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HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 545
RELATING TO: Substance Abuse Services
SPONSOR(S): Council for Healthy Communities and Representative Andrews
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION YEAS 9 NAYS 0
 - (2) STATE ADMINISTRATION YEAS 3 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 12 NAYS 0
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Concerns were raised regarding the deficiency of the statutes in addressing problems with background checks and exemptions from licensure of certain substance abuse treatment centers. To address these deficiencies, this bill:

- Amends the definition of a residential treatment component to specify that licensure provisions apply to alternative locations if treatment and/or rehabilitation are provided there;
- Specifies that owners, directors and managers of service providers, and provider personnel who have direct contact with children receiving services, or with adults who are developmentally disabled receiving services, are subject to level 2 background screening;
- Removes the provision that a sect is exempt from substance abuse service provider licensure requirements;
- Clarifies that DUI education and screening services must be licensed, if providing treatment services;
- Specifies that if providing services to clients involuntarily admitted to substance abuse treatment centers, licensed physicians, licensed psychologists, licensed social workers, marriage and family therapists, and mental health counselors must be licensed as substance abuse service providers;
- Requires that an applicant for licensure provide proof of compliance with local zoning ordinances;
- Specifies that the Department of Children and Families may grant exemptions from disqualification that would limit service provider personnel working with adults in substance abuse treatment facilities;
- Creates an expanded definition of *licensed service provider* to include a residential treatment center which provides either room and board or a combination of room and board and rehabilitation services;
- Requires that service provider personnel submit a request for exemption from disqualification within 30 days of being notified of a pending disqualification so that this employee may not be adversely affected pending disposition of his or her request.

CS/HB 545 provides for an effective date of July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

Requiring licensure for any activity or business endeavor, which does not currently require a license, does not support the principle of Less Government.

Requiring background checks in instances not currently required does not support the principle of Less Government, nor does it support the principle of Individual Freedom, in that it prohibits an individual from freely engaging in offering a service (while letting potential customers decide if they think the individual is qualified).

B. PRESENT SITUATION:

Residential Treatment Centers

Chapter 397, F.S., sets forth the provisions for licensing providers of substance abuse residential treatment services. However, the law is not clear on the issue of whether or not a license would be required in those instances where the treatment services are provided at locations other than the residential facility. For example, in some cases, residential facilities are used only for the purpose of housing substance abuse clients while the treatment services are provided at other locations. Alcohol, Drug Abuse, and Mental Health (ADM) District Program Offices have taken the position that, in such situations, the residential facility needs to be licensed as a substance abuse residential treatment program as defined in s. 397.311(19)(c), F.S., even if treatment is not being offered at the residential facility. In support of this position, the Program Directors proffer that since clients live together and are expected to follow a common protocol of activities and services that connect them to the residential facility, the facility should be licensed.

The Department of Children and Families (DCF) reports that owners and operators of residential facilities believe that if no treatment services are provided at the residential location, the facility should not have to meet the licensure requirements for residential treatment under Rule 65D-30.007, F.A.C. The department states that regardless of where the treatment services are provided, clients are expected and often required to live at the residential location and to adhere to specific policies and protocols that are part of the overall treatment process. Also, Rule 65D-30, F.A.C., provides safeguards for clients who live together in a residential facility by requiring that they undergo a physical examination and have access to other health services as a condition of residency. This requirement is designed to protect clients and staff from communicable diseases and to bring to the attention of staff any illness that a client might have that would require staff to monitor that client's condition.

Section 397.403 F.S., does not require that applicants for licensure under ch. 397, F.S., include proof of compliance with local zoning ordinances. In evaluating the licensure application, the department wants assurance that the applicant for licensure complies with all local ordinances. Other licensure laws require proof of compliance with local zoning ordinances. For example, s. 400.071,(2)(c), F.S., requires this information as part of the application for nursing home licensure. If compliance with local zoning ordinances is not maintained, theoretically, a license should not be issued by DCF. However, since it is not required statutorily to validate whether the applicant for a license under chapter 397, F.S., complies with local zoning ordinances, the Department fails to perform this function and consequently there may be providers that are licensed that do not comply with local zoning ordinances.

Background Checks for Licensed Centers

Section 435.04, F.S., level 2 screening standards, requires that all employees in positions designated by law as positions of trust or responsibility undergo security background investigations as a condition of employment and continued employment. Security background investigations include, but are not be limited to, fingerprinting for all purposes and checks, statewide criminal and juvenile record checks through the Florida Department of Law Enforcement, and federal criminal record checks through the Federal Bureau of Investigation, and may include local criminal record checks through local law enforcement agencies.

