

<b>Tab 1</b>	<b>CS/SB 140</b> by <b>JU, Benacquisto (CO-INTRODUCERS) Simpson, Book, Hutson, Perry, Bracy;</b> (Similar to H 00335) Marriage Licenses				
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<b>Tab 2</b>	<b>SB 268</b> by <b>Passidomo;</b> Public Records/Public Guardians and Public-guardian Case Managers				
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<b>Tab 3</b>	<b>SB 450</b> by <b>Garcia;</b> Mental Health and Substance Use Disorders				
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CHILDREN, FAMILIES, AND ELDER AFFAIRS**  
**Senator Garcia, Chair**  
**Senator Torres, Vice Chair**

**MEETING DATE:** Monday, November 6, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

**MEMBERS:** Senator Garcia, Chair; Senator Torres, Vice Chair; Senators Broxson, Campbell, Stargel, and Steube

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 140</b> Judiciary / Benacquisto (Similar H 335, Compare H 71, S 208)	Marriage Licenses; Providing that a marriage license may not be issued to a person under the age of 18 years; requiring each party to a marriage to provide his or her social security number or an alien registration number for purposes of child support enforcement; providing that the effective date of a marriage license must be delayed by 3 days if the parties to the marriage have not submitted valid certificates of completion of a premarital preparation course, etc.	JU 10/24/2017 Fav/CS CF 11/06/2017 RC
2	<b>SB 268</b> Passidomo	Public Records/Public Guardians and Public-guardian Case Managers; Providing an exemption from public records requirements for certain identifying and location information of current or former public guardians, public-guardian case managers, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.	CF 11/06/2017 GO RC
3	<b>SB 450</b> Garcia	Mental Health and Substance Use Disorders; Requiring a specific level of screening for peer specialists working in mental health programs and facilities; specifying that the use of peer specialists for recovery support is an essential element of a coordinated system of behavioral health care; requiring the Department of Children and Families to develop a training program for peer specialists and give preference to trainers who are certified peer specialists; requiring all peer specialists to meet the requirements of a background screening as a condition of employment and continued employment, etc.	CF 11/06/2017 AHS AP

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Monday, November 6, 2017, 4:00—6:00 p.m.

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

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Committee Code Not Found

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BILL: CS/SB 140

INTRODUCER: Judiciary Committee and Senator Benacquisto and others

SUBJECT: Marriage Licenses

DATE: November 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-Meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 140 prohibits a county court judge or clerk of the circuit court from issuing a marriage license to any person under the age of 18. Accordingly, a minor is not permitted to marry in the state. The current exceptions that permit a minor to marry, such as parental consent, the fact that a couple already has a child, or a physician's written verification of a pregnancy, are repealed. Under this bill, only a person 18 years of age or older is permitted to marry.

**II. Present Situation:**

According to the Bureau of Vital Statistics,<sup>1</sup> 1,828 marriage licenses were issued in the last 5 years to a couple in which at least one party was a minor. Of this total, 132 licenses were issued to a couple in which both parties were minors. In that same time period, 1 license was issued in which one party was 13 years old, 7 licenses were issued in which one party was 14 years old, 29 licenses were issued in which one party was 15 years old, and 1,807 licenses were issued in which one party was 16 or 17 years old.<sup>2</sup> A complete chart of data from the Bureau of Vital Statistics is provided below.

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<sup>1</sup> *Marriages Under 18, Years 2012-2016*, Email attachment supplied by Gary Sammet, Bureau of Vital Statistics, Department of Health (Oct. 25, 2017) (on file with the Senate Committee on Judiciary). The Bureau of Vital Statistics is the state repository for all marriage records filed in the state. The licenses are filed with the clerks of courts who are legally bound to report them to the Bureau.

<sup>2</sup> The sum of these four categories, 1,844, exceeds the total number of licenses issued, 1,828, because 16 minors are represented in more than one category.

**Marriage Licenses Issued to a Minor, Years 2012-2016<sup>3</sup>**

<b>Number of Marriages by Year by Spouse Age.</b>		<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Party 1</b>	<b>Party 2</b>					
13 years	16-17 Years		1			
14 years	15 Years		1			
	18-19 years			1		
	20-24 years	3				
15 Years	16-17 years	4	2	2		1
	18-19 years					3
	20-24 years	2	1		1	
	25-29 years			1		
16-17 Years	35-39 years				1	
	15 Years	3	2			
	16-17 Years	30	21	21	19	25
	18-19 years	195	145	136	128	113
	20-24 years	163	135	118	124	85
	25-29 years	28	25	26	38	18
	30-34 years	7	2	2	3	4
	35-39 years	2	1	2	1	1
18-19 years	40-44 years					1
	90-94 years			1		
20-24 years	15 Years	1	1			
	16-17 Years	19	16	18	21	35
25-29 years	14 years		1			
	15 Years		1			
	16-17 Years	5	7	5	8	21
30-34 years	15 Years	1				
	16-17 Years	2	1	2	2	4
35-39 years	14 years	1				
	15 Years				1	
	16-17 Years	1	1		1	
40-44 years	16-17 Years			1	1	
40-44 years	16-17 Years				1	
<b>Totals</b>		<b>467</b>	<b>364</b>	<b>336</b>	<b>350</b>	<b>311</b>

<sup>3</sup> Bureau of Vital Statistics, Florida Department of Health.

## **Marriage Licenses**

The authority to issue a marriage license in this state is vested solely in a county court judge or clerk of the circuit court.<sup>4</sup> No one may marry without a valid license.<sup>5</sup> In order to obtain a license, the single individuals must appear together in person, bring their valid government issued identification and social security numbers, and complete a marriage license application.

Applicants must generally be at least 18 years of age to obtain a marriage license. However, there are exceptions under which a minor may be issued a license to marry.

### ***Applicants Who are 16 or 17 May Marry With Parental Consent***

If an applicant for a marriage license is 16 or 17 years of age, he or she is entitled to a marriage license if both of his or her parents or a guardian provide consent to the marriage. However, the minor does not need parental consent if his or her parents are deceased or if the minor was married previously. The written consent must be acknowledged before a person authorized to take acknowledgments and administer oaths.<sup>6</sup>

### ***Judicial Bypass in Cases of Pregnancy or Parentage***

A minor applicant may receive a marriage license without parental consent in limited circumstances that depend upon the discretion of a county court judge. A county court judge may, in his or her discretion, issue a marriage license to a minor if both parties swear under oath that they are the parents of a child.<sup>7</sup> Additionally, if a pregnancy is verified in writing by a licensed physician, a county court judge may issue a marriage license to:

- Any male or female younger than 18 years of age and the parties swear under oath that they are expecting a child; or
- Any female younger than 18 years of age and a male older than 18 years of age if the female provides a sworn application that she is expecting a child.<sup>8</sup>

The statutes do not set a minimum age requirement for a marriage license when the applicants for a license have a child together or are expecting a child.<sup>9</sup> In these circumstances, the statutes permit a county court judge, in the exercise of his or her discretion, to issue a marriage license when one or both applicants for a license are younger than 16.

## **Disability of Nonage of Minors**

Disabilities of nonage are basically activities or actions that an individual cannot legally do or engage in as a minor. Current law removes the disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved,

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<sup>4</sup> Section 741.01, F.S.

<sup>5</sup> Section 741.08, F.S.

<sup>6</sup> Section 741.0405(1), F.S.

<sup>7</sup> Section 741.0405(2), F.S.

<sup>8</sup> Section 741.0405(3), F.S.

<sup>9</sup> See s. 741.0405(4), F.S.

or who is widowed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor.<sup>10</sup>

### III. Effect of Proposed Changes:

Under this bill, a person, without exception, must be at least 18 years of age to marry or receive a marriage license in this state. The current exceptions that allow a minor to marry with parental consent or without parental consent when the couple has a child or is expecting a child are repealed.

The bill takes effect July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

#### C. Government Sector Impact:

If marriage licenses are not issued to minors, the clerks of court might receive less revenue than in the years in which licenses were issued to minors.

### VI. Technical Deficiencies:

- Line 100 of the bill reads 741.03 and 741.04(2) commits ... It should read 741.03 or ~~and~~ 741.04(2) commits ...

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<sup>10</sup> Section 743.01, F.S.

- If CS/SB 140 is enacted, s.743.01 would need to be repealed at a future date. Sections 48.031, 450.012, 450.061, 731.201, and 744.102, F.S. would need to be amended to conform to the repeal of s. 743.01, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 741.02 of the Florida Statutes and repeals section 741.0405 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 Judiciary on October 25, 2017:**

The committee substitute reorganizes the current bill structure but does not make substantive changes to the bill. The committee substitute removes from s. 741.0405(4), F.S., the new language in the underlying bill which prohibits anyone younger than 18 years of age from marrying, and places it as new subsection (1) in s. 741.04, F.S. Current s. 741.0405, F.S. is then repealed. Section 741.04, F.S., is substantially reworded to modernize the language and break the existing language into shorter paragraphs.

- B. **Amendments:**

None.



By the Committee on Judiciary; and Senators Benacquisto,  
Simpson, Book, Hutson, Perry, and Bracy

590-00928-18

2018140c1

1 A bill to be entitled  
2 An act relating to marriage licenses; amending s.  
3 741.04, F.S.; providing that a marriage license may  
4 not be issued to a person under the age of 18 years;  
5 requiring parties to a marriage to file a written and  
6 signed affidavit with the county court judge or clerk  
7 of the circuit court before the judge or clerk may  
8 issue a marriage license; requiring such affidavit to  
9 include certain information; providing legislative  
10 intent; requiring each party to a marriage to provide  
11 his or her social security number or an alien  
12 registration number for purposes of child support  
13 enforcement; prohibiting a judge or clerk from issuing  
14 a marriage license unless he or she is presented with  
15 certain written statements; providing that the  
16 effective date of a marriage license must be delayed  
17 by 3 days if the parties to the marriage have not  
18 submitted valid certificates of completion of a  
19 premarital preparation course; providing exceptions;  
20 repealing s. 741.0405, F.S., relating to the issuance  
21 of marriage licenses to persons under 18 years of age;  
22 amending s. 741.05, F.S.; conforming cross-references;  
23 providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Section 741.04, Florida Statutes, is amended to  
28 read:

29 (Substantial rewording of section. See

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

590-00928-18

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30 s. 741.04, F.S., for present text.)  
31 741.04 Issuance of marriage license.--  
32 (1) A county court judge or clerk of the circuit court may  
33 not issue a license to marry to any person younger than 18 years  
34 of age.  
35 (2) A county court judge or clerk of the circuit court may  
36 not issue a license to marry until the parties to the marriage  
37 file with the county court judge or clerk of the court a written  
38 and signed affidavit, made and subscribed before a person  
39 authorized by law to administer an oath, which provides:  
40 (a) The social security number or any other available  
41 identification number for each person.  
42 (b) The respective ages of the parties.  
43 (3) The submission of social security numbers as provided  
44 in this section is intended to support the federal Personal  
45 Responsibility and Work Opportunity Reconciliation Act of 1996.  
46 The state has a compelling interest in promoting not only  
47 marriage, but also responsible parenting, which may include the  
48 payment of child support. Any person who has been issued a  
49 social security number shall provide that number in satisfying  
50 the requirement in subsection (2). Social security numbers or  
51 other identification numbers obtained under this section may be  
52 used only for the purposes of administration in Title IV-D child  
53 support enforcement cases.  
54 (a) Any person who is not a citizen of the United States  
55 may provide either a social security number or an alien  
56 registration number issued by the United States Bureau of  
57 Citizenship and Immigration Services.  
58 (b) Any person who is not a citizen of the United States

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59 and who has not been issued a social security number or an alien  
60 registration number is encouraged to provide another form of  
61 identification.

