

1 A bill to be entitled
2 An act relating to substance abuse and mental health;
3 amending s. 394.455, F.S.; revising the definition of
4 the term "mental illness" to exclude conditions
5 manifested by dementia or traumatic brain injury;
6 amending s. 394.674, F.S.; revising eligibility
7 requirements for certain substance abuse and mental
8 health services; providing priority for specified
9 individuals; conforming cross-references; conforming
10 provisions to changes made by the act; amending s.
11 394.908, F.S.; revising the definition of the term
12 "individuals in need;" revising distribution of
13 funding for substance abuse and mental health
14 services; amending s. 394.9085, F.S.; conforming a
15 cross-reference; amending s. 397.311, F.S.; revising
16 definitions; amending s. 397.4012, F.S.; revising
17 entities that are exempt from certain licensing
18 requirements; amending s. 397.4073, F.S.; providing an
19 exemption from background screening requirements for
20 certain peer specialists; amending s. 916.106, F.S.;
21 revising a definition; amending ss. 916.13 and 916.15,
22 F.S.; authorizing jails to share medical information
23 pertaining to specified defendants to the Department
24 of Children and Families; requiring the maintenance of
25 psychotropic medications to specified defendants under

26 | certain circumstances; providing an exception;
 27 | providing an effective date.

28 |

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

30 |

31 | Section 1. Subsection (28) of section 394.455, Florida
 32 | Statutes, is amended to read:

33 | 394.455 Definitions.—As used in this part, the term:

34 | (28) "Mental illness" means an impairment of the mental or
 35 | emotional processes that exercise conscious control of one's
 36 | actions or of the ability to perceive or understand reality,
 37 | which impairment substantially interferes with the person's
 38 | ability to meet the ordinary demands of living. For the purposes
 39 | of this part, the term does not include a developmental
 40 | disability as defined in chapter 393, intoxication, or
 41 | conditions manifested only by dementia, traumatic brain injury,
 42 | antisocial behavior, or substance abuse.

43 | Section 2. Section 394.674, Florida Statutes, is amended
 44 | to read:

45 | 394.674 Eligibility for publicly funded substance abuse
 46 | and mental health services; fee collection requirements.—

47 | (1) To be eligible to receive substance abuse and mental
 48 | health services funded by the department, an individual must be
 49 | indigent, uninsured, or underinsured and meet at least one of
 50 | the following criteria ~~a member of at least one of the~~

51 ~~department's priority populations approved by the Legislature.~~
52 ~~The priority populations include:~~

53 (a) For ~~adult~~ mental health services, an individual must
54 be:

55 1. An adult who has a serious mental illness, as defined
56 by the department using criteria that, at a minimum, include
57 diagnosis, prognosis, functional impairment, and receipt of
58 disability income for a psychiatric condition.

59 2. An adult at risk of serious mental illness who:

60 a.(I) Has a primary diagnosis of a mental disorder as
61 defined in the most recent edition of the Diagnostic and
62 Statistical Manual of Mental Disorders published by the American
63 Psychiatric Association that is not considered a serious mental
64 illness; or

65 (II) Has a condition with a Z-code diagnosis code in the
66 most recent edition of the Diagnostic and Statistical Manual of
67 Mental Disorders published by the American Psychiatric
68 Association; and

69 b. Experiences a severe stressful event and has problems
70 coping or has symptoms that place the individual at risk of more
71 restrictive interventions.

72 3. A child or adolescent at risk of emotional disturbance,
73 as defined in s. 394.492.

74 4. A child or adolescent who has an emotional disturbance,
75 as defined in s. 394.492.

76 5. A child or adolescent who has a serious emotional
 77 disturbance or mental illness, as defined in s. 394.492.

78 6. An individual who has a primary diagnosis of mental
 79 illness and a co-occurring substance use disorder.

80 7. An individual experiencing an acute mental or emotional
 81 crisis, as defined in s. 394.67.

