 into residential care. The stay remains in effect during the
783 pendency of all review proceedings in Florida courts until a
784 mandate issues.

785 (14) COMMITMENT REVIEW.—

Page 27 of 35

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586-02099-16

20167054pb

786 (a) For persons involuntarily admitted to residential
787 services by court order pursuant to this section, such
788 involuntary admission, unless otherwise ordered by the court,
789 must be reviewed annually. Placements resulting from an order
790 for involuntary admission must be part of the review. The agency
791 shall contract with a qualified evaluator to perform such
792 reviews which must be provided to the court upon completion.

793 (b) Upon receipt of an annual review by the court, a
794 hearing must be held to consider the results of the review and
795 to determine whether the person continues to meet the criteria
796 specified in paragraph (8)(b). If the person continues to meet
797 the criteria, the court shall determine whether he or she still
798 requires involuntary admission to a residential setting, whether
799 the person is in the most appropriate and least restrictive
800 setting, and whether the person is receiving adequate care,
801 treatment, habilitation, and rehabilitation in the residential
802 setting.

803 (c) The agency shall provide a copy of the annual review
804 and reasonable notice of the hearing to the appropriate state's
805 attorney, if applicable, and the person's attorney and guardian
806 or guardian advocate, if one is appointed.

807 (d) For purposes of this subsection, the term "qualified
808 evaluator" means a licensed psychologist with expertise in the
809 diagnosis, evaluation, and treatment of persons with
810 intellectual disabilities or autism.

811 Section 8. Section 26 of chapter 2015-222, Laws of Florida,
812 is repealed.

813 Section 9. Section 393.18, Florida Statutes, is reenacted
814 and amended to read:

Page 28 of 35

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586-02099-16

20167054pb

815 393.18 Comprehensive transitional education program.—A
 816 comprehensive transitional education program serves individuals
 817 ~~is a group of jointly operating centers or units, the collective~~
 818 ~~purpose of which is to provide a sequential series of~~
 819 ~~educational care, training, treatment, habilitation, and~~
 820 ~~rehabilitation services to persons who have developmental~~
 821 ~~disabilities, and who have severe or moderate maladaptive~~
 822 ~~behaviors, severe maladaptive behaviors and co-occurring complex~~
 823 ~~medical conditions, or a dual diagnosis of developmental~~
 824 ~~disability and mental illness. However, this section does not~~
 825 ~~require such programs to provide services only to persons with~~
 826 ~~developmental disabilities. All such Services provided by the~~
 827 ~~program must shall~~ be temporary in nature and delivered in a
 828 ~~manner designed to achieve structured residential setting,~~
 829 ~~having the primary goal of incorporating the principles~~
 830 ~~principle of self-determination and person-centered planning to~~
 831 ~~transition individuals to the most appropriate, least~~
 832 ~~restrictive community living option of their choice which is not~~
 833 ~~operated as a in establishing permanent residence for persons~~
 834 ~~with maladaptive behaviors in facilities that are not associated~~
 835 ~~with the comprehensive transitional education program. The~~
 836 ~~clinical director of the program must hold a doctorate degree~~
 837 ~~with a primary focus in behavior analysis from an accredited~~
 838 ~~university, be a certified behavior analyst pursuant to s.~~
 839 ~~393.17, and have at least 1 year of experience in providing~~
 840 ~~behavior analysis services for individuals with developmental~~
 841 ~~disabilities. The staff must shall~~ include behavior analysts and
 842 teachers, as appropriate, who ~~must shall~~ be available to provide
 843 services in each component center or unit of the program. A

