

By the Committee on Children, Families, and Elder Affairs; and
Senator Latvala

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1 A bill to be entitled
2 An act relating to mental health and substance abuse;
3 amending s. 394.455, F.S.; defining the term
4 "interested person"; amending s. 394.4598, F.S.;
5 authorizing a family member of a patient or an
6 interested party to petition a court for the
7 appointment of a guardian advocate; requiring a court
8 to give preference to certain specified surrogates if
9 such surrogate has already been designated by the
10 patient; creating s. 397.803, F.S.; establishing the
11 Substance Abuse Assistance Pilot Program within the
12 Department of Children and Families; requiring the
13 department to determine a target number of
14 participants within available funds; providing the
15 purpose of the pilot program; requiring the program to
16 develop safe and cost efficient treatment alternatives
17 and provide comprehensive case management services for
18 eligible substance abuse impaired adults; authorizing
19 participation in the program as an alternative to
20 criminal imprisonment; requiring that each pilot
21 program submit specified data to the department on a
22 monthly basis; providing eligibility criteria;
23 requiring that maximum enrollment be determined by the
24 department based on available funding; requiring the
25 department to contract with specified entities to
26 serve as program managers; specifying the functions of
27 the program manager; requiring the department to
28 establish certain criteria and qualifications for the
29 project manager; requiring that a pilot program site

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30 have only one network in a given region; providing
31 requirements for provider networks; specifying
32 services that must be provided by a provider network;
33 specifying that the primary payor for services
34 provided through the program is the participant's
35 private pay or Medicaid insurance coverage; allowing
36 eligible participants to share in the cost of provided
37 services based on ability to pay; requiring the
38 department to provide an annual report to the Governor
39 and Legislature evaluating the impact of the program;
40 requiring such report to include specified
41 information; transferring and renumbering s. 765.401,
42 F.S.; transferring and renumbering s. 765.404, F.S.;
43 providing a directive to the Division of Law Revision
44 and Information; creating s. 765.4015, F.S.; providing
45 a short title; creating s. 765.402, F.S.; providing
46 legislative findings; creating s. 765.403, F.S.;
47 defining terms; creating s. 765.405, F.S.; authorizing
48 an adult with capacity to execute a mental health or
49 substance abuse treatment advance directive; providing
50 a presumption of validity if certain requirements are
51 met; providing for execution of the mental health or
52 substance abuse treatment advance directive; creating
53 s. 765.406, F.S.; establishing requirements for a
54 valid mental health or substance abuse treatment
55 advance directive; providing that a mental health or
56 substance abuse treatment directive is valid upon
57 execution even if a part of the mental health or
58 substance abuse treatment directive takes effect at a

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59 later date; allowing a mental health or substance
60 abuse treatment advance directive to be revoked, in
61 whole or in part, or to expire under its own terms;
62 specifying that a mental health or substance abuse
63 treatment advance directive does not or may not serve
64 specified purposes; creating s. 765.407, F.S.;

65 providing circumstances under which a mental health or
66 substance abuse treatment advance directive may be
67 revoked; providing circumstances under which a
68 principal may waive specific directive provisions
69 without revoking the directive; creating s. 765.410,
70 F.S.; prohibiting criminal prosecution of a health
71 care facility, provider, or surrogate who acts
72 pursuant to a mental health or substance abuse
73 treatment decision; creating s. 765.411, F.S.;

74 providing for recognition of a mental health and
75 substance abuse treatment advance directive executed
76 in another state if it complies with the laws of this
77 state; amending ss. 394.495, 394.496, 394.9085
78 395.0197, 395.1051, 409.972, 456.0575, 744.704,
79 765.101, and 765.104, F.S.; conforming cross-
80 references; reenacting ss. 394.459(3)(b), 394.4598(6)
81 and (7), 394.4655(6)(d) and (7)(f), 394.467(6)(d),
82 394.46715, and 765.202(5), F.S., to incorporate the
83 amendment made to s. 394.4598, F.S., in references
84 thereto; providing an effective date.

