

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 682

SPONSOR: Children and Families Committee and Senator Peadar

SUBJECT: Substance Abuse Services

DATE: January 30, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barnes	Whiddon	CF	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

CS/SB 682 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 chief financial officers 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;
- 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; and
- 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.

This bill substantially amends sections 397.311, 397.405, 397.407, 397.416, 397.451, 212.055, and 440.102, of the Florida Statutes.

## **II. Present Situation:**

### **Licensure of Residential Treatment Facilities**

Section 397.401, F.S., specifies that it is unlawful for a person to act as a substance abuse service provider unless he or she is licensed or exempt from licensure under ch. 397, F.S. Section 397.311(19) F.S., specifies that a “licensed service provider” means a public agency or a private for-profit or not-for-profit agency under ch. 397, F.S.; a physician licensed under ch. 458, F.S., or ch. 459, F.S., or any other private practitioner licensed under ch. 397, F.S.; or a hospital licensed under ch. 395, F.S., which offers substance abuse impairment services through one or more of the licensable service components defined in s. 397.311(19)(a)-(h), F.S.

Residential treatment, is defined in s. 397.311(19)(c), F.S., as a structured, live-in environment within a nonhospital setting on a 24-hours-a-day, 7-days-a-week basis, and includes treatment, rehabilitation, and transitional care. Chapter 65D-30, Florida Administrative Code, contains the licensure standards for substance abuse services and section 65D-30.007, F.A.C, contains those standards specific to the residential treatment component.

The department reports that several of the District Alcohol, Drug Abuse, and Mental Health Program Offices have experienced problems in reference to substance abuse residential facility licensure when the residential program is located at several different sites. For example, residential facilities may be used only for housing substance abuse clients while treatment services are provided at other locations. The district program offices have taken the position that because clients live together and are expected to follow a common protocol of activities and services that connect them to the residential facility, the residential facility needs to be licensed as a substance abuse residential treatment program as defined in s. 397.311(19)(c), F.S.

The department 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 ch. 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, ch. 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.

Chapter 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 is in compliance 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.

### **Background Screening Requirements**

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 in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records 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 records 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 under 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 From Licensure**

Section 397.405, F.S., exempts from licensure certain entities that provide services to persons who are substance abuse impaired such as:

- DUI education and screening services required to be attended pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.91, F.S., unless these services are considered substance abuse treatment programs,
- physicians licensed under chapters 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.,
- an established and legally cognizable church or nonprofit religious organization, denomination, or sect providing substance abuse services,

The department's district substance abuse licensure staff report problems with the application of these exemptions. For example, it is unclear as to the exact circumstances under which programs that provide services to DUI clients would be licensed under ch. 397, F.S. District staff say that the law does not clearly delineate the circumstances under which the exemption applies to licensed health and mental health practitioners. There have been groups attempting to operate substance abuse treatment services under the auspices of a "religious sect" in order to be excluded from licensure standards.

The department reports that the term "sect" is not defined in law or rule. *Religion: The Social Context*, Third Edition, by Maeredith B. McGuire (Belmont, CA: Wadsworth Publishing Co.) distinguishes a "church" from a "sect" by stating that "the church is characteristically an integral part of the social order, whereas the sect stands apart from society in indifference or hostility."

### III. Effect of Proposed Changes:

#### Licensure of Residential Treatment Facilities

CS/SB 682 amends the definition of "licensed service provider," in s. 397.311(19)(c), F.S., to specify that licensure provisions for residential treatment apply to facilities:

- that provide room and board and treatment and rehabilitation within the primary residential facility; and
- that are used for room and board only and treatment and rehabilitation activities are provided on a mandatory basis at locations other than the primary residential facility in which case, all facilities must be operated under the auspices of the same provider. Licensing and regulatory requirements would apply to both the residential facility and all other facilities in which treatment and rehabilitation activities occur.

#### Background Screening Requirements

CS/SB 682 amends s. 397.451, F.S., specifying that background checks for all owners, directors and chief financial officers of service providers are subject to level 2 background screening requirements contained in ch. 435, F.S. All service 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.

The bill amends s. 397.403, F.S., to require that the application for licensure as a substance abuse provider under ch. 397, F.S., include sufficient information to conduct background screening as provided in s. 397.451, F.S.

The bill provides that a license may not be issued to an applicant service provider if any owner, director, or chief financial officer 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 screening unless an exemption from disqualification has been granted by the department pursuant to ch. 435, F.S. The owner, director, or chief financial officer has 90 days to obtain the required exemption during which time the license remains in effect. If an owner, director, or chief financial officer is arrested or found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 screening standard while acting in that capacity, the provider shall immediately remove the person from that position and notify the department within 2 days after removal, excluding weekends and holidays. Failure to remove that person will result in revocation of the provider's license.

The bill removes the fingerprinting and background check exemption for several groups such as:

- students in the health care professions who are interning with a service provider licensed under ch. 395, F.S., that does not treat unmarried minors or persons who are developmentally disabled,
- personnel working in a service provider licensed under ch. 395, F.S., who have less than 15 hours a week of direct contact with unmarried minors or persons who are developmentally disabled.

The bill specifies that service provider personnel must submit a request for exemption from disqualification within 30 days of being notified of a pending disqualification. This employee may not be adversely affected pending disposition of his or her request.

The bill provides that the department may grant exemptions from disqualification that would limit service provider personnel to working with adults in substance abuse treatment facilities.

The bill requires that an applicant for licensure also provide proof of compliance with local zoning ordinances. Service providers operating under a regular annual license will have 18 months from the expiration date of their regular license to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.

### **Exemptions From Licensure**

Section 397.405, F.S., exemptions for licensure, is amended to:

- remove the provision that a sect which is exclusively religious, spiritual or ecclesiastical in nature and providing substance abuse services is exempt from licensure requirements under ch. 397, F.S.,
- specify that DUI education and screening services must be licensed under ch. 397, F.S., if providing treatment services,

- require that physicians licensed under chapters 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., must be licensed under ch. 397, F.S., if providing services to involuntary clients under part V of ch. 397, F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The department reports that there would be minimal costs associated with the requirement for all owners, directors and chief financial officers of service providers to comply with level 2 background screening requirements as provided in ch. 435, F.S.

**C. Government Sector Impact:**

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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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