Section 397.451(1)(a), F.S., provides that service provider personnel who have direct contact with unmarried minors under 18 years of age and with persons with developmental disabilities must have a background check in accordance with level 2 screening under ch. 435, F.S. Section 397.311(29), F.S., defines "service provider personnel" to include all owners, directors, staff, and volunteers, including foster parents, of a service provider. The department reports that many licensed substance abuse providers currently conduct state level background screening on all staff because of the vulnerability of substance abuse impaired persons. Most providers, however, do not include the federal criminal record checks through the Federal Bureau of Investigation.

Chapter 397, F.S., has no provision prohibiting the licensure of a substance abuse provider when an owner, director, or manager is found guilty of, or is arrested for, a criminal offense. Chapter 397, F.S., does not require background checks of managing employees unless they have direct contact with unmarried minors less than 18 years of age or with clients who have a developmental disability. Licensure requirements for mental health treatment facilities, under s. 394.875(13)(g), F.S., require background and screening for a "managing employee." A license may not be granted as a mental health residential treatment facility if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in ch. 435, F.S.

The department reports that the omission of managers and other persons in authority from the background screening requirements in ch. 397, F.S., has the potential for allowing persons who have a criminal background to manage publicly funded substance abuse treatment programs. This omission makes it difficult for the department to establish the "competency and ability" of the applicant and its director to carry out the requirements of the substance abuse treatment law, as specified in s. 397.403(1)(b) and (c), F.S.

Exemptions for Licensure

Section 397.405, F.S., exempts from licensure certain entities that provide services to persons who are substance abuse impaired. According to the Department, this section of the statute has

presented some problems for ADM District licensure staff regarding intent and applicability. There are two areas. The first is that it is unclear as to the circumstances under which treatment programs that provide services to DUI clients would have to be licensed under ch. 397, F.S. The second is the exemption of physicians licensed under chs. 458 and 459, F.S., psychologists licensed under ch. 490, F.S., and social workers, marriage and family therapists, and mental health counselors licensed under ch. 491, F.S. For this class of practitioners, the law does not clearly state the circumstances under which the exemption would apply or would not apply.

C. EFFECT OF PROPOSED CHANGES:

HB 545 clarifies the conditions under which a residential facility has to be licensed as a substance abuse residential treatment program. In addition, HB 545 includes the following major provisions:

- Amends the definition of a residential treatment component to specify that licensure provisions under ch. 397, F.S., apply to alternative locations if treatment and rehabilitation are provided there;
- Specifies that owners, directors and managers of service providers are subject to level 2 background screening requirements contained in ch. 435, F.S., and provider personnel who have direct contact with children receiving services or adults who are developmentally disabled receiving services are subject to level 2 background screening as provider under ch. 435, F.S.;
- Removes the provision that a sect is exempt from licensure requirements under ch. 397, F.S.;
- Clarifies that DUI education and screening services must be licensed under ch. 397, F.S., if providing treatment services;
- Specifies that if providing services to involuntary clients under part V of ch. 397, F.S., licensed physicians; licensed psychologists; and licensed social workers, marriage and family therapists, and mental health counselors must be licensed under ch. 397, F.S.;
- Requires that an applicant for licensure provide proof of compliance with local zoning ordinances; and
- Specifies that the Department of Children and Family Services (department) may grant exemptions from disqualification that would limit service provider personnel to working with adults in substance abuse treatment facilities.

Provides for an effective date of July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes" section of this analysis.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department states that there would be a very small fiscal impact on the substance abuse licensure staff because of the additional workload associated with level 2 background screening requirements for owners, directors and chief financial officers of service providers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All substance abuse service providers will have to go to the expense of doing a background check on owners, directors, and managers and the background check will now include substance abuse providers that serve adults.

All substance abuse service providers will have to incur the expense of being properly zoned.

D. FISCAL COMMENTS:

It is anticipated that there will be an impact on staff in the department (DCF) who process the Level 2 (federal) screening information for adults. This is of significant concern to the department in light of the 12.5 percent reduction in administrative staff that took effect in January. As a result, the department is in the process of determining the potential impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on Health Regulation adopted a "strike everything" amendment that is traveling with the bill. The bill was reported favorably as amended.

The Strike everything amendment conforms the House bill with the Senate bill by replacing the term *manager* with *chief financial officer* as it relates to background screening requirements. In addition, the strike all provides:

- An expanded definition of *licensed service provider* to include a residential treatment center which provides either room and board or a combination of room and board and rehabilitation services;
- That current providers have 18 months to comply with local zoning ordinances; and
- That service provider personnel submit a request for exemption from disqualification within 30 days of being notified of a pending disqualification so that this employee may not be adversely affected pending disposition of his or her request.

On February 26, 2002, the Council for Healthy Communities reported HB 545 favorably as a Council Substitute.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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