85

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

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88 Section 1. Present subsections (16) through (32) and (34)
89 through (38) of section 394.455, Florida Statutes, are
90 redesignated as subsections (17) through (33) and (35) through
91 (39), respectively, a new subsection (16) is added to that
92 section, and present subsection (33) of that section is amended,
93 to read:

94 394.455 Definitions.—As used in this part, unless the
95 context clearly requires otherwise, the term:

96 (16) "Interested person" means, for the purposes of this
97 chapter, any person who may reasonably be expected to be
98 affected by the outcome of the particular proceeding involved,
99 including anyone interested in the welfare of an incapacitated
100 person.

101 (34)~~(33)~~ "Service provider" means any public or private
102 receiving facility, an entity under contract with the Department
103 of Children and Families to provide mental health services, a
104 clinical psychologist, a clinical social worker, a marriage and
105 family therapist, a mental health counselor, a physician, a
106 psychiatric nurse as defined in subsection (24) ~~(23)~~, or a
107 community mental health center or clinic as defined in this
108 part.

109 Section 2. Subsections (1) and (5) of section 394.4598,
110 Florida Statutes, are amended to read:

111 394.4598 Guardian advocate.—

112 (1) The administrator, a family member of the patient, or
113 an interested party, may petition the court for the appointment
114 of a guardian advocate based upon the opinion of a psychiatrist
115 that the patient is incompetent to consent to treatment. If the
116 court finds that a patient is incompetent to consent to

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117 treatment and has not been adjudicated incapacitated and a
118 guardian with the authority to consent to mental health
119 treatment appointed, it shall appoint a guardian advocate. The
120 patient has the right to have an attorney represent him or her
121 at the hearing. If the person is indigent, the court shall
122 appoint the office of the public defender to represent him or
123 her at the hearing. The patient has the right to testify, cross-
124 examine witnesses, and present witnesses. The proceeding shall
125 be recorded either electronically or stenographically, and
126 testimony shall be provided under oath. One of the professionals
127 authorized to give an opinion in support of a petition for
128 involuntary placement, as described in s. 394.4655 or s.
129 394.467, must testify. A guardian advocate must meet the
130 qualifications of a guardian contained in part IV of chapter
131 744, except that a professional referred to in this part, an
132 employee of the facility providing direct services to the
133 patient under this part, a departmental employee, a facility
134 administrator, or member of the Florida local advocacy council
135 shall not be appointed. A person who is appointed as a guardian
136 advocate must agree to the appointment.

137 (5) In selecting a guardian advocate, the court shall give
138 preference to a health care, mental health care, or substance
139 abuse treatment surrogate, if one has already been designated by
140 the patient. If the patient has not previously selected a health
141 care, mental health care, or substance abuse treatment
142 surrogate, except for good cause documented in the court record,
143 the selection shall be made from the following list in the order
144 of listing:

145 (a) The patient's spouse.

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146 (b) An adult child of the patient.

147 (c) A parent of the patient.

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

149 (e) An adult friend of the patient.

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

152 Section 3. Section 397.803, Florida Statutes, is created to
153 read:

154 397.803 Substance Abuse Assistance Pilot Program.—

155 (1) PILOT PROGRAM.—

156 (a) There is created within the Department of Children and
157 Families the Substance Abuse Assistance Pilot Program in such
158 regions of the state as may be designated in the general
159 appropriations act.

160 (b) Within available funding, the department shall
161 determine a target number of participants in each pilot program
162 region.

163 (c) The pilot program is created to determine whether the
164 provision of comprehensive care through a coordinated system of
165 case management that offers a range of recovery support services
166 during and after treatment for acute episodes leads to increased
167 employment, stability in housing, and decreased involvement in
168 the criminal justice system on the part of participants.

169 (d) The pilot program shall provide a comprehensive
170 continuum of high-quality and accessible substance abuse
171 intervention, residential and outpatient treatment,
172 comprehensive case management, and recovery support services for
173 substance abuse impaired adults.

174 (e) The pilot program in each selected region shall develop

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175 safe and cost efficient treatment alternatives and provide
176 comprehensive case management and continuum of care services for
177 eligible substance abuse impaired adults.