Page 29 of 35

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586-02099-16

20167054pb

844 behavior analyst must be certified pursuant to s. 393.17.
 845 (1) Comprehensive transitional education programs must
 846 ~~shall include a minimum of two component centers or units, one~~
 847 ~~of which shall be an intensive treatment and educational center~~
 848 ~~or a transitional training and educational center, which~~
 849 ~~provides services to persons with maladaptive behaviors in the~~
 850 following components sequential order:
 851 (a) ~~Intensive treatment and education educational center.—~~
 852 This component provides is a self-contained residential unit
 853 ~~providing~~ intensive behavioral and educational programming for
 854 individuals whose conditions persons with severe maladaptive
 855 ~~behaviors whose behaviors~~ preclude placement in a less
 856 restrictive environment due to the threat of danger or injury to
 857 themselves or others. Continuous-shift staff are shall be
 858 required for this component.
 859 (b) ~~Intensive Transitional training and education~~
 860 ~~educational center.—~~This component provides is a residential
 861 ~~unit for persons with moderate maladaptive behaviors providing~~
 862 concentrated psychological and educational programming that
 863 emphasizes a transition toward a less restrictive environment.
 864 Continuous-shift staff are shall be required for this component.
 865 (c) ~~Community Transition residence.—~~This component provides
 866 ~~is a residential center providing~~ educational programs and any
 867 support services, training, and care that are needed ~~to assist~~
 868 ~~persons with maladaptive behaviors~~ to avoid regression to more
 869 restrictive environments while preparing them for more
 870 independent living. Continuous-shift staff may shall be required
 871 for this component.
 872 (d) ~~Alternative living center.—~~This component is a

Page 30 of 35

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586-02099-16 20167054pb

873 ~~residential unit providing an educational and family living~~
 874 ~~environment for persons with maladaptive behaviors in a~~
 875 ~~moderately unrestricted setting. Residential staff shall be~~
 876 ~~required for this component.~~

877 ~~(c) Independent living education center. This component is~~
 878 ~~a facility providing a family living environment for persons~~
 879 ~~with maladaptive behaviors in a largely unrestricted setting and~~
 880 ~~includes education and monitoring that is appropriate to support~~
 881 ~~the development of independent living skills.~~

882 (2) Components of a comprehensive transitional education
 883 program are subject to the license issued under s. 393.067 to a
 884 comprehensive transitional education program and may be located
 885 on a single site or multiple sites as long as such components
 886 are located within the same agency region.

887 (3) Comprehensive transitional education programs shall
 888 develop individual education plans for each person with
 889 maladaptive behaviors, severe maladaptive behaviors and co-
 890 occurring complex medical conditions, or a dual diagnosis of
 891 developmental disability and mental illness who receives
 892 services from the program. Each individual education plan shall
 893 be developed in accordance with the criteria specified in 20
 894 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300. Educational
 895 components of the program, including individual education plans,
 896 must be integrated with the local school district to the extent
 897 possible.

898 (4) ~~For comprehensive transitional education programs,~~ The
 899 total number of persons in a comprehensive transitional
 900 education program residents who are being provided with services
 901 may not in any instance exceed the licensed capacity of 120

586-02099-16 20167054pb

902 residents, and each residential unit within the component
 903 centers of a the program authorized under this section may not
 904 in any instance exceed 15 residents. However, a program that was
 905 authorized to operate residential units with more than 15
 906 residents before July 1, 2015, may continue to operate such
 907 units.

908 (5) Beginning July 1, 2016, the agency may approve the
 909 proposed admission or readmission of individuals into a
 910 comprehensive transitional education program for up to 2 years
 911 subject to a specific review process. The agency may allow an
 912 individual to live in this setting for a longer period of time
 913 if, after a clinical review is conducted by the agency, it is
 914 determined that remaining in the program for a longer period of
 915 time is in the best interest of the individual.

916 (6) Comprehensive transitional education programs shall
 917 provide continuous recorded video and audio monitoring in all
 918 residential common areas. Recordings must be maintained for at
 919 least 60 days during which time the agency may review them at
 920 any time. At the request of the agency, the comprehensive
 921 transitional education program shall retain specified recordings
 922 indefinitely throughout the course of an investigation into
 923 allegations of potential abuse or neglect.