62  
63 This subsection does not prohibit a county court judge or clerk  
64 of the circuit court from issuing a marriage license to  
65 individuals who are not citizens of the United States if one or  
66 both of them are unable to provide a social security number, an  
67 alien registration number, or another identification number.

68 (4) A county court judge or clerk of the circuit court may  
69 not issue a license for the marriage of any person unless the  
70 county court judge or clerk of the circuit court is first  
71 presented with both of the following:

72 (a) A written statement, signed by both parties, which  
73 specifies whether the parties, individually or together, have  
74 completed a premarital preparation course.

75 (b) A written statement that verifies that both parties  
76 have obtained and read or otherwise accessed the information  
77 contained in the handbook or other electronic media presentation  
78 of the rights and responsibilities of parties to a marriage  
79 specified in s. 741.0306.

80 (5) If a couple does not submit to the clerk of the circuit  
81 court valid certificates of completion of a premarital  
82 preparation course, the clerk shall delay the effective date of  
83 the marriage license by 3 days from the date of application, and  
84 the effective date must be printed on the marriage license in  
85 bold type. If a couple submits valid certificates of completion  
86 of a premarital preparation course, the effective date of the  
87 marriage license may not be delayed. The clerk shall grant

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88 exceptions to the delayed effective date requirement to non-  
89 Florida residents and to couples asserting hardship. Marriage  
90 license fee waivers are available to all eligible couples. A  
91 county court judge issuing a marriage license may waive the  
92 delayed effective date requirement for Florida residents who  
93 demonstrate good cause.

94 Section 2. Section 741.0405, Florida Statutes, is repealed.

95 Section 3. Section 741.05, Florida Statutes, is amended to  
96 read:

97 741.05 Penalty for violation of ss. 741.03, ~~741.04(2)~~  
98 741.04(1).--Any county court judge, clerk of the circuit court,  
99 or other person who ~~violates~~ ~~shall violate~~ any provision of ss.  
100 741.03 and ~~741.04(2)~~ commits ~~741.04(1)~~ shall be guilty of a  
101 misdeemeanor of the first degree, punishable as provided in s.  
102 775.082 or s. 775.083.

103 Section 4. This act shall take effect July 1, 2018.

**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.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 268

INTRODUCER: Senator Passidomo

SUBJECT: Public Records/Public Guardians and Public-guardian Case Managers

DATE: November 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Pre-meeting</b>
2.			GO	
3.			RC	

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**I. Summary:**

SB 268 creates a public records exemption for the identifying and location information of current and former public guardians, public-guardian case managers, and their spouses and children. The bill provides for retroactive application, and includes a constitutionally required public necessity statement. The exemption will stand repealed on October 2, 2023, pursuant to the Open Government Sunset Review Act unless it is reenacted.

The bill requires a two-thirds vote from each chamber for passage.

The bill has no impact on state revenues or expenditures.

The bill has an effective date of July 1, 2018.

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

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<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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 as “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.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>13</sup> 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).

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> 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.<sup>16</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>17</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it 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.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.<sup>23</sup>

## 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.<sup>24</sup> 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, in situations where an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is based on the determination of a court appointed examination committee.<sup>25</sup>

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.<sup>26</sup> A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.<sup>27</sup> 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.<sup>28</sup> In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out its 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’s overall physical and social health. A guardian must file with the court an initial guardianship report,<sup>29</sup> an annual guardianship report,<sup>30</sup> and an annual accounting of the ward’s property.<sup>31</sup> The reports provide evidence of the guardian’s faithful execution of his or her fiduciary duties.<sup>32</sup>

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(1), F.S., explicitly 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.” If a

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<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> Section 744.102(9)(a) and (b), F.S.

<sup>25</sup> Sections 744.102(12), 744.3201, 744.341, F.S.

<sup>26</sup> *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990). Section 744.361(1), F.S.

<sup>27</sup> *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

<sup>28</sup> *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

<sup>29</sup> Section 744.362, F.S.

<sup>30</sup> Section 744.367, F.S.

<sup>31</sup> Section 744.3678, F.S.

<sup>32</sup> Sections 744.368(1) and 744.369, F.S.

guardian breaches his or her fiduciary duty, a court will intervene and “take the necessary actions to protect the ward and the ward’s assets.”<sup>33</sup>

### **Office of the Public and Professional Guardians**

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.<sup>34</sup> The Statewide Public Guardianship Office was renamed the Office of the Public and Professional Guardians in 2006.<sup>35</sup> 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.”<sup>36</sup> A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>37</sup> A public guardian may be an appointee of the Office of the Public and Professional Guardians or a contract employee of a nonprofit corporation.<sup>38</sup> Public guardianship offices are located in all 20 judicial circuits in the state.

Currently, the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of public guardians and public-guardian case managers as well as the names and location of schools and day care facilities of the children of public guardians and public-guardian case managers are subject to release pursuant to a public records request.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 744.21031, F.S., to allow the home addresses, telephone numbers, dates of birth, places of employment, and photographs of current or former public guardians and public-guardian case managers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former guardians and public-guardian case managers; and the names and locations of schools and day care facilities attended by the children of current and former public guardians and public-guardian case managers to be exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill also provides that the public records exemption has retroactive effect.

The public records exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** states that the Legislature finds it is a public necessity that the identifying and location information of current and former public guardians and public-guardian case managers, their spouses and children be exempt from s. 119.07(1) and s. 24(a), Article I of the State Constitution. The bill includes examples of how public guardians have been threatened and injured by their wards. The bill provides that the release of identifying and location information

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<sup>33</sup> Section 744.446(4), F.S.

<sup>34</sup> Chapter 99-277, Laws of Fla.

<sup>35</sup> Chapter 2016-40, Laws of Fla.

<sup>36</sup> Section 744.2007(1), F.S.

<sup>37</sup> Section 744.102(17), F.S.

<sup>38</sup> Section 744.2006, F.S.

of current and former public guardians, public-guardian case managers, and their family members places them in danger of physical and emotional harm from disgruntled individuals who may act inappropriately or seek revenge due to actions taken by public guardians. Section 2 also states that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

**Section 3** provides an effective date of July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill exempts certain identifying and location information of current and former public guardians, their spouses and children. The public necessity for the exemption provides that guardians and their family members are subject to threats of emotional and physical harm from disgruntled individuals. The exemption from disclosure would help protect guardians and their families. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Private contractors will have to redact the information of the public guardian or public-guardian case manager if a public records request is made. This cost will be absorbed through existing resources.



C. **Government Sector Impact:**

Government entities will have to redact the information of the public guardian or public-guardian case manager if a public records request is made. This cost will be absorbed through existing resources.

VI. **Technical Deficiencies:**

Section 2. of the bill on line 77 should be Section 3.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 744.21031 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.



423396

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 744.21031, Florida Statutes, is created  
to read:

744.21031 Public records exemption.—The home addresses,  
telephone numbers, dates of birth, places of employment, and  
photographs of current or former public guardians and employees  
with fiduciary responsibility; the names, home addresses,



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11 telephone numbers, dates of birth, and places of employment of  
12 the spouses and children of such persons; and the names and  
13 locations of schools and day care facilities attended by the  
14 children of such persons are exempt from s. 119.07(1) and s.  
15 24(a), Art. I of the State Constitution. This exemption applies  
16 to information held by an agency before, on, or after July 1,  
17 2018. This section is subject to the Open Government Sunset  
18 Review Act in accordance with s. 119.15 and shall stand repealed  
19 on October 2, 2023, unless reviewed and saved from repeal  
20 through reenactment by the Legislature.

21 Section 2. (1) The Legislature finds that it is a public  
22 necessity that the following identifying and location  
23 information be exempt from s. 119.07(1), Florida Statutes, and  
24 s. 24(a), Article I of the State Constitution:

25 (a) The home addresses, telephone numbers, dates of birth,  
26 places of employment, and photographs of current or former  
27 public guardians and employees with fiduciary responsibility;

28 (b) The names, home addresses, telephone numbers, dates of  
29 birth, and places of employment of spouses and children of such  
30 guardians and employees with fiduciary responsibility; and

31 (c) The names and locations of schools and day care  
32 facilities attended by the children of such guardians and  
33 employees with fiduciary responsibility.

34 (2) The Legislature finds that the release of such  
35 identifying and location information might place current or  
36 former public guardians and employees with fiduciary  
37 responsibility and their family members in danger of physical  
38 and emotional harm from disgruntled individuals who react  
39 inappropriately to actions taken by the public guardians and



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40 employees with fiduciary responsibility. Public guardians and  
41 employees with fiduciary responsibility provide a valuable  
42 service to the community by helping some of the state's most  
43 vulnerable residents who lack the physical or mental capacity to  
44 take care of most aspects of their own personal affairs. Public  
45 guardians and employees with fiduciary responsibility help those  
46 who lack a willing and qualified family member or friend and do  
47 not have the income or assets to pay a professional guardian.

48 (3) Despite the value of this service, however, some  
49 persons, including a public guardian's own wards, become  
50 disgruntled with the assistance provided or the decisions a  
51 public guardian or an employee with fiduciary responsibility  
52 makes, which can result in a guardian or an employee with  
53 fiduciary responsibility or the family members of the guardian  
54 or the employee with fiduciary responsibility becoming potential  
55 targets for an act of revenge. Wards have harassed their public  
56 guardians with threats of incarceration, violence, and death  
57 through voicemail messages and social media. Wards have also  
58 left voicemail messages threatening to kill themselves and others,  
59 as well as the public guardian. In the course of their duties,  
60 public guardians have also been subject to being physically  
61 assaulted.

62 (4) After a public guardian or an employee with fiduciary  
63 responsibility concludes his or her service, the risk continues  
64 because a disgruntled individual may wait until then to commit  
65 an act of revenge. The harm that may result from the release of  
66 a public guardian's or an employee with fiduciary  
67 responsibility's personal identifying and location information  
68 outweighs any public benefit that may be derived from the



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69 disclosure of the information.

70 Section 2. This act shall take effect July 1, 2018.

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

72 And the title is amended as follows:

73 Delete everything before the enacting clause  
74 and insert:

75 A bill to be entitled

76 An act relating to public records; creating s.

77 744.21031, F.S.; providing an exemption from public

78 records requirements for certain identifying and

79 location information of current or former public

80 guardians, employees with fiduciary responsibility,

81 and the spouses and children thereof; providing for

82 retroactive application; providing for future

83 legislative review and repeal of the exemption;

84 providing a statement of public necessity; providing

85 an effective date.

By Senator Passidomo

28-00312-18

2018268\_\_

A bill to be entitled

An act relating to public records; creating s. 744.21031, F.S.; providing an exemption from public records requirements for certain identifying and location information of current or former public guardians, public-guardian case managers, and the spouses and children thereof; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 744.21031, Florida Statutes, is created to read:

744.21031 Public records exemption.—The home addresses, telephone numbers, dates of birth, places of employment, and photographs of current or former public guardians and public-guardian case managers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after July 1, 2018. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the

Page 1 of 3

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

28-00312-18

2018268\_\_

Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that the following identifying and location information be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) The home addresses, telephone numbers, dates of birth, places of employment, and photographs of current or former public guardians and public-guardian case managers;

(b) The names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such guardians and case managers; and

(c) The names and locations of schools and day care facilities attended by the children of such guardians and case managers.