178 (f) Participation in the pilot program may be designated as
179 an alternative to criminal imprisonment for substance abuse
180 impaired adults, as appropriate.

181 (g) Each pilot program region shall submit data to the
182 department on a monthly basis that, at a minimum, reports
183 characteristics of the participants, use of services, and such
184 data as necessary to measure changes in participants' status
185 with regard to housing, employment, and criminal activity.

186 (2) ELIGIBILITY AND ENROLLMENT.—Maximum enrollment shall be
187 determined by the department, based on funding. To be eligible
188 for participation in the pilot program a person must:

189 (a) Be 18 years of age or older with a history of chronic
190 substance abuse or addiction.

191 (b) Execute a mental health or substance abuse treatment
192 directive as defined in s. 765.403.

193 (c) Include in the mental health or substance abuse
194 treatment directive a self-binding arrangement provision that
195 must:

196 1. Be in writing.

197 2. Be dated and signed by the principal or the principal's
198 designated representative if the principal is unable to sign.

199 3. State whether the principal wishes to be able to revoke
200 the directive at any time or whether the directive remains
201 irrevocable when the principal is unable to consent to treatment
202 or is incapacitated. Failure to clarify whether the directive is
203 revocable does not render it unenforceable. If the directive

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204 fails to state whether it is revocable, the principal may revoke
205 it at any time.

206 4. Contain a clear affirmation that the principal is aware
207 of the nature of the document signed and that the directive was
208 signed freely and voluntarily.

209 5. Be witnessed by at least two adults who, for the
210 purposes of this section, may not be:

211 a. A member of the principal's treatment team;

212 b. Related to the principal by blood, adoption, or
213 marriage;

214 c. Be in a romantic or dating relationship with the
215 principal;

216 d. The surrogate named by the principal in the signed
217 directive; or

218 e. The owner, operator, or employee of, or a relative of
219 the owner, operator, or an employee of, a treatment facility in
220 which the principal is a patient.

221 6. Be witnessed by persons who attest that:

222 a. They were present when the principal signed the
223 directive;

224 b. The principal appeared to have capacity and not be under
225 undue influence or duress when he or she signed the directive;
226 and

227 c. The principal presented identification or the witness
228 personally knows the principal.

229 7. If the directive includes a provision that it is
230 irrevocable, it must contain a written, signed attestation from
231 a mental health professional that the principal had capacity at
232 the time the directive was executed. If the principal is free to

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233 revoke the directive at any time, such attestation is not
234 required.

235 8. Be valid upon execution.

236 9. Contain a designated activation standard other than the
237 principal's inability to provide consent to treatment or
238 incapacity by describing circumstances or events under which the
239 directive becomes active.

240 10. Affirmatively state that despite activation, a
241 directive does not prevail over contemporaneous preferences
242 expressed by a principal who has capacity or the ability to
243 consent to treatment and has not included a self-binding
244 arrangement provision in the directive.

245 11. Appoint a surrogate to make all health care and
246 substance abuse treatment decisions for the principal, including
247 decisions to consent on behalf of the principal to inpatient
248 mental health or substance abuse treatment.

249 12. Contain a provision that decisions made by a surrogate
250 for a principal's mental health care or substance abuse
251 treatment are effective without judicial approval.

252 (d) Share responsibility for the costs of pilot program
253 services according to his or her ability to pay, based on a
254 sliding scale.

255 (3) SYSTEM OF CARE; CASE MANAGEMENT; PAYMENT METHOD.-

256 (a) The department shall contract with the Medicaid managed
257 care organization or behavioral health managing entity operating
258 in the applicable geographic region to serve as program manager.

259 (b) The program manager is responsible for the following
260 functions:

261 1. Network management including recruitment and retention

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262 of an adequate number of qualified service providers to ensure
263 accessibility and quality of care;

264 2. Coordination of care, including the development and
265 implementation of organizational structures and operational
266 policies necessary to ensure that the network provides
267 continuity of care and avoids unnecessary duplication of
268 services;

269 3. Comprehensive case management, which may be provided by
270 the program manager or by a contracted service provider,
271 including direct interaction with participants and other
272 activities necessary to assess, plan, implement, and monitor the
273 needed services; and

274 4. Administrative functions for the network including, but
275 not limited to, data management, financial management, and
276 contract compliance.

