

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 450

INTRODUCER: Senator Garcia

SUBJECT: Mental Health and Substance Use Disorders

DATE: November 14, 2017 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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.¹ 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

¹ 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).

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.²

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.³ In 2016, Florida had 53,180 deaths from overdoses of legal and illegal opioids.⁴ 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.⁵ 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.⁶ The most recognized form of peer support is the

² *Id.*

³ 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 (last visited Nov. 2, 2017).

⁴ *Id.*

⁵ 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).

⁶ 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).

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.⁷

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

- 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 a 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.⁸

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.⁹ 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.¹⁰ 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.¹¹ Common offenses would include using and selling illegal substances,

⁷ 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).

⁸ 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).

⁹ 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).

¹⁰ *Id.*

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

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 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.¹² 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 or a family member of such a person 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.

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

¹² 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.

would otherwise disqualify them from providing recovery services. This language is no longer needed as the bill revises background requirements in the newly created s. 397.417, F.S.

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 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 must be certified and 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 certified peer specialist.

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.¹³ 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 in chapter 397, F.S. relating to substance abuse.

¹³ 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 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.

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 in 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 in 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 Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on November 13, 2017:

- Adds a family member or caregiver of a person with a substance use disorder or mental illness to the definition of a peer specialist. This is current practice and family members presently serve as certified peer specialists in Florida.
- Allows certified peer specialists, along with licensed behavioral health care professionals, to supervise other peer specialists. The CS removes supervision by a behavioral health care agency.
- Clarifies that peer specialists must have had no felony convictions for at least 3 years and meet the background screening requirements in the bill.

- Requires peer specialists to have completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for any felony prior to being certified.
- Adds felony assault and battery, female genital mutilation, and robbery, as offenses that would disqualify peer specialists. The CS clarifies that drug offenses that are first and second degree are disqualifying for peer specialists. Peer specialists would still be able to request an exemption from a state agency. The CS removes the offense of selling a non-controlled substance as a controlled substance from the list of disqualifying offenses.

B. Amendments:

None.