(2) The Legislature finds that the release of such identifying and location information might place current or former public guardians and public-guardian case managers and their family members in danger of physical and emotional harm from disgruntled individuals who react inappropriately to actions taken by the public guardians and public-guardian case managers. Public guardians and public-guardian case managers provide a valuable service to the community by helping some of the state's most vulnerable residents who lack the physical or mental capacity to take care of most aspects of their own personal affairs. Public guardians and public-guardian case managers help those who lack a willing and qualified family member or friend and do not have the income or assets to pay a professional guardian.

(3) Despite the value of this service, however, some

Page 2 of 3

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

28-00312-18

2018268\_\_

59 persons, including a public guardian's own wards, become  
60 disgruntled with the assistance provided or the decisions a  
61 public guardian or case manager makes, which can result in a  
62 guardian or case manager or the guardian's or case manager's  
63 family members becoming potential targets for an act of revenge.  
64 Wards have harassed their public guardians with threats of  
65 incarceration, violence, and death through voicemail messages  
66 and social media. Wards have also left voicemail messages  
67 threatening to kill themselves and others, as well as the public  
68 guardian. In the course of their duties, public guardians have  
69 also been subject to being physically assaulted.

70 (4) After a public guardian or case manager concludes his  
71 or her service, the risk continues because a disgruntled  
72 individual may wait until then to commit an act of revenge. The  
73 harm that may result from the release of a public guardian's or  
74 case manager's personal identifying and location information  
75 outweighs any public benefit that may be derived from the  
76 disclosure of the information.

77 Section 2. This act shall take effect July 1, 2018.

**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.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 450

INTRODUCER: Senator Garcia

SUBJECT: Mental Health and Substance Use Disorders

DATE: November 3, 2017

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u><b>Pre-meeting</b></u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 450 promotes the use of peer specialists in behavioral health care. Peer specialists are persons who have recovered from a substance use disorder or mental illness who support a person with a current substance use disorder or mental illness. The bill revises background screening requirements and codifies existing training and certification requirements for peer specialists.

The bill is expected to have a positive fiscal impact on the state and is effective July 1, 2018.

**II. Present Situation:**

**Behavioral Health Workforce Shortage**

Workforce issues for providers of substance use disorder and mental illness services, which have been of concern for decades, have taken on a greater sense of urgency with the passage of recent parity and health reform legislation.<sup>1</sup> The Affordable Care Act increased the number of people who are eligible for health care coverage including behavioral health services. In addition, as screening for mental illness and substance abuse becomes more frequent in primary care, more people will need behavioral health services. Furthermore, workforce shortages will be impacted by additional demands that result from: (1) a large number of returning veterans in need of services; and (2) new state re-entry initiatives to reduce prison populations, a large majority of whom have mental or substance use disorders.<sup>2</sup>

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<sup>1</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues. January 24, 2013. Available at: <https://store.samhsa.gov/shin/content/PEP13-RTC-BHWORk/PEP13-RTC-BHWORk.pdf> (last visited Nov. 2, 2017).

<sup>2</sup> *Id.*



Shortages of qualified behavioral health workers, recruitment and retention of staff and an aging workforce have long been cited as problems. Lack of workers in rural/frontier areas and the need for a workforce more reflective of the racial and ethnic composition of the U.S. population create additional barriers to accessing care for many. Recruitment and retention efforts are hampered by inadequate compensation, which discourages many from entering or remaining in the field. In addition, the misunderstanding and prejudice of persons with mental and substance use disorders can negatively affect the use of peer specialists.

### **Opioid Epidemic**

Florida has experienced an exponential growth in overdoses and death from overdoses from opioids.<sup>3</sup> In 2016, Florida had 53,180 deaths from overdoses of legal and illegal opioids.<sup>4</sup> The overdoses and deaths have significant social and economic impacts to the state. For example, families are negatively impacted as more children must be removed from their homes due to substance use or the death of their parents.

On May 3, 2017, Governor Rick Scot, following the Centers for Disease Control and Prevention (CDC) declaring a national opioid epidemic, signed Executive Order 17-146 directing a Public Health Emergency across the state for the opioid epidemic in Florida.<sup>5</sup> The Emergency Order, allowed the state to immediately draw down more than \$27 million in federal grant funding from the United States Department of Health and Human Services Opioid State Targeted Response Grant to provide prevention, treatment and recovery support services. In addition, Surgeon General Dr. Celeste Philip issued a standing order for Naloxone, an emergency treatment for opioid overdose. This will help ensure first responders have immediate access to this lifesaving drug to respond to opioid overdoses.

### **Use of Peer Specialists**

Research has shown that recovery from a substance use disorder or mental illness is facilitated by the use of social support provided by peers.<sup>6</sup> The most recognized form of peer support is the 12-step programs of Alcoholic Anonymous and Narcotic Anonymous. More recently, peers or peer specialists, have been used to assist persons with serious mental illnesses.<sup>7</sup>

Research has identified four types of social support provided by peers:

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<sup>3</sup> Jim Hall, Senior Epidemiologist, Center for Applied Research on Substance Use and Health Disparities, Nova Southeastern University. Presentation to the Senate Appropriations Subcommittee on Health and Human Services, Oct. 25, 2017. Available at [http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AHS/MeetingRecords/MeetingPacket\\_3987.pdf](http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AHS/MeetingRecords/MeetingPacket_3987.pdf) (last visited Nov. 2, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> Office of the Governor, Executive Order number 17-146. Available at <http://www.flgov.com/wp-content/uploads/2017/05/17146.pdf> (last visited Nov. 2, 2017).

<sup>6</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited Nov. 2, 2017).

<sup>7</sup> National Public Radio. In Texas, People with Mental Illness Are Finding Work Helping Peers. July 11, 2017. <http://www.npr.org/sections/health-shots/2017/07/11/536501069/in-texas-people-with-mental-illness-are-finding-work-helping-peers> (last visited Nov. 2, 2017).

- Emotional - where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. This is often provided by peer mentoring or peer-led support groups.
- Informational - where a peer shares knowledge and information to provide life or vocational skills training. Examples include parenting classes, job readiness training, or wellness seminars.
- Instrumental - where a peer provides concrete assistance to help others accomplish tasks. Examples include child care, transportation and help accessing health and human services.
- Affiliational - where the peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. Examples include staffing recovery centers, sports league participation, and alcohol or drug free socialization.<sup>8</sup>

The Department of Children and Families (department) Florida Peer Services Handbook, defines a peer as an individual who has life experience with a mental health and/or substance use condition.<sup>9</sup> Current department guidelines recommend that an individual be in recovery for at least two years to be considered for peer training. In Florida, family members or caregivers can also work and be certified as peer specialists.

The Florida Certification Board currently offers certification with three distinct endorsements for individuals with lived experience who wish to become certified as Peer Specialists. General requirements for certification include being age 18 or older, minimum education of high school diploma or equivalent, background screening, completion of a minimum of 40 hours of training, and passing a competency exam.

### **Barriers to the Use of Peer Specialists**

Currently, there is a shortage of peers working within behavioral health services. As of June 2017, there are 418 individuals with active certification through the Florida Certification Board.<sup>10</sup> There are two principal barriers to the use of peer specialists.

First, peer specialists often cannot pass background screening requirements in ss. 435.04 and 408.809, F.S. Persons who have recovered from a substance use disorder or mental illness often have a criminal history.<sup>11</sup> Common offenses would include using and selling illegal substances, prostitution, or financial fraud. Section 435.04, F.S., allows persons with disqualifying offenses identified through background screening to apply to the respective state agency head (the Secretary of the Department of Children and Families or the Secretary of the Agency for Health Care Administration) for an exemption if it has been three or more years since their conviction. The applicant must produce all court records regarding their convictions, letters of recommendation, evidence of their rehabilitation, education documents, evidence of

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<sup>8</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited Nov. 2, 2017).

<sup>9</sup> Department of Children and Families, Florida Peer Services Handbook. Available at <http://www.myflfamilies.com/service-programs/substance-abuse/publications> (last visited Nov. 2, 2017).

<sup>10</sup> *Id.*

<sup>11</sup> SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

employment, and fill out a questionnaire. The requirements of this exemption often deter persons from becoming peer specialists.

Second, peer specialists have only recently been reimbursed as a behavioral health care service. Medicaid billing for peer support services began in Georgia in 1999, and quickly expanded nationally in 2007 after the Center for Medicare and Medicaid Services (CMS) sent guidelines to states on how to be reimbursed for services delivered by peer providers.<sup>12</sup> In 2012, Georgia was approved as the first state to bill for a peer whole health and wellness service delivered by peer providers. CMS' Clarifying Guidance on Peer Services Policy from May 2013 states that any peer provider must "complete training and certification as defined by the state" before providing billable services. Beginning January 1, 2014, CMS expanded the type of practitioners who can provide Medicaid prevention services beyond physicians and other licensed practitioners, at a state's discretion, which can include peer providers. Florida's Medicaid program currently covers peer recovery services. The department also allows the state's behavioral health managing entities to reimburse for these services.

### III. Effect of Proposed Changes:

**Section 1** amends s. 394.455, F.S., to define "peer specialist," as a person who has been in recovery from a substance use disorder or mental illness for the past 2 years and is certified or is seeking certification under s. 397.417, F.S. This is consistent with the department's definition for peer specialists and recommended recovery time, and is consistent with national standards. However, this definition only includes persons with lived direct experience of substance use disorders or mental illness, and excludes family members.

**Section 2** amends s. 394.4572, F.S., relating to background screening of mental health personnel. The bill conforms this statute to the requirements of the bill to background screen peer specialists through the newly created s. 397.417, F.S.

**Section 3** amends s. 394.4573, F.S., to add use of peer specialists to the list of recovery supports as an essential element of a coordinated system of behavioral health care.

**Section 4** amends s. 397.311, F.S., providing definitions to Chapter 397 on Substance Abuse Services to include a definition for "peer specialist."

**Section 5** amends s. 397.4073, F.S., relating to background screening for persons working with persons with substance use disorders. The bill removes provisions authorizing agency heads to exempt persons who have recovered from a substance use disorder from drug offenses that would otherwise disqualify them from providing recovery services. This language is no longer needed as the bill creates s. 397.417, F.S., with revised background requirements.

**Section 6** creates s. 397.417, F.S., to specify legislative findings that there is a shortage of behavioral health care employees; that the state is experiencing an opioid epidemic; and that peers are often an effective support for persons with substance use disorders or mental illness

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<sup>12</sup> U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. SMDL #07-011. Aug. 15, 2007. On file with the Senate Committee on Children, Families and Elder Affairs.

because the peer shares the same life experience. The bill intends expand the use of peer specialists as a cost-effective behavioral health care service.

The bill sets qualifications for peer specialists and responsibilities of the department. A peer specialist may be certified and must meet the background screening requirements, as well as complete a training program approved by the department. The department must develop a training program for peer specialists—with preference given to trainers who are certified peer specialists—and certify peer specialists via an approved, designated certification organization. The bill also requires peer specialists that are providing services be supervised by a licensed behavioral health care professional or licensed behavioral health care agency.