277 (c) The department shall establish criteria for ensuring
278 that an adequate number of providers are included in the network
279 and for provider qualifications, which shall be specified in the
280 contract with the program manager. The pilot program shall be
281 limited to one network in the region for the duration of the
282 pilot program. The provider network shall:

283 1. Offer a comprehensive range of services for substance
284 abuse impaired or drug addicted adults.

285 2. Enter into agreements with law enforcement agencies and
286 the criminal justice system to divert nonviolent offenders with
287 histories of serious substance abuse or chronic addiction into
288 intensive treatment, comprehensive case management, and
289 rehabilitation services.

290 3. Enter into an agreement with the appropriate

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291 neighborhood housing services program to provide housing
292 assistance to eligible participants.

293 4. Enter into an agreement with the entity under contract
294 with the Statewide Public Guardianship Office in the pilot
295 program region to provide guardians to act in the capacity of
296 surrogates for eligible participants who do not have family
297 members or other adults available to perform such duties.

298 5. Enter into an agreement with the applicable nonprofit
299 local legal services organization serving the pilot program
300 region to provide legal assistance to eligible participants.

301 (4) SERVICES.—The network must be capable of providing, at
302 a minimum, the following services to substance abuse impaired or
303 drug addicted adults:

304 1. Comprehensive case management and continuum of care
305 coordination;

306 2. Outpatient treatment services;

307 3. Crisis care, including mobile response, and
308 detoxification in short-term residential facilities;

309 4. Inpatient treatment services;

310 5. Step-down residential treatment services;

311 6. Housing needs assessment and assistance;

312 7. Employment assistance programs;

313 8. Transportation needs assessment and assistance; and

314 9. Legal services.

315 (5) PAYMENT FOR SERVICES.—

316 (a) The general revenue funds appropriated by the
317 legislature for the purposes of this section shall be applied to
318 payment for services only after an eligible participant's
319 private pay or Medicaid insurance coverage has been exhausted.

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320 (b) An eligible participant may share in the cost of
321 provided services based on his or her ability to pay.

322 (6) ACCOUNTABILITY; ANNUAL REPORTS.—

323 (a) By October 1 of each year, the department shall provide
324 a written report to the Governor, the President of the Senate,
325 and the Speaker of the House of Representatives which describes
326 the operation and effectiveness of the pilot program. The report
327 must include, but is not limited to, an evaluation of the impact
328 of the following components of the program:

- 329 1. Comprehensive case management;
330 2. Care coordination and followup care;
331 3. Housing initiatives; and
332 4. Employment assistance.

333 (b) The report must include a recommendation regarding the
334 continuation, expansion, or termination of the pilot program.

335 Section 4. Section 765.401, Florida Statutes, is
336 transferred and renumbered as section 765.311, Florida Statutes.

337 Section 5. Section 765.404, Florida Statutes, is
338 transferred and renumbered as section 765.312, Florida Statutes.

339 Section 6. The Division of Law Revision and Information is
340 directed to rename part IV of chapter 765, Florida Statutes, as
341 "Mental Health and Substance Abuse Advance Directives."

342 Section 7. Section 765.4015, Florida Statutes, is created
343 to read:

344 765.4015 Short title.—Sections 765.402-765.411 may be cited
345 as the "Jennifer Act."

346 Section 8. Section 765.402, Florida Statutes, is created to
347 read:

348 765.402 Legislative findings.—

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349 (1) The Legislature recognizes that an individual with
350 capacity has the ability to control decisions relating to his or
351 her own mental health care or substance abuse treatment. The
352 Legislature finds that:

353 (a) Substance abuse and some mental illnesses cause
354 individuals to fluctuate between capacity and incapacity;

355 (b) During periods when an individual's capacity is
356 unclear, the individual may be unable to provide informed
357 consent necessary to access needed treatment;

358 (c) Early treatment may prevent an individual from becoming
359 so ill that involuntary treatment is necessary; and

360 (d) Individuals with substance abuse impairment or mental
361 illness need an established procedure to express their
362 instructions and preferences for treatment and provide advance
363 consent to or refusal of treatment. This procedure should be
364 less expensive and less restrictive than guardianship.