82 ~~Adults who have severe and persistent mental illness, as~~
 83 ~~designated by the department using criteria that include~~
 84 ~~severity of diagnosis, duration of the mental illness, ability~~
 85 ~~to independently perform activities of daily living, and receipt~~
 86 ~~of disability income for a psychiatric condition. Included~~
 87 ~~within this group are:~~

88 ~~a. Older adults in crisis.~~

89 ~~b. Older adults who are at risk of being placed in a more~~
 90 ~~restrictive environment because of their mental illness.~~

91 ~~c. Persons deemed incompetent to proceed or not guilty by~~
 92 ~~reason of insanity under chapter 916.~~

93 ~~d. Other persons involved in the criminal justice system.~~

94 ~~e. Persons diagnosed as having co-occurring mental illness~~
 95 ~~and substance abuse disorders.~~

96 ~~2. Persons who are experiencing an acute mental or~~
 97 ~~emotional crisis as defined in s. 394.67(17).~~

98 (b) For substance abuse services, an individual must
 99 children's mental health services:

100 1. Have a substance use disorder that meets one of the

101 diagnostic categories specified in the most recent edition of
102 the Diagnostic and Statistical Manual of Mental Disorders
103 published by the American Psychiatric Association.

104 2. Have a substance use disorder that meets one of the
105 diagnostic categories specified in the most recent edition of
106 the Diagnostic and Statistical Manual of Mental Disorders
107 published by the American Psychiatric Association as the primary
108 diagnosis and a co-occurring mental illness or serious emotional
109 disturbance.

110 3. Be at risk for initiating alcohol or drug use.

111 ~~Children who are at risk of emotional disturbance as~~
112 ~~defined in s. 394.492(4).~~

113 ~~2. Children who have an emotional disturbance as defined~~
114 ~~in s. 394.492(5).~~

115 ~~3. Children who have a serious emotional disturbance as~~
116 ~~defined in s. 394.492(6).~~

117 ~~4. Children diagnosed as having a co-occurring substance~~
118 ~~abuse and emotional disturbance or serious emotional~~
119 ~~disturbance.~~

120 ~~(c) For substance abuse treatment services:~~

121 ~~1. Adults who have substance abuse disorders and a history~~
122 ~~of intravenous drug use.~~

123 ~~2. Persons diagnosed as having co-occurring substance~~
124 ~~abuse and mental health disorders.~~

125 ~~3. Parents who put children at risk due to a substance~~

126 ~~abuse disorder.~~

127 ~~4. Persons who have a substance abuse disorder and have~~
128 ~~been ordered by the court to receive treatment.~~

129 ~~5. Children at risk for initiating drug use.~~

130 ~~6. Children under state supervision.~~

131 ~~7. Children who have a substance abuse disorder but who~~
132 ~~are not under the supervision of a court or in the custody of a~~
133 ~~state agency.~~

134 ~~8. Persons identified as being part of a priority~~
135 ~~population as a condition for receiving services funded through~~
136 ~~the Center for Mental Health Services and Substance Abuse~~
137 ~~Prevention and Treatment Block Grants.~~

138 (2) Providers receiving funds from the department for
139 behavioral health services must give priority to:

140 (a) Pregnant women and women with dependent children.

141 (b) Intravenous drug users.

142 (c) Individuals who have a substance use disorder and have
143 been ordered by the court to receive treatment.

144 (d) Parents, legal guardians, or caregivers with child
145 welfare involvement and parents, legal guardians, or caregivers
146 who put children at risk due to substance abuse.

147 (e) Children and adolescents under state supervision.

148 (f) Individuals involved in the criminal justice system,
149 including those deemed incompetent to proceed or not guilty by
150 reason of insanity under chapter 916.

151 (3)~~(2)~~ Crisis services, as defined in s. 394.67, must,
 152 within the limitations of available state and local matching
 153 resources, be available to each individual ~~person~~ who is
 154 eligible for services under subsection (1), regardless of the
 155 individual's ~~person's~~ ability to pay for such services. An
 156 individual ~~A person~~ who is experiencing a mental health crisis
 157 and who does not meet the criteria for involuntary examination
 158 under s. 394.463(1), or an individual ~~a person~~ who is
 159 experiencing a substance abuse crisis and who does not meet the
 160 involuntary admission criteria in s. 397.675, must contribute to
 161 the cost of his or her care and treatment pursuant to the
 162 sliding fee scale developed under subsection (5) ~~(4)~~, unless
 163 charging a fee is contraindicated because of the crisis
 164 situation.