In addition, the bill also provides that peer specialist services may be reimbursed as a recovery service through the department, behavioral health managing entity, or Medicaid.

The bill specifies revised background screening requirements that differ from current law because persons who have recovered from a substance use disorder or mental illness may be more likely to have committed certain offenses.<sup>13</sup> Under current law and department rule, peers working with persons suffering from substance use disorders must meet background screening requirements in s. 435.04, F.S. Peers working with persons suffering from mental illness must meet the screening requirements in s. 435.04 F.S., as well as those in s. 408.409, F.S. The new screening requirements of the bill eliminate the following disqualifying offenses from current law for peer specialists:

- misdemeanor assault, or battery (Ch. 784, F.S.),
- prostitution (Ch. 796, F.S.),
- lower level burglary offenses (s. 810.02, F.S.),
- lower level theft and robbery offenses (Ch. 812, F.S.),
- lower level drug abuse offenses (s. 817.563 and Ch. 893, F.S.),
- mail or wire fraud (s. 817.034, F.S.),
- insurance fraud (s. 817.234, F.S.),
- credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.),
- identification fraud (s. 817.568, F.S.), and
- forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

Finally, the bill offers a grandfather clause to allow all peer specialists certified as of July 1, 2018 to be recognized as having met the requirements of this bill.

**Section 7** amend s. 212.055, F.S., relating to the county public hospital surtax to correct a cross reference to a definition.

**Section 8** amends s. 394.495, F.S., relating to children’s mental health care to correct a cross reference to definitions.

**Section 9** amends s. 394.496, F.S., relating to mental health service planning to correct a cross reference to definitions.

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<sup>13</sup> SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

**Section 10** amends s. 394.9085, F.S., relating to behavioral health service provider liability to correct a cross reference to definitions.

**Section 11** amends s. 397.416, F.S., relating to substance use disorder treatment services to correct a cross reference to a definition.

**Section 12** amends s. 409.972, F.S., relating to enrollment in Medicaid to correct a cross reference to a definition.

**Section 13** amends s. 440.102, F.S., relating to the drug-free workplace program to correct a cross reference to a definition.

**Section 14** amends s. 744.2007, F.S., relating to public guardians to correct a cross reference to a definition.

**Section 15** provides an effective date of July 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow additional peers to be employed to provide recovery services to persons suffering from substance use disorder to mental illnesses. Private insurers and Medicaid managed care plans may see a reduction in the cost of behavioral health care services if more health insurance providers make use of peer specialists. This would be due to the effectiveness of peer specialists is assisting persons recovering from substance use disorders or mental illnesses and the lower cost of peer recovery services compared to other behavioral health care services.

**C. Government Sector Impact:**

The bill may result in additional background screenings if more persons apply to be peer specialists. The employee or behavioral health care provider are charged a fee to cover the cost of the background screening.

The state may see a reduction in the cost of behavioral health care services if more health insurance providers make use of peer specialists. This would be due to the effectiveness of peer specialists is assisting persons recovering from substance use disorders or mental illnesses and the lower cost of peer recovery services compared to other behavioral health care services.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.4572, 394.4573, 397.311, 397.4073, 212.055, 394.495, 394.496, 394.9085, 397.416, 409.972, 440.102, and 744.2007.

This bill creates the section 397.417 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.



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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (32) through (48) of section 394.455, Florida Statutes, are redesignated as subsections (33) through (49), respectively, and a new subsection (32) is added to that section, to read:

394.455 Definitions.—As used in this part, the term:

(32) "Peer specialist" means a person who has been in



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11 recovery from a substance use disorder or mental illness for the  
12 past 2 years or a family member or caregiver of a person with a  
13 substance use disorder or mental illness and who is certified  
14 under s. 397.417.

15 Section 2. Paragraph (a) of subsection (1) of section  
16 394.4572, Florida Statutes, is amended to read:

17 394.4572 Screening of mental health personnel.—

18 (1)(a) The department and the Agency for Health Care  
19 Administration shall require level 2 background screening  
20 pursuant to chapter 435 for mental health personnel. "Mental  
21 health personnel" includes all program directors, professional  
22 clinicians, staff members, and volunteers working in public or  
23 private mental health programs and facilities who have direct  
24 contact with individuals held for examination or admitted for  
25 mental health treatment. For purposes of this chapter,  
26 employment screening of mental health personnel also includes,  
27 but is not limited to, employment screening as provided under  
28 chapter 435 and s. 408.809. The department and the Agency for  
29 Health Care Administration shall require a level 2 background  
30 screening pursuant to s. 397.417(5) for persons working as peer  
31 specialists in public or private mental health programs or  
32 facilities who have direct contact with individuals held for  
33 involuntary examination or admitted for mental health treatment.

34 Section 3. Paragraph (1) of subsection (2) of section  
35 394.4573, Florida Statutes, is amended to read:

36 394.4573 Coordinated system of care; annual assessment;  
37 essential elements; measures of performance; system improvement  
38 grants; reports.—On or before December 1 of each year, the  
39 department shall submit to the Governor, the President of the





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40 Senate, and the Speaker of the House of Representatives an  
41 assessment of the behavioral health services in this state. The  
42 assessment shall consider, at a minimum, the extent to which  
43 designated receiving systems function as no-wrong-door models,  
44 the availability of treatment and recovery services that use  
45 recovery-oriented and peer-involved approaches, the availability  
46 of less-restrictive services, and the use of evidence-informed  
47 practices. The department's assessment shall consider, at a  
48 minimum, the needs assessments conducted by the managing  
49 entities pursuant to s. 394.9082(5). Beginning in 2017, the  
50 department shall compile and include in the report all plans  
51 submitted by managing entities pursuant to s. 394.9082(8) and  
52 the department's evaluation of each plan.

53 (2) The essential elements of a coordinated system of care  
54 include:

55 (1) Recovery support, including, but not limited to, the  
56 use of peer specialists as described in s. 397.417 to assist in  
57 the individual's recovery from a substance use disorder or  
58 mental illness, support for competitive employment, educational  
59 attainment, independent living skills development, family  
60 support and education, wellness management and self-care, and  
61 assistance in obtaining housing that meets the individual's  
62 needs. Such housing may include mental health residential  
63 treatment facilities, limited mental health assisted living  
64 facilities, adult family care homes, and supportive housing.  
65 Housing provided using state funds must provide a safe and  
66 decent environment free from abuse and neglect.

67 Section 4. Present subsections (30) through (49) of section  
68 397.311, Florida Statutes, are redesignated as subsections (31)



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69 through (50), respectively, and a new subsection (30) is added  
70 to that section, to read:

71 397.311 Definitions.—As used in this chapter, except part  
72 VIII, the term:

73 (30) "Peer specialist" means a person who has been in  
74 recovery from a substance use disorder or mental illness for the  
75 past 2 years or a family member or caregiver of a person with a  
76 substance use disorder or mental illness and who is certified  
77 under s. 397.417.

78 Section 5. Paragraphs (b) and (c) of subsection (4) of  
79 section 397.4073, Florida Statutes, are amended to read:

80 397.4073 Background checks of service provider personnel.—

81 (4) EXEMPTIONS FROM DISQUALIFICATION.—

82 ~~(b) Since rehabilitated substance abuse impaired persons~~  
83 ~~are effective in the successful treatment and rehabilitation of~~  
84 ~~individuals with substance use disorders, for service providers~~  
85 ~~which treat adolescents 13 years of age and older, service~~  
86 ~~provider personnel whose background checks indicate crimes under~~  
87 ~~s. 817.563, s. 893.13, or s. 893.147 may be exempted from~~  
88 ~~disqualification from employment pursuant to this paragraph.~~

89 ~~(c) The department may grant exemptions from~~  
90 ~~disqualification which would limit service provider personnel to~~  
91 ~~working with adults in substance use disorder ~~abuse~~ treatment~~  
92 ~~facilities.~~

93 Section 6. Section 397.417, Florida Statutes, is created to  
94 read:

95 397.417 Behavioral health peer specialists.—

96 (1) LEGISLATIVE FINDINGS AND INTENT.—

97 (a) The Legislature finds that:



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98           1. The ability to provide adequate behavioral health  
99 services is limited by a shortage of professionals and  
100 paraprofessionals.

101           2. The state is experiencing an increase in opioid  
102 addictions, which prove fatal to persons in many cases.

103           3. Peer specialists provide effective support services  
104 because they share common life experiences with the persons they  
105 assist.

106           4. Peer specialists promote a sense of community among  
107 those in recovery.

108           5. Research has shown that peer support facilitates  
109 recovery and reduces health care costs.

110           6. Peer specialists may have a criminal history that  
111 prevents them from meeting background screening requirements.

112           (b) The Legislature intends to expand the use of peer  
113 specialists as a cost-effective means of providing services by  
114 ensuring that peer specialists meet specified qualifications,  
115 meet modified background screening requirements, and are  
116 adequately reimbursed for their services.

117           (2) QUALIFICATIONS.—

118           (a) A person may seek certification as a peer specialist if  
119 he or she has been in recovery from a substance use disorder or  
120 mental illness for the past 2 years or if he or she is a family  
121 member or caregiver of a person with a substance use disorder or  
122 mental illness.

123           (b) To obtain certification as a peer specialist, a person  
124 must meet the background screening requirements of subsection  
125 (5), complete the training program, and achieve a passing score  
126 on the competency exam described in paragraph (3)(a).



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127 (3) DUTIES OF THE DEPARTMENT.—

128 (a) The department must develop a training program for  
129 persons seeking certification as peer specialists. The  
130 department must give preference to trainers who are certified  
131 peer specialists. The training program must coincide with a  
132 competency exam and be based on current practice standards.

133 (b) The department shall certify peer specialists. The  
134 department may certify peer specialists directly or may  
135 designate a private, nonprofit certification organization to  
136 certify peer specialists, implement the training program, and  
137 administer the competency exam.

138 (c) The department must require that a person providing  
139 peer specialist services be certified or be supervised by a  
140 licensed behavioral health care professional or a certified peer  
141 specialist.

142 (4) PAYMENT.—Peer specialist services may be reimbursed as  
143 a recovery service through the department, a behavioral health  
144 managing entity, or the Medicaid program. Medicaid managed care  
145 plans are encouraged to use peer specialists in providing  
146 recovery services.

147 (5) BACKGROUND SCREENING.—

148 (a) All peer specialists must have completed or been  
149 lawfully released from confinement, supervision, or any  
150 nonmonetary condition imposed by the court for any felony and  
151 must undergo a background screening as a condition of employment  
152 and continued employment. The background screening must include  
153 fingerprinting for statewide criminal history records checks  
154 through the Department of Law Enforcement and national criminal  
155 history records checks through the Federal Bureau of



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156 Investigation. The background screening may include local  
157 criminal records checks through local law enforcement agencies.

158 (b) The department or the Agency for Health Care  
159 Administration, as applicable, may require by rule that  
160 fingerprints submitted pursuant to this section be submitted  
161 electronically to the Department of Law Enforcement.

162 (c) The department or the Agency for Health Care  
163 Administration, as applicable, may contract with one or more  
164 vendors to perform all or part of the electronic fingerprinting  
165 pursuant to this section. Such contracts must ensure that the  
166 owners and personnel of the vendor performing the electronic  
167 fingerprinting are qualified and will ensure the integrity and  
168 security of all personal identifying information.