365 (2) The Legislature further recognizes that:

366 (a) A mental health or substance abuse treatment advance
367 directive must provide the individual with a full range of
368 choices.

369 (b) For a mental health or substance abuse directive to be
370 an effective tool, individuals must be able to choose how they
371 want their directives to be applied, including the right of
372 revocation, during periods when they are incompetent to consent
373 to treatment.

374 (c) There must be a clear process so that treatment
375 providers can abide by an individual's treatment choices.

376 Section 9. Section 765.403, Florida Statutes, is created to
377 read:

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378 765.403 Definitions.—As used in this section, the term:

379 (1) "Adult" means any individual who has attained the age
380 of majority or is an emancipated minor.

381 (2) "Capacity" means that an adult has not been found to be
382 incapacitated pursuant to s. 394.463.

383 (3) "Health care facility" means a hospital, nursing home,
384 hospice, home health agency, or health maintenance organization
385 licensed in this state, or any facility subject to part I of
386 chapter 394.

387 (4) "Incapacity" or "incompetent" means an adult who is:

388 (a) Unable to understand the nature, character, and
389 anticipated results of proposed treatment or alternatives or the
390 recognized serious possible risks, complications, and
391 anticipated benefits of treatments and alternatives, including
392 nontreatment;

393 (b) Physically or mentally unable to communicate a willful
394 and knowing decision about mental health care or substance abuse
395 treatment;

396 (c) Unable to communicate his or her understanding or
397 treatment decisions; or

398 (d) Determined incompetent pursuant to s. 394.463.

399 (5) "Informed consent" means consent voluntarily given by a
400 person after a sufficient explanation and disclosure of the
401 subject matter involved to enable that person to have a general
402 understanding of the treatment or procedure and the medically
403 acceptable alternatives, including the substantial risks and
404 hazards inherent in the proposed treatment or procedures or
405 nontreatment, and to make knowing mental health care or
406 substance abuse treatment decisions without coercion or undue

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407 influence.

408 (6) "Mental health or substance abuse treatment advance
409 directive" means a written document in which the principal makes
410 a declaration of instructions or preferences or appoints a
411 surrogate to make decisions on behalf of the principal regarding
412 the principal's mental health or substance abuse treatment, or
413 both.

414 (7) "Mental health professional" means a psychiatrist,
415 psychologist, psychiatric nurse, or social worker, and such
416 other mental health professionals licensed pursuant to chapter
417 458, chapter 464, chapter 490, or chapter 491.

418 (8) "Principal" means a competent adult who executes a
419 mental health or substance abuse treatment advance directive and
420 on whose behalf mental health care or substance abuse treatment
421 decisions are to be made.

422 (9) "Surrogate" means any competent adult expressly
423 designated by a principal to make mental health care or
424 substance abuse treatment decisions on behalf of the principal
425 as set forth in the principal's mental health or substance abuse
426 treatment advance directive or self-binding arrangement as those
427 terms are defined in this section.

428 Section 10. Section 765.405, Florida Statutes, is created
429 to read:

430 765.405 Mental health or substance abuse treatment advance
431 directive; execution; allowable provisions.—

432 (1) An adult with capacity may execute a mental health or
433 substance abuse treatment advance directive.

434 (2) A directive executed in accordance with this section is
435 presumed to be valid. The inability to honor one or more

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436 provisions of a directive does not affect the validity of the
437 remaining provisions.

438 (3) A directive may include any provision relating to
439 mental health or substance abuse treatment or the care of the
440 principal. Without limitation, a directive may include:

441 (a) The principal's preferences and instructions for mental
442 health or substance abuse treatment.

443 (b) Consent to specific types of mental health or substance
444 abuse treatment.