924 (7) Comprehensive transitional education programs shall
 925 operate and maintain a video and audio monitoring system that
 926 enables authorized agency staff to monitor program activities
 927 and facilities in real time from an off-site location. To the
 928 extent possible, such monitoring may be in a manner that
 929 precludes detection or knowledge of the monitoring by staff who
 930 may be present in monitored areas.

586-02099-16

20167054pb

931 (8) Licensure is authorized for a comprehensive
 932 transitional education program that, by July 1, 1989:
 933 (a) Was in actual operation; or
 934 (b) Owned a fee simple interest in real property for which
 935 a county or municipal government has approved zoning that allows
 936 the placement of a facility operated by the program and has
 937 registered an intent with the agency to operate a comprehensive
 938 transitional education program. However, nothing prohibits the
 939 assignment of licensure eligibility by such a registrant to
 940 another entity at a different site within the state if the
 941 entity is in compliance with the criteria of this subsection and
 942 local zoning requirements and each residential facility within
 943 the component centers or units of the program authorized under
 944 this paragraph does not exceed a capacity of 15 persons.
 945 (9) Notwithstanding subsection (8), in order to maximize
 946 federal revenues and provide for children needing special
 947 behavioral services, the agency may authorize the licensure of a
 948 facility that:
 949 (a) Provides residential services for children who have
 950 developmental disabilities and intensive behavioral problems as
 951 defined by the agency; and
 952 (b) As of July 1, 2010, served children who were served by
 953 the child welfare system and who have an open case in the State
 954 Automated Child Welfare Information System.
 955
 956 The facility must be in compliance with all program criteria and
 957 local land use and zoning requirements and may not exceed a
 958 capacity of 15 children.
 959 Section 10. Subsection (2) of section 393.501, Florida

Page 33 of 35

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586-02099-16

20167054pb

960 Statutes, is amended to read:
 961 393.501 Rulemaking.—
 962 (2) Such rules must address the number of facilities on a
 963 single lot or on adjacent lots, except that there is no
 964 restriction on the number of facilities designated as community
 965 residential homes located within a planned residential community
 966 as those terms are defined in s. 419.001(1). In adopting rules,
 967 comprehensive transitional education programs ~~an alternative~~
 968 ~~living center and an independent living education center~~, as
 969 described in s. 393.18, are subject to s. 419.001, except that
 970 such program centers are exempt from the 1,000-foot-radius
 971 requirement of s. 419.001(2) if:
 972 (a) The program centers are located on a site zoned in a
 973 manner that permits all the components of a comprehensive
 974 transitional education program center to be located on the site;
 975 or
 976 (b) There are no more than three such program centers
 977 within a radius of 1,000 feet.
 978 Section 11. Paragraph (b) of subsection (1) of section
 979 383.141, Florida Statutes, is amended to read:
 980 383.141 Prenatally diagnosed conditions; patient to be
 981 provided information; definitions; information clearinghouse;
 982 advisory council.—
 983 (1) As used in this section, the term:
 984 (b) "Developmental disability" includes Down syndrome and
 985 other developmental disabilities defined by s. 393.063(12) ~~s.~~
 986 ~~393.063(9)~~.
 987 Section 12. Paragraph (d) of subsection (2) of section
 988 1002.385, Florida Statutes, is amended to read:

Page 34 of 35

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02099-16

20167054pb

989 1002.385 Florida personal learning scholarship accounts.-
990 (2) DEFINITIONS.-As used in this section, the term:
991 (d) "Disability" means, for a 3- or 4-year-old child or for
992 a student in kindergarten to grade 12, autism spectrum disorder,
993 as defined in the Diagnostic and Statistical Manual of Mental
994 Disorders, Fifth Edition, published by the American Psychiatric
995 Association; cerebral palsy, as defined in s. 393.063(6) ~~s-~~
996 ~~393.063(4)~~; Down syndrome, as defined in s. 393.063(15) ~~s-~~
997 ~~393.063(13)~~; an intellectual disability, as defined in s.
998 393.063(25) ~~s. 393.063(21)~~; Prader-Willi syndrome, as defined in
999 s. 393.063(29) ~~s. 393.063(25)~~; or spina bifida, as defined in s.
1000 393.063(41) ~~s. 393.063(36)~~; for a student in kindergarten, being
1001 a high-risk child, as defined in s. 393.063(23)(a) ~~s-~~
1002 ~~393.063(20)(a)~~; muscular dystrophy; and Williams syndrome.
1003 Section 13. This act shall take effect July 1, 2016.
1004

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SPB 7054
FINAL ACTION: Submitted as Committee Bill
MEETING DATE: Wednesday, January 20, 2016
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	1/20/2016 Motion to submit as Committee Bill Altman		Yea	Nay	Yea	Nay
Yea	Nay		Yea	Nay				
		Dean						
X		Detert						
X		Garcia						
		Hutson						
		Ring						
X		Altman, VICE CHAIR						
X		Sobel, CHAIR						
4	0							
Yea	Nay	TOTALS	FAV Yea	- Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

For/Waive

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/20/16

Meeting Date

7054

Bill Number (if applicable)

Topic _____

Name BARBARA PALMER

Amendment Barcode (if applicable)

Job Title DIRECTOR FOR APD

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 AGENCY FOR PERSONS WITH DISABILITIES

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

Waive In Support

1/20/2016
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7054
Bill Number (if applicable)

Topic APD

Amendment Barcode (if applicable)

Name Janice Phillips

Job Title Support Coordinator

Address 1831 Fiddler Ct
Street

Phone 850 8774393

Tallahassee FL 32308
City State Zip

Email phillips@hmsf1.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Association of Support Coordination

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)

For/Waive

SB 1138
Bill Number (if applicable)

Amendment Barcode (if applicable)

1-20-14
Meeting Date

Topic SB 1138 - Sobes Homes

Name Melissa McKinlay

Job Title Commissioner - Palm Beach County

Address 301 N. Olive Ave.

Street

City

FL

State

33401

Zip

Phone 561-355-2206

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Palm Beach County

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

For/waive

1-20-16
Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1138
Bill Number (if applicable)

Topic Ethical Marketing

Amendment Barcode (if applicable)

Name Jim Smith

Job Title Atty

Address 201 S Adams
Street

Phone 850 5912277

Tal 32301
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing B H O P

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)

For

20 Jan 2016
Meeting Date

1138
Bill Number (if applicable)

Topic Ethical Marketing / Substance Abuse

Amendment Barcode (if applicable)

Name ~~JFF~~ Mark Fontaine

Job Title Executive Director

Address 2868 Mahan Dr
Street

Phone 878-2194

Tallahassee FL 32308
City State Zip

Email mfontaine@fadga.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

For/waive

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-20-15

Meeting Date

1138

Bill Number (if applicable)

Topic Behavioral Health - SB 1138

Amendment Barcode (if applicable)

Name MONTE STEVENS

Job Title _____

Address 123 S. Adams St

Phone 671 4401

Street

TALLAHASSEE

FL

32301

Email Stevens@sostrategy.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Ambrosia Treatment Center

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

Waive In-Support

1-20-2016

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1138
Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic _____

Name THAD LOWREY

Job Title VP Governmental Relations

Address 7720 SW 102

Phone 727.992.8508

PORT RICHEY FL 34668
City State Zip

Email Howry@oper-par.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.