169 (d) Vendors who submit fingerprints on behalf of employers  
170 must:

- 171 1. Meet the requirements of s. 943.053; and  
172 2. Have the ability to communicate electronically with the  
173 department or the Agency for Health Care Administration, as  
174 applicable, accept screening results from the Department of Law  
175 Enforcement and provide the applicant's full first name, middle  
176 initial, and last name; social security number or individual  
177 taxpayer identification number; date of birth; mailing address;  
178 sex; and race.

179 (e) The background screening under this section must ensure  
180 that a peer specialist has not, during the previous 3 years,  
181 been arrested for and is awaiting final disposition of, been  
182 found guilty of, regardless of adjudication, or entered a plea  
183 of nolo contendere or guilty to, or been adjudicated delinquent  
184 and the record has not been sealed or expunged for, any felony.



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185       (f) The background screening under this section must ensure  
186 that a peer specialist has not been found guilty of, regardless  
187 of adjudication, or entered a plea of nolo contendere or guilty  
188 to, or been adjudicated delinquent and the record has not been  
189 sealed or expunged for, any offense prohibited under any of the  
190 following state laws or similar laws of another jurisdiction:

191       1. Section 393.135, relating to sexual misconduct with  
192 certain developmentally disabled clients and reporting of such  
193 sexual misconduct.

194       2. Section 394.4593, relating to sexual misconduct with  
195 certain mental health patients and reporting of such sexual  
196 misconduct.

197       3. Section 409.9201, relating to Medicaid fraud.

198       4. Section 415.111, relating to adult abuse, neglect, or  
199 exploitation of aged persons or disabled adults.

200       5. Section 741.28, relating to domestic violence.

201       6. Section 777.04, relating to attempts, solicitation, and  
202 conspiracy to commit an offense listed in this section.

203       7. Section 782.04, relating to murder.

204       8. Section 782.07, relating to manslaughter, aggravated  
205 manslaughter of an elderly person or disabled adult, aggravated  
206 manslaughter of a child, or aggravated manslaughter of an  
207 officer, a firefighter, an emergency medical technician, or a  
208 paramedic.

209       9. Section 782.071, relating to vehicular homicide.

210       10. Section 782.09, relating to killing of an unborn child  
211 by injury to the mother.

212       11. Chapter 784, relating to assault, battery, and culpable  
213 negligence, if the offense was a felony.



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- 214        12. Section 787.01, relating to kidnapping.
- 215        13. Section 787.02, relating to false imprisonment.
- 216        14. Section 787.025, relating to luring or enticing a  
217 child.
- 218        15. Section 787.04(2), relating to leading, taking,  
219 enticing, or removing a minor beyond the state limits, or  
220 concealing the location of a minor, with criminal intent pending  
221 custody proceedings.
- 222        16. Section 787.04(3), relating to leading, taking,  
223 enticing, or removing a minor beyond the state limits, or  
224 concealing the location of a minor, with criminal intent pending  
225 dependency proceedings or proceedings concerning alleged abuse  
226 or neglect of a minor.
- 227        17. Section 790.115(1), relating to exhibiting firearms or  
228 weapons within 1,000 feet of a school.
- 229        18. Section 790.115(2)(b), relating to possessing an  
230 electric weapon or device, destructive device, or other weapon  
231 on school property.
- 232        19. Section 794.011, relating to sexual battery.
- 233        20. Former s. 794.041, relating to prohibited acts of  
234 persons in familial or custodial authority.
- 235        21. Section 794.05, relating to unlawful sexual activity  
236 with certain minors.
- 237        22. Section 794.08, relating to female genital mutilation.
- 238        23. Section 798.02, relating to lewd and lascivious  
239 behavior.
- 240        24. Chapter 800, relating to lewdness and indecent  
241 exposure.
- 242        25. Section 806.01, relating to arson.



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- 243        26. Section 810.02, relating to burglary, if the offense  
244 was a felony of the first degree.
- 245        27. Section 810.14, relating to voyeurism, if the offense  
246 was a felony.
- 247        28. Section 810.145, relating to video voyeurism, if the  
248 offense was a felony.
- 249        29. Section 812.13, relating to robbery.
- 250        30. Section 812.131, relating to robbery by sudden  
251 snatching.
- 252        31. Section 812.133, relating to carjacking.
- 253        32. Section 812.135, relating to home-invasion robbery.
- 254        33. Section 817.50, relating to fraudulently obtaining  
255 goods or services from a health care provider and false reports  
256 of a communicable disease.
- 257        34. Section 817.505, relating to patient brokering.
- 258        35. Section 825.102, relating to abuse, aggravated abuse,  
259 or neglect of an elderly person or disabled adult.
- 260        36. Section 825.1025, relating to lewd or lascivious  
261 offenses committed upon or in the presence of an elderly person  
262 or disabled person.
- 263        37. Section 825.103, relating to exploitation of an elderly  
264 person or disabled adult, if the offense was a felony.
- 265        38. Section 826.04, relating to incest.
- 266        39. Section 827.03, relating to child abuse, aggravated  
267 child abuse, or neglect of a child.
- 268        40. Section 827.04, relating to contributing to the  
269 delinquency or dependency of a child.
- 270        41. Former s. 827.05, relating to negligent treatment of  
271 children.





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- 272       42. Section 827.071, relating to sexual performance by a  
273 child.
- 274       43. Section 831.30, relating to fraud in obtaining  
275 medicinal drugs.
- 276       44. Section 831.31, relating to sale, manufacture,  
277 delivery, possession with intent to sell, manufacture, or  
278 deliver any counterfeit controlled substance if the offense was  
279 a felony.
- 280       45. Section 843.01, relating to resisting arrest with  
281 violence.
- 282       46. Section 843.025, relating to depriving a law  
283 enforcement, correctional, or correctional probation officer  
284 means of protection or communication.
- 285       47. Section 843.12, relating to aiding in an escape.
- 286       48. Section 843.13, relating to aiding in the escape of  
287 juvenile inmates of correctional institutions.
- 288       49. Chapter 847, relating to obscene literature.
- 289       50. Section 874.05, relating to encouraging or recruiting  
290 another to join a criminal gang.
- 291       51. Chapter 893, relating to drug abuse prevention and  
292 control, if the offense was a felony of the second degree or  
293 greater severity.
- 294       52. Section 895.03, relating to racketeering and collection  
295 of unlawful debts.
- 296       53. Section 896.101, relating to the Florida Money  
297 Laundering Act.
- 298       54. Section 916.1075, relating to sexual misconduct with  
299 certain forensic clients and reporting of such sexual  
300 misconduct.



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301       55. Section 944.35(3), relating to inflicting cruel or  
302 inhuman treatment on an inmate resulting in great bodily harm.  
303       56. Section 944.40, relating to escape.  
304       57. Section 944.46, relating to harboring, concealing, or  
305 aiding an escaped prisoner.  
306       58. Section 944.47, relating to introduction of contraband  
307 into a correctional facility.  
308       59. Section 985.701, relating to sexual misconduct in  
309 juvenile justice programs.  
310       60. Section 985.711, relating to contraband introduced into  
311 detention facilities.  
312       (6) EXEMPTION REQUESTS.—Persons who wish to become a peer  
313 specialist and are disqualified under subsection (5) may request  
314 an exemption from disqualification pursuant to s. 435.07 from  
315 the department or the Agency for Health Care Administration, as  
316 applicable.  
317       (7) GRANDFATHER CLAUSE.—All peer specialists certified as  
318 of the effective date of this act are recognized as having met  
319 the requirements of this act.  
320       Section 7. Paragraph (e) of subsection (5) of section  
321 212.055, Florida Statutes, is amended to read:  
322       212.055 Discretionary sales surtaxes; legislative intent;  
323 authorization and use of proceeds.—It is the legislative intent  
324 that any authorization for imposition of a discretionary sales  
325 surtax shall be published in the Florida Statutes as a  
326 subsection of this section, irrespective of the duration of the  
327 levy. Each enactment shall specify the types of counties  
328 authorized to levy; the rate or rates which may be imposed; the  
329 maximum length of time the surtax may be imposed, if any; the



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330 procedure which must be followed to secure voter approval, if  
331 required; the purpose for which the proceeds may be expended;  
332 and such other requirements as the Legislature may provide.  
333 Taxable transactions and administrative procedures shall be as  
334 provided in s. 212.054.

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

345 (e) A governing board, agency, or authority shall be  
346 chartered by the county commission upon this act becoming law.  
347 The governing board, agency, or authority shall adopt and  
348 implement a health care plan for indigent health care services.  
349 The governing board, agency, or authority shall consist of no  
350 more than seven and no fewer than five members appointed by the  
351 county commission. The members of the governing board, agency,  
352 or authority shall be at least 18 years of age and residents of  
353 the county. A ~~No~~ member may not be employed by or affiliated  
354 with a health care provider or the public health trust, agency,  
355 or authority responsible for the county public general hospital.  
356 The following community organizations shall each appoint a  
357 representative to a nominating committee: the South Florida  
358 Hospital and Healthcare Association, the Miami-Dade County



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359 Public Health Trust, the Dade County Medical Association, the  
360 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade  
361 County. This committee shall nominate between 10 and 14 county  
362 citizens for the governing board, agency, or authority. The  
363 slate shall be presented to the county commission and the county  
364 commission shall confirm the top five to seven nominees,  
365 depending on the size of the governing board. Until such time as  
366 the governing board, agency, or authority is created, the funds  
367 provided for in subparagraph (d)2. shall be placed in a  
368 restricted account set aside from other county funds and not  
369 disbursed by the county for any other purpose.

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

376 2. The plan and subsequent amendments to it shall fund a  
377 defined range of health care services for both indigent persons  
378 and the medically poor, including primary care, preventive care,  
379 hospital emergency room care, and hospital care necessary to  
380 stabilize the patient. For the purposes of this section,  
381 "stabilization" means stabilization as defined in s. 397.311 ~~s.~~  
382 ~~397.311(45)~~. Where consistent with these objectives, the plan  
383 may include services rendered by physicians, clinics, community  
384 hospitals, and alternative delivery sites, as well as at least  
385 one regional referral hospital per service area. The plan shall  
386 provide that agreements negotiated between the governing board,  
387 agency, or authority and providers shall recognize hospitals



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388 that render a disproportionate share of indigent care, provide  
389 other incentives to promote the delivery of charity care to draw  
390 down federal funds where appropriate, and require cost  
391 containment, including, but not limited to, case management.  
392 From the funds specified in subparagraphs (d)1. and 2. for  
393 indigent health care services, service providers shall receive  
394 reimbursement at a Medicaid rate to be determined by the  
395 governing board, agency, or authority created pursuant to this  
396 paragraph for the initial emergency room visit, and a per-member  
397 per-month fee or capitation for those members enrolled in their  
398 service area, as compensation for the services rendered  
399 following the initial emergency visit. Except for provisions of  
400 emergency services, upon determination of eligibility,  
401 enrollment shall be deemed to have occurred at the time services  
402 were rendered. The provisions for specific reimbursement of  
403 emergency services shall be repealed on July 1, 2001, unless  
404 otherwise reenacted by the Legislature. The capitation amount or  
405 rate shall be determined before program implementation by an  
406 independent actuarial consultant. In no event shall such  
407 reimbursement rates exceed the Medicaid rate. The plan must also  
408 provide that any hospitals owned and operated by government  
409 entities on or after the effective date of this act must, as a  
410 condition of receiving funds under this subsection, afford  
411 public access equal to that provided under s. 286.011 as to any  
412 meeting of the governing board, agency, or authority the subject  
413 of which is budgeting resources for the retention of charity  
414 care, as that term is defined in the rules of the Agency for  
415 Health Care Administration. The plan shall also include  
416 innovative health care programs that provide cost-effective



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417 alternatives to traditional methods of service and delivery  
418 funding.