165 (4)~~(3)~~ Mental health services, substance abuse services,
 166 and crisis services, as defined in s. 394.67, must, within the
 167 limitations of available state and local matching resources, be
 168 available to each individual ~~person~~ who is eligible for services
 169 under subsection (1). Such individual ~~person~~ must contribute to
 170 the cost of his or her care and treatment pursuant to the
 171 sliding fee scale developed under subsection (5) ~~(4)~~.

172 (5)~~(4)~~ The department shall adopt rules to implement
 173 ~~client~~ eligibility, ~~client~~ enrollment, and fee collection
 174 requirements for publicly funded substance abuse and mental
 175 health services.

176 (a) The rules must require each provider under contract
177 with the department or a managing entity that ~~which~~ enrolls
178 eligible individuals ~~persons~~ into treatment to develop a sliding
179 fee scale for individuals ~~persons~~ who have a net family income
180 at or above 150 percent of the Federal Poverty Income
181 Guidelines, unless otherwise required by state or federal law.
182 The sliding fee scale must use the uniform schedule of discounts
183 by which a provider under contract with the department or a
184 managing entity discounts its established ~~client~~ charges for
185 services supported with state, federal, or local funds, using,
186 at a minimum, factors such as family income, financial assets,
187 and family size as declared by the individual ~~person~~ or the
188 individual's ~~person's~~ guardian. The rules must include uniform
189 criteria to be used by all service providers in developing the
190 schedule of discounts for the sliding fee scale.

191 (b) The rules must address the most expensive types of
192 treatment, such as residential and inpatient treatment, in order
193 to make it possible for an individual ~~a client~~ to responsibly
194 contribute to his or her mental health or substance abuse care
195 without jeopardizing the family's financial stability. An
196 individual ~~A person~~ who is not eligible for Medicaid and whose
197 net family income is less than 150 percent of the Federal
198 Poverty Income Guidelines must pay a portion of his or her
199 treatment costs which is comparable to the copayment amount
200 required by the Medicaid program for Medicaid clients under

201 ~~pursuant to~~ s. 409.9081.

202 (c) The rules must require that individuals ~~persons~~ who
203 receive financial assistance from the Federal Government because
204 of a disability and are in long-term residential treatment
205 settings contribute to their board and care costs and treatment
206 costs and must be consistent with ~~the provisions in~~ s. 409.212.

207 ~~(6)(5)~~ An individual ~~A person~~ who meets the eligibility
208 criteria in subsection (1) shall be served in accordance with
209 the appropriate district substance abuse and mental health
210 services plan specified in s. 394.75 and within available
211 resources.

212 Section 3. Section 394.908, Florida Statutes, is amended
213 to read:

214 394.908 Substance abuse and mental health funding equity;
215 distribution of appropriations.—In recognition of the historical
216 inequity in the funding of substance abuse and mental health
217 services for the department's districts and regions and to
218 rectify this inequity and provide for equitable funding in the
219 future throughout the state, the following funding process shall
220 be used:

221 (1) Funding thresholds for substance abuse and mental
222 health services in each of the current districts, statewide,
223 shall be established based on the current number of individuals
224 in need per district of substance abuse and mental health
225 services, respectively.

226 (2) "Individuals in need" means those persons who meet
227 eligibility criteria under s. 394.674 ~~fit the profile of the~~
228 ~~respective priority populations~~ and require mental health or
229 substance abuse services.

230 (3) Any additional funding beyond the 2005-2006 fiscal
231 year base appropriation for substance abuse ~~alcohol, drug abuse,~~
232 and mental health services shall be allocated to districts for
233 substance abuse and mental health services based on:

234 (a) Epidemiological estimates of disabilities that apply
235 to individuals in need ~~the respective priority populations.~~

236 (b) A pro rata share distribution that ensures districts
237 below the statewide average funding level per ~~individual in each~~
238 ~~priority population~~ of "individuals in need" receive funding
239 necessary to achieve equity.

240 (4) ~~Priority populations for~~ Individuals in need shall be
241 displayed for each district and distributed concurrently with
242 the approved operating budget. The display ~~by priority~~
243 ~~population~~ shall show: The annual number of individuals served
244 based on prior year actual numbers, the annual cost per
245 individual served, and the estimated number of the total
246 ~~priority population for~~ individuals in need.