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THE FLORIDA SENATE

APPEARANCE RECORD

Fov

1/20/2016
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

762
Bill Number (if applicable)

Topic Marchman Act Public Records Exemption

Name Paul Lowell

Amendment Barcode (if applicable)

Job Title Public Affairs Director, Foley & Lardner

Address 106. E. College Ave # 900

Phone 850-222-6106

Tallahassee
City

FL
State

32301
Zip

Email p.lowell@foley.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Palm Beach County

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)

For/Waive

1/20/16
Meeting Date

730
Bill Number (if applicable)

Topic Professional Guardians

Amendment Barcode (if applicable)

Name Laura Cantwell

Job Title Associate State Director

Address 400 Carlton Pkwy, Suite 100
Street

Phone 850-570-2110

St. Pete State Zip

Email lcantwell@aarp.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AARP 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.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Children, Families, and Elder Affairs Committee

Judge:

Started: 1/20/2016 4:08:29 PM

Ends: 1/20/2016 4:29:35 PM Length: 00:21:07

4:08:34 PM Meeting called to order
4:08:36 PM Roll call
4:08:51 PM Quorum present
4:09:14 PM Tab 3- SB 1138 (Clemens) "Ethical Marketing"
4:09:25 PM Strike all amendment 448396 (Sen Ring) Explained by Sen Clemens
4:11:16 PM Amendment 448396 Adopted
4:11:24 PM SB 1138 as amended
4:11:30 PM Public testimony
4:11:37 PM Melissa McKinley- Palm Beach County- Waive in support
4:11:55 PM Jim Smith- BHOP-Waive in support
4:12:05 PM Mark Fontaine- FL Alcohol and Drug Abuse Assoc- Waive in support
4:12:14 PM Monte Stevens -Ambrosia Treatment Center- Waive in support
4:12:22 PM Thad Lowrey- Operation PAR-Waive in support
4:12:34 PM Sen Clemens waive close
4:12:45 PM Roll call for final vote
4:13:02 PM CS SB 1138 Reported favorably
4:13:12 PM Tab 2- SB 762 (Abruzzo)
4:13:31 PM SB 762 introduced by Sen Abruzzo
4:14:10 PM Public testimony
4:14:18 PM Paul Lowell- Palm Beach County- Waive in support
4:14:32 PM Sen Abruzzo close
4:14:55 PM Roll call for final vote
4:15:12 PM SB 762 Reported favorably
4:15:24 PM Tab 1 - SB 730 (Margolis) "Professional Guardians"
4:16:17 PM Daniel Bruno, Legislative Aide, introduces bill
4:16:51 PM Amendment 201494, explained by Daniel Bruno, Legislative Aide to
Sen Margolis
4:17:22 PM Sen Detert question
4:17:26 PM Bruno
4:17:30 PM Sen Detert question
4:17:32 PM Bruno
4:17:53 PM Amendment adopted
4:17:58 PM Bill as amended
4:18:08 PM Sen Detert
4:18:21 PM Bruno

4:18:47 PM Sen Garcia
4:19:04 PM Bruno
4:19:37 PM Sen Garcia question for Chair
4:19:43 PM Chair Sobel
4:20:14 PM Sen Detert
4:20:21 PM Bruno
4:20:50 PM Sen Detert follow up
4:21:37 PM Chair Sobel
4:21:44 PM Bruno
4:21:55 PM Public testimony
4:22:05 PM Laura Cantwell- AARP-Waive in support
4:22:19 PM Waive close
4:22:24 PM Roll call on final vote
4:22:41 PM CS SB 730 Reported favorably
4:22:55 PM Tab 4- SPB 7054 (CF) "Agency for Persons with Disabilities"
4:23:21 PM Chair Sobel introducing SPB 7054
4:24:10 PM Barbara Palmer, Director for APD- Speaking in support
4:25:21 PM Staff, Barbara, explanation of SPB 7054
4:27:35 PM Public testimony
4:27:46 PM Janice Phillips- Assoc of Support Coordination- Waive in support
4:28:07 PM Chair Sobel, close of SPB 7054
4:28:47 PM Sen Altman moves SPB 7054 be considered Committee Bill
4:28:52 PM Roll call for final vote
4:29:11 PM 7054 Reported favorably
4:29:26 PM Sen Altman moves to rise
4:29:29 PM Meeting adjourned