445 (c) Refusal to consent to specific types of mental health
446 or substance abuse treatment.

447 (d) Consent to admission to and retention in a facility for
448 mental health or substance abuse treatment for up to 14 days.
449 Such consent must be an affirmative statement contained within
450 the directive and must clearly indicate whether such consent is
451 revocable by the principal during a mental health or substance
452 abuse crisis.

453 (e) Descriptions of situations that may cause the principal
454 to experience a mental health or substance abuse crisis.

455 (f) Suggested alternative responses that may supplement or
456 be in lieu of direct mental health or substance abuse treatment,
457 such as treatment approaches from other providers.

458 (g) The principal's nomination of a guardian, limited
459 guardian, or guardian advocate as provided chapter 744.

460 (4) A directive may be combined with or be independent of a
461 nomination of a guardian, other durable power of attorney, or
462 other advance directive.

463 Section 11. Section 765.406, Florida Statutes, is created
464 to read:

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465 765.406 Execution of a mental health or substance abuse
466 advance directive; effective date; expiration.-

467 (1) A directive must:

468 (a) Be in writing.

469 (b) Contain language that clearly indicates that the
470 principal intends to create a directive.

471 (c) Contain language that clearly indicates whether the
472 principal intends for the surrogate to have the authority to
473 provide consent on the principal's behalf to voluntary admission
474 to inpatient mental health or substance abuse treatment and
475 whether the principal's consent is revocable.

476 (d) Be dated and signed by the principal or, if the
477 principal is unable to sign, at the principal's direction in the
478 principal's presence.

479 (e) Be witnessed by two adults, each of whom must declare
480 that he or she personally knows the principal and was present
481 when the principal dated and signed the directive, and that the
482 principal did not appear to be incapacitated or acting under
483 fraud, undue influence, or duress. The person designated as the
484 surrogate may not act as a witness to the execution of the
485 document designating the mental health or substance abuse care
486 treatment surrogate. At least one person who acts as a witness
487 must be neither the principal's spouse nor his or her blood
488 relative.

489 (2) A directive is valid upon execution, but all or part of
490 the directive may take effect at a later date as designated by
491 the principal in the directive.

492 (3) A directive may:

493 (a) Be revoked, in whole or in part, pursuant to s.

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494 765.407; or

495 (b) Expire under its own terms.

496 (4) A directive does not or may not:

497 (a) Create an entitlement to mental health, substance
498 abuse, or medical treatment or supersede a determination of
499 medical necessity.

500 (b) Obligate any health care provider, professional person,
501 or health care facility to pay the costs associated with the
502 treatment requested.

503 (c) Obligate a health care provider, professional person,
504 or health care facility to be responsible for the nontreatment
505 or personal care of the principal or the principal's personal
506 affairs outside the scope of services the facility normally
507 provides.

508 (d) Replace or supersede any will or testamentary document
509 or supersede the provision of intestate succession.

510 (e) Be revoked by an incapacitated principal unless that
511 principal selected the option to permit revocation while
512 incapacitated at the time his or her directive was executed.

513 (f) Be used as the authority for inpatient admission for
514 more than 14 days.

515 Section 12. Section 765.407, Florida Statutes, is created
516 to read:

517 765.407 Revocation; waiver.—

518 (1) (a) A principal with capacity may, by written statement
519 of the principal or at the principal's direction in the
520 principal's presence, revoke a directive in whole or in part.

521 (b) A person incompetent to consent to treatment may revoke
522 a directive only if he or she elected at the time of executing

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523 the directive to be able to revoke when incapacitated.

524 (2) The principal shall provide a copy of his or her
525 written statement of revocation to his or her agent, if any, and
526 to each health care provider, professional person, or health
527 care facility that received a copy of the directive from the
528 principal.

529 (3) The written statement of revocation is effective as to
530 a health care provider, professional person, or health care
531 facility upon receipt. The professional person, health care
532 provider, or health care facility, or persons acting under their
533 direction, shall make the statement of revocation part of the
534 principal's medical record.