247 (5) The annual cost per individual served shall be defined
248 as the total actual funding for mental health or substance abuse
249 services ~~each priority population~~ divided by the number of
250 individuals receiving mental health or substance abuse services

251 ~~served in the priority population for~~ that year.

252 Section 4. Subsection (6) of section 394.9085, Florida
253 Statutes, is amended to read:

254 394.9085 Behavioral provider liability.—

255 (6) For purposes of this section, the terms
256 "detoxification services," "addictions receiving facility," and
257 "receiving facility" have the same meanings as those provided in
258 ss. 397.311(26)(a)3. ~~ss. 397.311(26)(a)4.~~, 397.311(26)(a)1., and
259 394.455(39), respectively.

260 Section 5. Paragraph (a) of subsection (26) of section
261 397.311, Florida Statutes, is amended to read:

262 397.311 Definitions.—As used in this chapter, except part
263 VIII, the term:

264 (26) Licensed service components include a comprehensive
265 continuum of accessible and quality substance abuse prevention,
266 intervention, and clinical treatment services, including the
267 following services:

268 (a) "Clinical treatment" means a professionally directed,
269 deliberate, and planned regimen of services and interventions
270 that are designed to reduce or eliminate the misuse of drugs and
271 alcohol and promote a healthy, drug-free lifestyle. As defined
272 by rule, "clinical treatment services" include, but are not
273 limited to, the following licensable service components:

274 1. "Addictions receiving facility" is a secure, acute care
275 facility that provides, at a minimum, detoxification and

276 stabilization services; is operated 24 hours per day, 7 days per
277 week; and is designated by the department to serve individuals
278 found to be substance use impaired as described in s. 397.675
279 who meet the placement criteria for this component.

280 2. "Day or night treatment" is a service provided in a
281 nonresidential environment, with a structured schedule of
282 treatment and rehabilitative services.

283 ~~3. "Day or night treatment with community housing" means a~~
284 ~~program intended for individuals who can benefit from living~~
285 ~~independently in peer community housing while participating in~~
286 ~~treatment services for a minimum of 5 hours a day for a minimum~~
287 ~~of 25 hours per week.~~

288 3.4. "Detoxification" is a service involving subacute care
289 that is provided on an inpatient or an outpatient basis to
290 assist individuals to withdraw from the physiological and
291 psychological effects of substance abuse and who meet the
292 placement criteria for this component.

293 4.5. "Intensive inpatient treatment" includes a planned
294 regimen of evaluation, observation, medical monitoring, and
295 clinical protocols delivered through an interdisciplinary team
296 approach provided 24 hours per day, 7 days per week, in a highly
297 structured, live-in environment.

298 5.6. "Intensive outpatient treatment" is a service that
299 provides individual or group counseling in a more structured
300 environment, is of higher intensity and duration than outpatient

301 treatment, and is provided to individuals who meet the placement
302 criteria for this component.

303 ~~6.7.~~ "Medication-assisted treatment for opioid use
304 disorders ~~opiate addiction~~" is a service that uses methadone or
305 other medication as authorized by state and federal law, in
306 combination with medical, rehabilitative, supportive, and
307 counseling services in the treatment of individuals who are
308 dependent on opioid drugs.

309 ~~7.8.~~ "Outpatient treatment" is a service that provides
310 individual, group, or family counseling by appointment during
311 scheduled operating hours for individuals who meet the placement
312 criteria for this component.

313 ~~8.9.~~ "Residential treatment" is a service provided in a
314 structured live-in environment within a nonhospital setting on a
315 24-hours-per-day, 7-days-per-week basis, and is intended for
316 individuals who meet the placement criteria for this component.

317 Section 6. Section 397.4012, Florida Statutes, is amended
318 to read:

319 397.4012 Exemptions from licensure.—The following are
320 exempt from the licensing provisions of this chapter:

321 (1) A hospital or hospital-based component licensed under
322 chapter 395.

323 (2) A nursing home facility as defined in s. 400.021.

324 (3) A substance abuse education program established
325 pursuant to s. 1003.42.

326 (4) A facility or institution operated by the Federal
 327 Government.

328 (5) A physician or physician assistant licensed under
 329 chapter 458 or chapter 459.

330 (6) A psychologist licensed under chapter 490.