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

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

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

435 Section 8. Subsection (3) of section 394.495, Florida  
436 Statutes, is amended to read:

437 394.495 Child and adolescent mental health system of care;  
438 programs and services.-

439 (3) Assessments must be performed by:

440 (a) A professional as defined in s. 394.455(5), (7), (33)  
441 ~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~;

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

443 (c) A person who is under the direct supervision of a  
444 qualified professional as defined in s. 394.455(5), (7), (33)  
445 ~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~ or a professional licensed under



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446 chapter 491.

447 Section 9. Subsection (5) of section 394.496, Florida  
448 Statutes, is amended to read:

449 394.496 Service planning.—

450 (5) A professional as defined in s. 394.455(5), (7), (33)  
451 ~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~ or a professional licensed under  
452 chapter 491 must be included among those persons developing the  
453 services plan.

454 Section 10. Subsection (6) of section 394.9085, Florida  
455 Statutes, is amended to read:

456 394.9085 Behavioral provider liability.—

457 (6) For purposes of this section, the term ~~terms~~  
458 “detoxification services” has the same meaning as  
459 detoxification in s. 397.311(26) (a), “addictions receiving  
460 facility” has the same meaning as provided in s.  
461 397.311(26) (a), and “receiving facility” has have the same  
462 meaning meanings as those provided in s. 394.455 ss.  
463 ~~397.311(26) (a) 4., 397.311(26) (a) 1., and 394.455(39),~~  
464 ~~respectively.~~

465 Section 11. Section 397.416, Florida Statutes, is amended  
466 to read:

467 397.416 Substance use disorder ~~abuse~~ treatment services;  
468 qualified professional.—Notwithstanding any other provision of  
469 law, a person who was certified through a certification process  
470 recognized by the former Department of Health and Rehabilitative  
471 Services before January 1, 1995, may perform the duties of a  
472 qualified professional with respect to substance use ~~abuse~~  
473 treatment services as defined in this chapter, and need not meet  
474 the certification requirements contained in s. 397.311(35) ~~s.~~



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475 ~~397.311(34).~~

476 Section 12. Paragraph (b) of subsection (1) of section  
477 409.972, Florida Statutes, is amended to read:

478 409.972 Mandatory and voluntary enrollment.—

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

483 (b) Medicaid recipients residing in residential commitment  
484 facilities operated through the Department of Juvenile Justice  
485 or in a treatment facility as defined in s. 394.455 ~~s.~~  
486 ~~394.455(47).~~

487 Section 13. Paragraphs (d) and (g) of subsection (1) of  
488 section 440.102, Florida Statutes, are amended to read:

489 440.102 Drug-free workplace program requirements.—The  
490 following provisions apply to a drug-free workplace program  
491 implemented pursuant to law or to rules adopted by the Agency  
492 for Health Care Administration:

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

495 (d) "Drug rehabilitation program" means a service provider  
496 as defined in s. 397.311 which, established pursuant to s.  
497 ~~397.311(43), that~~ provides confidential, timely, and expert  
498 identification, assessment, and resolution of employee drug  
499 abuse.

500 (g) "Employee assistance program" means an established  
501 program capable of providing expert assessment of employee  
502 personal concerns; confidential and timely identification  
503 services with regard to employee drug abuse; referrals of





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504 employees for appropriate diagnosis, treatment, and assistance;  
505 and followup services for employees who participate in the  
506 program or require monitoring after returning to work. If, in  
507 addition to the above activities, an employee assistance program  
508 provides diagnostic and treatment services, these services shall  
509 in all cases be provided by service providers as defined in s.  
510 397.311 ~~pursuant to s. 397.311(43).~~

511 Section 14. Subsection (7) of section 744.2007, Florida  
512 Statutes, is amended to read:

513 744.2007 Powers and duties.—

514 (7) A public guardian may not commit a ward to a treatment  
515 facility, as defined in s. 394.455 ~~s. 394.455(47)~~, without an  
516 involuntary placement proceeding as provided by law.

517 Section 15. This act shall take effect July 1, 2018.

518

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

520 And the title is amended as follows:

521 Delete everything before the enacting clause  
522 and insert:

523 A bill to be entitled

524 An act relating to mental health and substance use  
525 disorders; amending s. 394.455, F.S.; defining the  
526 term "peer specialist"; amending s. 394.4572, F.S.;  
527 requiring a specific level of screening for peer  
528 specialists working in mental health programs and  
529 facilities; amending s. 394.4573, F.S.; specifying  
530 that the use of peer specialists for recovery support  
531 is an essential element of a coordinated system of  
532 behavioral health care; amending s. 397.311, F.S.;



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533 defining the term "peer specialist"; amending s.  
534 397.4073, F.S.; conforming provisions to changes made  
535 by the act; creating s. 397.417, F.S.; providing  
536 legislative findings and intent; authorizing a person  
537 to seek certification as a peer specialist if he or  
538 she meets specified qualifications; requiring a  
539 background screening, completion of a training  
540 program, and a passing score on a competency exam for  
541 a qualified person to obtain certification as a peer  
542 specialist; requiring the Department of Children and  
543 Families to develop a training program for peer  
544 specialists and give preference to trainers who are  
545 certified peer specialists; requiring the training  
546 program to coincide with a competency exam and be  
547 based on current practice standards; requiring the  
548 department to certify peer specialists directly or by  
549 designating a nonprofit certification organization;  
550 requiring that a person providing peer specialist  
551 services be certified or supervised by a licensed  
552 behavioral health care professional or a certified  
553 peer specialist; authorizing the department, a  
554 behavioral health managing entity, or the Medicaid  
555 program to reimburse a peer specialist service as a  
556 recovery service; encouraging Medicaid managed care  
557 plans to use peer specialists in providing recovery  
558 services; requiring peer specialists to meet the  
559 requirements of a background screening as a condition  
560 of employment and continued employment; authorizing  
561 the department or the Agency for Health Care



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562 Administration to require by rule that fingerprints be  
563 submitted electronically to the Department of Law  
564 Enforcement; authorizing the department or the agency  
565 to contract with certain vendors for fingerprinting;  
566 specifying requirements for vendors; specifying  
567 offenses to be considered in the background screening  
568 of a peer specialist; authorizing a person who does  
569 not meet background screening requirements to request  
570 an exemption from disqualification from the department  
571 or the agency; providing that all peer specialists  
572 certified as of the effective date of this act are  
573 recognized as having met the requirements of this act;  
574 amending ss. 212.055, 394.495, 394.496, 394.9085,  
575 397.416, 409.972, 440.102, and 744.2007, F.S.;  
576 conforming cross-references; making technical changes;  
577 providing an effective date.

By Senator Garcia

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1 A bill to be entitled  
 2 An act relating to mental health and substance use  
 3 disorders; amending s. 394.455, F.S.; defining the  
 4 term "peer specialist"; amending s. 394.4572, F.S.;  
 5 requiring a specific level of screening for peer  
 6 specialists working in mental health programs and  
 7 facilities; amending s. 394.4573, F.S.; specifying  
 8 that the use of peer specialists for recovery support  
 9 is an essential element of a coordinated system of  
 10 behavioral health care; amending s. 397.311, F.S.;  
 11 defining the term "peer specialist"; amending s.  
 12 397.4073, F.S.; conforming a provision to changes made  
 13 by the act; creating s. 397.417, F.S.; providing  
 14 legislative findings and intent; providing  
 15 qualifications and requiring a background screening as  
 16 a condition of certification for peer specialists;  
 17 requiring the Department of Children and Families to  
 18 develop a training program for peer specialists and  
 19 give preference to trainers who are certified peer  
 20 specialists; requiring that a peer specialist  
 21 providing services be supervised by a licensed  
 22 behavioral health care professional or a licensed  
 23 behavioral health care agency; requiring the  
 24 department to certify peer specialists directly or by  
 25 designating a nonprofit certification organization;  
 26 requiring a person to pass a competency exam before  
 27 certification as a peer specialist; authorizing the  
 28 department, a behavioral health managing entity, or  
 29 the Medicaid program to reimburse a peer specialist

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30 service as a recovery service; encouraging Medicaid  
 31 managed care plans to use peer specialists in the  
 32 provision of recovery services; requiring all peer  
 33 specialists to meet the requirements of a background  
 34 screening as a condition of employment and continued  
 35 employment; authorizing the department or the Agency  
 36 for Health Care Administration to require by rule that  
 37 fingerprints are submitted electronically to the  
 38 Department of Law Enforcement; authorizing the  
 39 department or the agency to contract with certain  
 40 vendors for fingerprinting; specifying requirements  
 41 for vendors; specifying offenses to be considered in  
 42 the background screening of a peer specialist;  
 43 authorizing a person who does not meet background  
 44 screening requirements to request an exemption from  
 45 disqualification from the department or the agency;  
 46 providing that all peer specialists certified as of  
 47 the effective date of this act are recognized as  
 48 having met the requirements of this act; amending ss.  
 49 212.055, 394.495, 394.496, 394.9085, 397.416, 409.972,  
 50 440.102, and 744.2007, F.S.; conforming cross-  
 51 references; making technical changes; providing an  
 52 effective date.

53  
 54 Be It Enacted by the Legislature of the State of Florida:

55  
 56 Section 1. Present subsections (32) through (48) of section  
 57 394.455, Florida Statutes, are redesignated as subsections (33)  
 58 through (49), respectively, and a new subsection (32) is added

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59 to that section, to read:

60 394.455 Definitions.—As used in this part, the term:

61 (32) "Peer specialist" means a person who has been in  
 62 recovery from a substance use disorder or mental illness for the  
 63 past 2 years and is certified or is seeking certification under  
 64 s. 397.417.

65 Section 2. Paragraph (a) of subsection (1) of section  
 66 394.4572, Florida Statutes, is amended to read:

67 394.4572 Screening of mental health personnel.—

68 (1) (a) The department and the Agency for Health Care  
 69 Administration shall require level 2 background screening  
 70 pursuant to chapter 435 for mental health personnel. "Mental  
 71 health personnel" includes all program directors, professional  
 72 clinicians, staff members, and volunteers working in public or  
 73 private mental health programs and facilities who have direct  
 74 contact with individuals held for examination or admitted for  
 75 mental health treatment. For purposes of this chapter,  
 76 employment screening of mental health personnel also includes,  
 77 but is not limited to, employment screening as provided under  
 78 chapter 435 and s. 408.809. The department and the Agency for  
 79 Health Care Administration shall require a level 2 background  
 80 screening pursuant to s. 397.417(5) for persons working as peer  
 81 specialists in public or private mental health programs or  
 82 facilities who have direct contact with individuals held for  
 83 involuntary examination or admitted for mental health treatment.