535 (4) A directive also may:

536 (a) Be revoked, in whole or in part, expressly or to the
537 extent of any inconsistency, by a subsequent directive; or

538 (b) Be superseded or revoked by a court order, including
539 any order entered in a criminal matter. The individual's family,
540 the health care facility, the attending physician, or any other
541 interested person who may be directly affected by the
542 surrogate's decision concerning any health care may seek
543 expedited judicial intervention pursuant to rule 5.900 of the
544 Florida Probate Rules, if that person believes:

545 1. The surrogate's decision is not in accord with the
546 individual's known desires;

547 2. The advance directive is ambiguous, or the individual
548 has changed his or her mind after execution of the advance
549 directive;

550 3. The surrogate was improperly designated or appointed, or
551 the designation of the surrogate is no longer effective or has

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552 been revoked;

553 4. The surrogate has failed to discharge duties, or
554 incapacity or illness renders the surrogate incapable of
555 discharging duties;

556 5. The surrogate has abused powers; or

557 6. The individual has sufficient capacity to make his or
558 her own health care decisions.

559 (5) A directive that would have otherwise expired but is
560 effective because the principal is incapacitated remains
561 effective until the principal is no longer incapacitated unless
562 the principal elected to be able to revoke while incapacitated
563 and has revoked the directive.

564 (6) When a principal with capacity consents to treatment
565 that differs from, or refuses treatment consented to in, his or
566 her directive, the consent or refusal constitutes a waiver of a
567 particular provision and does not constitute a revocation of the
568 provision or the directive unless that principal also revokes
569 the provision or directive.

570 Section 13. Section 765.410, Florida Statutes, is created
571 to read:

572 765.410 Immunity from liability; weight of proof;
573 presumption.-

574 (1) A health care facility, provider, or other person who
575 acts under the direction of a health care facility or provider
576 is not subject to criminal prosecution or civil liability, and
577 may not be deemed to have engaged in unprofessional conduct, as
578 a result of carrying out a mental health care or substance abuse
579 treatment decision made in accordance with this section. The
580 surrogate who makes a mental health care or substance abuse

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581 treatment decision on a principal's behalf, pursuant to this
582 section, is not subject to criminal prosecution or civil
583 liability for such action.

584 (2) This section applies unless it is shown by a
585 preponderance of the evidence that the person authorizing or
586 effectuating a mental health or substance abuse treatment
587 decision did not, in good faith, comply with this section.

588 Section 14. Section 765.411, Florida Statutes, is created
589 to read:

590 765.411 Recognition of mental health and substance abuse
591 treatment advance directive executed in another state.—A mental
592 health or substance abuse treatment advance directive executed
593 in another state in compliance with the law of that state is
594 validly executed for the purposes of this chapter.

595 Section 15. Subsection (3) of section 394.495, Florida
596 Statutes, is amended to read:

597 394.495 Child and adolescent mental health system of care;
598 programs and services.—

599 (3) Assessments must be performed by:

600 (a) A professional as defined in s. 394.455(2), (4), (22)
601 ~~(21)~~, (24) ~~(23)~~, or (25) ~~(24)~~;

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

603 (c) A person who is under the direct supervision of a
604 professional as defined in s. 394.455(2), (4), (22) ~~(21)~~, (24)
605 ~~(23)~~, or (25) ~~(24)~~ or a professional licensed under chapter 491.

606
607 The department shall adopt by rule statewide standards for
608 mental health assessments, which must be based on current
609 relevant professional and accreditation standards.

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610 Section 16. Subsection (6) of section 394.496, Florida
611 Statutes, is amended to read:

612 394.496 Service planning.—

613 (6) A professional as defined in s. 394.455(2), (4), (22)
614 ~~(21)~~, (24) ~~(23)~~, or (25) ~~(24)~~ or a professional licensed under
615 chapter 491 must be included among those persons developing the
616 services plan.

617 Section 17. Subsection (6) of section 394.9085, Florida
618 Statutes, is amended to read:

619 394.9085 Behavioral provider liability.—

620 (6) For purposes of this section, the terms “detoxification
621 services,” “addictions receiving facility,” and “receiving
622 facility” have the same meanings as those provided in ss.
623 397.311(18)(a)4., 397.311(18)(a)1., and 394.455(27)~~(26)~~,
624 respectively.

625 Section 18. Paragraph (d) of subsection (1) of section
626 395.0197, Florida Statutes, is amended to read:

627 395.0197 Internal risk management program.—

628 (1) Every licensed facility shall, as a part of its
629 administrative functions, establish an internal risk management
630 program that includes all of the following components:

631 (d) A system for informing a patient or an individual
632 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~ that the
633 patient was the subject of an adverse incident, as defined in
634 subsection (5). Such notice shall be given by an appropriately
635 trained person designated by the licensed facility as soon as
636 practicable to allow the patient an opportunity to minimize
637 damage or injury.

638 Section 19. Section 395.1051, Florida Statutes, is amended

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639 to read:

640 395.1051 Duty to notify patients.—An appropriately trained
641 person designated by each licensed facility shall inform each
642 patient, or an individual identified pursuant to s. 765.311(1)
643 ~~s. 765.401(1)~~, in person about adverse incidents that result in
644 serious harm to the patient. Notification of outcomes of care
645 that result in harm to the patient under this section shall not
646 constitute an acknowledgment or admission of liability, nor can
647 it be introduced as evidence.

648 Section 20. Paragraph (b) of subsection (1) of section
649 409.972, Florida Statutes, is amended to read:

650 409.972 Mandatory and voluntary enrollment.—

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

655 (b) Medicaid recipients residing in residential commitment
656 facilities operated through the Department of Juvenile Justice
657 or mental health treatment facilities as defined by s.
658 394.455(33) ~~s. 394.455(32)~~.

659 Section 21. Section 456.0575, Florida Statutes, is amended
660 to read:

661 456.0575 Duty to notify patients.—Every licensed health
662 care practitioner shall inform each patient, or an individual
663 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~, in person
664 about adverse incidents that result in serious harm to the
665 patient. Notification of outcomes of care that result in harm to
666 the patient under this section shall not constitute an
667 acknowledgment of admission of liability, nor can such

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668 notifications be introduced as evidence.

669 Section 22. Subsection (7) of section 744.704, Florida
670 Statutes, is amended to read:

671 744.704 Powers and duties.—

672 (7) A public guardian shall not commit a ward to a mental
673 health treatment facility, as defined in s. 394.455(33) ~~s.~~
674 ~~394.455(32)~~, without an involuntary placement proceeding as
675 provided by law.

676 Section 23. Subsection (15) of section 765.101, Florida
677 Statutes, is amended to read:

678 765.101 Definitions.—As used in this chapter:

679 (15) "Proxy" means a competent adult who has not been
680 expressly designated to make health care decisions for a
681 particular incapacitated individual, but who, nevertheless, is
682 authorized pursuant to s. 765.311 ~~s. 765.401~~ to make health care
683 decisions for such individual.

684 Section 24. Subsection (4) of section 765.104, Florida
685 Statutes, is amended to read:

686 765.104 Amendment or revocation.—

687 (4) Any patient for whom a medical proxy has been
688 recognized under s. 765.311 ~~s. 765.401~~ and for whom any previous
689 legal disability that precluded the patient's ability to consent
690 is removed may amend or revoke the recognition of the medical
691 proxy and any uncompleted decision made by that proxy. The
692 amendment or revocation takes effect when it is communicated to
693 the proxy, the health care provider, or the health care facility
694 in writing or, if communicated orally, in the presence of a
695 third person.

696 Section 25. Paragraph (b) of subsection (3) of s. 394.459,

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697 subsections (6) and (7) of s. 394.4598, paragraph (d) of
698 subsection (6) and paragraph (f) of subsection (7) of s.
699 394.4655, paragraph (d) of subsection (6) of s. 394.467, s.
700 394.46715, and subsection (5) of s. 765.202, Florida Statutes,
701 are reenacted for the purpose of incorporating the amendments
702 made to s. 394.4598, Florida Statutes.

703 Section 26. This act shall take effect July 1, 2015.