84 Section 3. Paragraph (1) of subsection (2) of section  
 85 394.4573, Florida Statutes, is amended to read:

86 394.4573 Coordinated system of care; annual assessment;  
 87 essential elements; measures of performance; system improvement

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88 grants; reports.—On or before December 1 of each year, the  
 89 department shall submit to the Governor, the President of the  
 90 Senate, and the Speaker of the House of Representatives an  
 91 assessment of the behavioral health services in this state. The  
 92 assessment shall consider, at a minimum, the extent to which  
 93 designated receiving systems function as no-wrong-door models,  
 94 the availability of treatment and recovery services that use  
 95 recovery-oriented and peer-involved approaches, the availability  
 96 of less-restrictive services, and the use of evidence-informed  
 97 practices. The department's assessment shall consider, at a  
 98 minimum, the needs assessments conducted by the managing  
 99 entities pursuant to s. 394.9082(5). Beginning in 2017, the  
 100 department shall compile and include in the report all plans  
 101 submitted by managing entities pursuant to s. 394.9082(8) and  
 102 the department's evaluation of each plan.

103 (2) The essential elements of a coordinated system of care  
 104 include:

105 (1) Recovery support, including, but not limited to, the  
 106 use of peer specialists pursuant to s. 397.417, support for  
 107 competitive employment, educational attainment, independent  
 108 living skills development, family support and education,  
 109 wellness management and self-care, and assistance in obtaining  
 110 housing that meets the individual's needs. Such housing may  
 111 include mental health residential treatment facilities, limited  
 112 mental health assisted living facilities, adult family care  
 113 homes, and supportive housing. Housing provided using state  
 114 funds must provide a safe and decent environment free from abuse  
 115 and neglect.

116 Section 4. Present subsections (30) through (49) of section

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117 397.311, Florida Statutes, are redesignated as subsections (31)  
 118 through (50), respectively, and a new subsection (30) is added  
 119 to that section, to read:

120 397.311 Definitions.—As used in this chapter, except part  
 121 VIII, the term:

122 (30) "Peer specialist" means a person who has been in  
 123 recovery from a substance use disorder or mental illness for the  
 124 past 2 years and is certified or is seeking certification under  
 125 s. 397.417.

126 Section 5. Paragraphs (b) and (c) of subsection (4) of  
 127 section 397.4073, Florida Statutes, are amended to read:

128 397.4073 Background checks of service provider personnel.—  
 129 (4) EXEMPTIONS FROM DISQUALIFICATION.—  
 130 (b) ~~Since rehabilitated substance abuse impaired persons~~  
 131 ~~are effective in the successful treatment and rehabilitation of~~  
 132 ~~individuals with substance use disorders, for service providers~~  
 133 ~~which treat adolescents 13 years of age and older, service~~  
 134 ~~provider personnel whose background checks indicate crimes under~~  
 135 ~~s. 817.563, s. 893.13, or s. 893.147 may be exempted from~~  
 136 ~~disqualification from employment pursuant to this paragraph.~~  
 137 ~~(c)~~ The department may grant exemptions from  
 138 disqualification which would limit service provider personnel to  
 139 working with adults in substance use abuse treatment facilities.

140 Section 6. Section 397.417, Florida Statutes, is created to  
 141 read:

142 397.417 Behavioral health peer specialists.—  
 143 (1) LEGISLATIVE FINDINGS AND INTENT.—  
 144 (a) The Legislature finds that:  
 145 1. The ability to provide adequate behavioral health

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146 services is limited by a shortage of professionals and  
 147 paraprofessionals.  
 148 2. The state is experiencing an increase in opioid  
 149 addictions, which prove fatal to persons in many cases.  
 150 3. Peer specialists provide effective support services  
 151 because they share common life experiences with the persons they  
 152 assist.  
 153 4. Peer specialists promote a sense of community among  
 154 those in recovery.  
 155 5. Research has shown that peer support facilitates  
 156 recovery and reduces health care costs.  
 157 6. Peer specialists may have a criminal history that  
 158 prevents them from meeting background screening requirements.  
 159 (b) The Legislature intends to expand the use of peer  
 160 specialists as a cost-effective means of providing services by  
 161 ensuring that peer specialists meet specified qualifications,  
 162 meet modified background screening requirements, and are  
 163 adequately reimbursed for their services.  
 164 (2) QUALIFICATIONS.—  
 165 (a) A person may be certified as a peer specialist if he or  
 166 she has been in recovery from a substance use disorder or mental  
 167 illness for the past 2 years and meets all requirements of this  
 168 section.  
 169 (b) A peer specialist must meet the background screening  
 170 requirements of subsection (5) and complete a training program  
 171 approved by the department. The training program must coincide  
 172 with a competency exam and be based on the current practice  
 173 standards.  
 174 (3) DUTIES OF THE DEPARTMENT.—

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175 (a) The department must develop a training program for peer  
 176 specialists. The department must give preference to trainers who  
 177 are certified peer specialists.

178 (b) The department must require that a peer specialist  
 179 providing services is supervised by a licensed behavioral health  
 180 care professional or licensed behavioral health care agency.

181 (c) The department must certify peer specialists. The  
 182 department may designate a private, nonprofit certification  
 183 organization to certify peer specialists or may certify peer  
 184 specialists directly. The department or designated organization  
 185 must require a peer specialist to pass a competency exam before  
 186 certification.

187 (4) PAYMENT.—Peer specialist services may be reimbursed as  
 188 a recovery service through the department, a behavioral health  
 189 managing entity, or the Medicaid program. Medicaid managed care  
 190 plans are encouraged to use peer specialists in the provision of  
 191 recovery services.

192 (5) BACKGROUND SCREENING.—

193 (a) All peer specialists must undergo a background  
 194 screening as a condition of employment and continued employment  
 195 which must include fingerprinting for statewide criminal history  
 196 records checks through the Department of Law Enforcement and  
 197 national criminal history records checks through the Federal  
 198 Bureau of Investigation. The background screening may include  
 199 local criminal records checks through local law enforcement  
 200 agencies.

201 (b) The department or the Agency for Health Care  
 202 Administration, as applicable, may require by rule that  
 203 fingerprints submitted pursuant to this section must be

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204 submitted electronically to the Department of Law Enforcement.

205 (c) The department or the Agency for Health Care  
 206 Administration, as applicable, may contract with one or more  
 207 vendors to perform all or part of the electronic fingerprinting  
 208 pursuant to this section. Such contracts must ensure that the  
 209 owners and personnel of the vendor performing the electronic  
 210 fingerprinting are qualified and will ensure the integrity and  
 211 security of all personal identifying information.

212 (d) Vendors who submit fingerprints on behalf of employers  
 213 must:

- 214 1. Meet the requirements of s. 943.053; and
- 215 2. Have the ability to communicate electronically with the  
 216 department or the Agency for Health Care Administration, as  
 217 applicable, accept screening results from the Department of Law  
 218 Enforcement and provide the applicant's full first name, middle  
 219 initial, and last name; social security number or individual  
 220 taxpayer identification number; date of birth; mailing address;  
 221 sex; and race.

222 (e) The background screening under this section must ensure  
 223 that a peer specialist has not, during the previous 3 years,  
 224 been arrested for and is awaiting final disposition of, has been  
 225 found guilty of, regardless of adjudication, or entered a plea  
 226 of nolo contendere or guilty to, or has been adjudicated  
 227 delinquent and the record has not been sealed or expunged for,  
 228 any offense prohibited under any of the following state laws or  
 229 similar laws of another jurisdiction:

- 230 1. Section 393.135, relating to sexual misconduct with  
 231 certain developmentally disabled clients and reporting of such  
 232 sexual misconduct.

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- 233 2. Section 394.4593, relating to sexual misconduct with  
 234 certain mental health patients and reporting of such sexual  
 235 misconduct.
- 236 3. Section 409.9201, relating to Medicaid fraud.
- 237 4. Section 415.111, relating to adult abuse, neglect, or  
 238 exploitation of aged persons or disabled adults.
- 239 5. Section 741.28, relating to domestic violence.
- 240 6. Section 777.04, relating to attempts, solicitation, and  
 241 conspiracy to commit an offense listed in this section.
- 242 7. Section 782.04, relating to murder.
- 243 8. Section 782.07, relating to manslaughter, aggravated  
 244 manslaughter of an elderly person or disabled adult, aggravated  
 245 manslaughter of a child, or aggravated manslaughter of an  
 246 officer, a firefighter, an emergency medical technician, or a  
 247 paramedic.
- 248 9. Section 782.071, relating to vehicular homicide.
- 249 10. Section 782.09, relating to killing of an unborn child  
 250 by injury to the mother.
- 251 11. Section 787.01, relating to kidnapping.
- 252 12. Section 787.02, relating to false imprisonment.
- 253 13. Section 787.025, relating to luring or enticing a  
 254 child.
- 255 14. Section 787.04(2), relating to leading, taking,  
 256 enticing, or removing a minor beyond the state limits, or  
 257 concealing the location of a minor, with criminal intent pending  
 258 custody proceedings.
- 259 15. Section 787.04(3), relating to leading, taking,  
 260 enticing, or removing a minor beyond the state limits, or  
 261 concealing the location of a minor, with criminal intent pending

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- 262 dependency proceedings or proceedings concerning alleged abuse  
 263 or neglect of a minor.
- 264 16. Section 790.115(1), relating to exhibiting firearms or  
 265 weapons within 1,000 feet of a school.
- 266 17. Section 790.115(2)(b), relating to possessing an  
 267 electric weapon or device, destructive device, or other weapon  
 268 on school property.
- 269 18. Section 794.011, relating to sexual battery.
- 270 19. Former s. 794.041, relating to prohibited acts of  
 271 persons in familial or custodial authority.
- 272 20. Section 794.05, relating to unlawful sexual activity  
 273 with certain minors.
- 274 21. Section 798.02, relating to lewd and lascivious  
 275 behavior.
- 276 22. Chapter 800, relating to lewdness and indecent  
 277 exposure.
- 278 23. Section 806.01, relating to arson.
- 279 24. Section 810.14, relating to voyeurism, if the offense  
 280 was a felony.
- 281 25. Section 810.145, relating to video voyeurism, if the  
 282 offense was a felony.
- 283 26. Section 817.50, relating to fraudulently obtaining  
 284 goods or services from a health care provider.
- 285 27. Section 817.505, relating to patient brokering.
- 286 28. Section 817.563, relating to fraudulent sale of  
 287 controlled substances, if the offense was a felony.
- 288 29. Section 825.102, relating to abuse, aggravated abuse,  
 289 or neglect of an elderly person or disabled adult.
- 290 30. Section 825.1025, relating to lewd or lascivious

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291 offenses committed upon or in the presence of an elderly person  
 292 or disabled person.

293 31. Section 825.103, relating to exploitation of an elderly  
 294 person or disabled adult, if the offense was a felony.

295 32. Section 826.04, relating to incest.

296 33. Section 827.03, relating to child abuse, aggravated  
 297 child abuse, or neglect of a child.

298 34. Section 827.04, relating to contributing to the  
 299 delinquency or dependency of a child.

300 35. Former s. 827.05, relating to negligent treatment of  
 301 children.

302 36. Section 827.071, relating to sexual performance by a  
 303 child.

304 37. Section 831.30, relating to fraud in obtaining  
 305 medicinal drugs.

306 38. Section 831.31, relating to sale, manufacture,  
 307 delivery, possession with intent to sell, manufacture, or  
 308 deliver any counterfeit controlled substance if the offense was  
 309 a felony.

310 39. Section 843.01, relating to resisting arrest with  
 311 violence.

312 40. Section 843.025, relating to depriving a law  
 313 enforcement, correctional, or correctional probation officer  
 314 means of protection or communication.

315 41. Section 843.12, relating to aiding in an escape.

316 42. Section 843.13, relating to aiding in the escape of  
 317 juvenile inmates of correctional institutions.

318 43. Chapter 847, relating to obscene literature.

319 44. Section 874.05, relating to encouraging or recruiting

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320 another to join a criminal gang.

321 45. Chapter 893, relating to drug abuse prevention and  
 322 control, if the offense was a felony.

323 46. Section 895.03, relating to racketeering and collection  
 324 of unlawful debts.

325 47. Section 896.101, relating to the Florida Money  
 326 Laundering Act.

327 48. Section 916.1075, relating to sexual misconduct with  
 328 certain forensic clients and reporting of such sexual  
 329 misconduct.

330 49. Section 944.35(3), relating to inflicting cruel or  
 331 inhuman treatment on an inmate resulting in great bodily harm.

332 50. Section 944.40, relating to escape.

333 51. Section 944.46, relating to harboring, concealing, or  
 334 aiding an escaped prisoner.

335 52. Section 944.47, relating to introduction of contraband  
 336 into a correctional facility.

337 53. Section 985.701, relating to sexual misconduct in  
 338 juvenile justice programs.

339 54. Section 985.711, relating to contraband introduced into  
 340 detention facilities.

341 (6) EXEMPTION REQUESTS.—Persons who wish to become a peer  
 342 specialist and are disqualified under subsection (5) may request  
 343 an exemption from disqualification pursuant to s. 435.07 from  
 344 the department or the Agency for Health Care Administration, as  
 345 applicable.

346 (7) GRANDFATHER CLAUSE.—All peer specialists certified as  
 347 of the effective date of this act are recognized as having met  
 348 the requirements of this act.

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349 Section 7. Paragraph (e) of subsection (5) of section  
 350 212.055, Florida Statutes, is amended to read:  
 351 212.055 Discretionary sales surtaxes; legislative intent;  
 352 authorization and use of proceeds.—It is the legislative intent  
 353 that any authorization for imposition of a discretionary sales  
 354 surtax shall be published in the Florida Statutes as a  
 355 subsection of this section, irrespective of the duration of the  
 356 levy. Each enactment shall specify the types of counties  
 357 authorized to levy; the rate or rates which may be imposed; the  
 358 maximum length of time the surtax may be imposed, if any; the  
 359 procedure which must be followed to secure voter approval, if  
 360 required; the purpose for which the proceeds may be expended;  
 361 and such other requirements as the Legislature may provide.  
 362 Taxable transactions and administrative procedures shall be as  
 363 provided in s. 212.054.  
 364 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in  
 365 s. 125.011(1) may levy the surtax authorized in this subsection  
 366 pursuant to an ordinance either approved by extraordinary vote  
 367 of the county commission or conditioned to take effect only upon  
 368 approval by a majority vote of the electors of the county voting  
 369 in a referendum. In a county as defined in s. 125.011(1), for  
 370 the purposes of this subsection, “county public general  
 371 hospital” means a general hospital as defined in s. 395.002  
 372 which is owned, operated, maintained, or governed by the county  
 373 or its agency, authority, or public health trust.  
 374 (e) A governing board, agency, or authority shall be  
 375 chartered by the county commission upon this act becoming law.  
 376 The governing board, agency, or authority shall adopt and  
 377 implement a health care plan for indigent health care services.

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378 The governing board, agency, or authority shall consist of no  
 379 more than seven and no fewer than five members appointed by the  
 380 county commission. The members of the governing board, agency,  
 381 or authority shall be at least 18 years of age and residents of  
 382 the county. A ~~No~~ member may not be employed by or affiliated  
 383 with a health care provider or the public health trust, agency,  
 384 or authority responsible for the county public general hospital.  
 385 The following community organizations shall each appoint a  
 386 representative to a nominating committee: the South Florida  
 387 Hospital and Healthcare Association, the Miami-Dade County  
 388 Public Health Trust, the Dade County Medical Association, the  
 389 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade  
 390 County. This committee shall nominate between 10 and 14 county  
 391 citizens for the governing board, agency, or authority. The  
 392 slate shall be presented to the county commission and the county  
 393 commission shall confirm the top five to seven nominees,  
 394 depending on the size of the governing board. Until such time as  
 395 the governing board, agency, or authority is created, the funds  
 396 provided for in subparagraph (d)2. shall be placed in a  
 397 restricted account set aside from other county funds and not  
 398 disbursed by the county for any other purpose.  
 399 1. The plan shall divide the county into a minimum of four  
 400 and maximum of six service areas, with no more than one  
 401 participant hospital per service area. The county public general  
 402 hospital shall be designated as the provider for one of the  
 403 service areas. Services shall be provided through participants'  
 404 primary acute care facilities.  
 405 2. The plan and subsequent amendments to it shall fund a  
 406 defined range of health care services for both indigent persons

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407 and the medically poor, including primary care, preventive care,  
 408 hospital emergency room care, and hospital care necessary to  
 409 stabilize the patient. For the purposes of this section,  
 410 "stabilization" means stabilization as defined in s. 397.311 ~~s.~~  
 411 ~~397.311(45)~~. Where consistent with these objectives, the plan  
 412 may include services rendered by physicians, clinics, community  
 413 hospitals, and alternative delivery sites, as well as at least  
 414 one regional referral hospital per service area. The plan shall  
 415 provide that agreements negotiated between the governing board,  
 416 agency, or authority and providers shall recognize hospitals  
 417 that render a disproportionate share of indigent care, provide  
 418 other incentives to promote the delivery of charity care to draw  
 419 down federal funds where appropriate, and require cost  
 420 containment, including, but not limited to, case management.  
 421 From the funds specified in subparagraphs (d)1. and 2. for  
 422 indigent health care services, service providers shall receive  
 423 reimbursement at a Medicaid rate to be determined by the  
 424 governing board, agency, or authority created pursuant to this  
 425 paragraph for the initial emergency room visit, and a per-member  
 426 per-month fee or capitation for those members enrolled in their  
 427 service area, as compensation for the services rendered  
 428 following the initial emergency visit. Except for provisions of  
 429 emergency services, upon determination of eligibility,  
 430 enrollment shall be deemed to have occurred at the time services  
 431 were rendered. The provisions for specific reimbursement of  
 432 emergency services shall be repealed on July 1, 2001, unless  
 433 otherwise reenacted by the Legislature. The capitation amount or  
 434 rate shall be determined before program implementation by an  
 435 independent actuarial consultant. In no event shall such

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436 reimbursement rates exceed the Medicaid rate. The plan must also  
 437 provide that any hospitals owned and operated by government  
 438 entities on or after the effective date of this act must, as a  
 439 condition of receiving funds under this subsection, afford  
 440 public access equal to that provided under s. 286.011 as to any  
 441 meeting of the governing board, agency, or authority the subject  
 442 of which is budgeting resources for the retention of charity  
 443 care, as that term is defined in the rules of the Agency for  
 444 Health Care Administration. The plan shall also include  
 445 innovative health care programs that provide cost-effective  
 446 alternatives to traditional methods of service and delivery  
 447 funding.

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

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

456 5. At the end of each fiscal year, the governing board,  
 457 agency, or authority shall prepare an audit that reviews the  
 458 budget of the plan, delivery of services, and quality of  
 459 services, and makes recommendations to increase the plan's  
 460 efficiency. The audit shall take into account participant  
 461 hospital satisfaction with the plan and assess the amount of  
 462 poststabilization patient transfers requested, and accepted or  
 463 denied, by the county public general hospital.

464 Section 8. Subsection (3) of section 394.495, Florida

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465 Statutes, is amended to read:

466 394.495 Child and adolescent mental health system of care;  
467 programs and services.—

468 (3) Assessments must be performed by:

469 (a) A professional as defined in s. 394.455(5), (7), (33)  
470 ~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~;

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

472 (c) A person who is under the direct supervision of a  
473 qualified professional as defined in s. 394.455(5), (7), (33)  
474 ~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~ or a professional licensed under  
475 chapter 491.

476 Section 9. Subsection (5) of section 394.496, Florida  
477 Statutes, is amended to read:

478 394.496 Service planning.—

479 (5) A professional as defined in s. 394.455(5), (7), (33)  
480 ~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~ or a professional licensed under  
481 chapter 491 must be included among those persons developing the  
482 services plan.

483 Section 10. Subsection (6) of section 394.9085, Florida  
484 Statutes, is amended to read:

485 394.9085 Behavioral provider liability.—

486 (6) For purposes of this section, the terms “detoxification  
487 services” has the same meaning as detoxification in s.  
488 397.311(26) (a), “addictions receiving facility” has the same  
489 meaning as provided in s. 397.311(26) (a), and “receiving  
490 facility” has have the same meaning meanings as those provided  
491 in s. 394.455 ss. 397.311(26) (a)4., 397.311(26) (a)1., and  
492 394.455(39), respectively.

493 Section 11. Section 397.416, Florida Statutes, is amended

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494 to read:

495 397.416 Substance use ~~abuse~~ treatment services; qualified  
496 professional.—Notwithstanding any other provision of law, a  
497 person who was certified through a certification process  
498 recognized by the former Department of Health and Rehabilitative  
499 Services before January 1, 1995, may perform the duties of a  
500 qualified professional with respect to substance use ~~abuse~~  
501 treatment services as defined in this chapter, and need not meet  
502 the certification requirements contained in s. 397.311(35) ~~s.~~  
503 ~~397.311(34)~~.

504 Section 12. Paragraph (b) of subsection (1) of section  
505 409.972, Florida Statutes, is amended to read:

506 409.972 Mandatory and voluntary enrollment.—

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

511 (b) Medicaid recipients residing in residential commitment  
512 facilities operated through the Department of Juvenile Justice  
513 or in a treatment facility as defined in s. 394.455 ~~s.~~  
514 ~~394.455(47)~~.

515 Section 13. Paragraphs (d) and (g) of subsection (1) of  
516 section 440.102, Florida Statutes, are amended to read:

517 440.102 Drug-free workplace program requirements.—The  
518 following provisions apply to a drug-free workplace program  
519 implemented pursuant to law or to rules adopted by the Agency  
520 for Health Care Administration:

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

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523 (d) "Drug rehabilitation program" means a service provider  
524 as defined in s. 397.311 which, ~~established pursuant to s.~~  
525 ~~397.311(43)~~, that provides confidential, timely, and expert  
526 identification, assessment, and resolution of employee drug  
527 abuse.

528 (g) "Employee assistance program" means an established  
529 program capable of providing expert assessment of employee  
530 personal concerns; confidential and timely identification  
531 services with regard to employee drug abuse; referrals of  
532 employees for appropriate diagnosis, treatment, and assistance;  
533 and followup services for employees who participate in the  
534 program or require monitoring after returning to work. If, in  
535 addition to the above activities, an employee assistance program  
536 provides diagnostic and treatment services, these services shall  
537 in all cases be provided by service providers as defined in s.  
538 397.311 pursuant to s. 397.311(43).

539 Section 14. Subsection (7) of section 744.2007, Florida  
540 Statutes, is amended to read:

541 744.2007 Powers and duties.—

542 (7) A public guardian may not commit a ward to a treatment  
543 facility, as defined in s. 394.455 ~~s. 394.455(47)~~, without an  
544 involuntary placement proceeding as provided by law.

545 Section 15. This act shall take effect July 1, 2018.