331 (7) A social worker, marriage and family therapist, or
 332 mental health counselor licensed under chapter 491.

333 (8) A legally cognizable church or nonprofit religious
 334 organization or denomination providing substance abuse services,
 335 including prevention services, which are solely religious,
 336 spiritual, or ecclesiastical in nature. A church or nonprofit
 337 religious organization or denomination providing any of the
 338 licensed service components itemized under s. 397.311(26) is not
 339 exempt from substance abuse licensure but retains its exemption
 340 with respect to all services which are solely religious,
 341 spiritual, or ecclesiastical in nature.

342 (9) Facilities licensed under chapter 393 which, in
 343 addition to providing services to persons with developmental
 344 disabilities, also provide services to persons developmentally
 345 at risk as a consequence of exposure to alcohol or other legal
 346 or illegal drugs while in utero.

347 (10) DUI education and screening services provided
 348 pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.291.
 349 Persons or entities providing treatment services must be
 350 licensed under this chapter unless exempted from licensing as

HB 1081

2020

351 provided in this section.

352 (11) A facility licensed under s. 394.875 as a crisis
353 stabilization unit.

354

355 The exemptions from licensure in subsections (3), (4), (8), (9),
356 and (10) ~~this section~~ do not apply to any service provider that
357 receives an appropriation, grant, or contract from the state to
358 operate as a service provider as defined in this chapter or to
359 any substance abuse program regulated under ~~pursuant to~~ s.
360 397.4014. Furthermore, this chapter may not be construed to
361 limit the practice of a physician or physician assistant
362 licensed under chapter 458 or chapter 459, a psychologist
363 licensed under chapter 490, a psychotherapist licensed under
364 chapter 491, or an advanced practice registered nurse licensed
365 under part I of chapter 464, who provides substance abuse
366 treatment, so long as the physician, physician assistant,
367 psychologist, psychotherapist, or advanced practice registered
368 nurse does not represent to the public that he or she is a
369 licensed service provider and does not provide services to
370 individuals under ~~pursuant to~~ part V of this chapter. Failure to
371 comply with any requirement necessary to maintain an exempt
372 status under this section is a misdemeanor of the first degree,
373 punishable as provided in s. 775.082 or s. 775.083.

374 Section 7. Paragraph (a) of subsection (1) of section
375 397.4073, Florida Statutes, is amended to read:

376 | 397.4073 Background checks of service provider personnel.—

377 | (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
 378 | EXCEPTIONS.—

379 | (a) For all individuals screened on or after July 1, 2019,
 380 | background checks shall apply as follows:

381 | 1. All owners, directors, chief financial officers, and
 382 | clinical supervisors of service providers are subject to level 2
 383 | background screening as provided under s. 408.809 and chapter
 384 | 435. Inmate substance abuse programs operated directly or under
 385 | contract with the Department of Corrections are exempt from this
 386 | requirement.

387 | 2. All service provider personnel who have direct contact
 388 | with children receiving services or with adults who are
 389 | developmentally disabled receiving services are subject to level
 390 | 2 background screening as provided under s. 408.809 and chapter
 391 | 435.

392 | 3. All peer specialists who have direct contact with
 393 | individuals receiving services are subject to level 2 background
 394 | screening as provided under s. 408.809 and chapter 435. Peer
 395 | specialists employed or certified before July 1, 2019, are
 396 | exempt from this requirement if, at the time of their employment
 397 | or certification, the department knew about any disqualifying
 398 | offenses of the peer specialist.

399 | Section 8. Subsection (14) of section 916.106, Florida
 400 | Statutes, is amended to read:

401 916.106 Definitions.—For the purposes of this chapter, the
402 term:

403 (14) "Mental illness" means an impairment of the emotional
404 processes that exercise conscious control of one's actions, or
405 of the ability to perceive or understand reality, which
406 impairment substantially interferes with the defendant's ability
407 to meet the ordinary demands of living. For the purposes of this
408 chapter, the term does not apply to defendants who have only an
409 intellectual disability or autism or a defendant with traumatic
410 brain injury or dementia who lacks a co-occurring mental
411 illness, and does not include intoxication or conditions
412 manifested only by antisocial behavior or substance abuse
413 impairment.

414 Section 9. Paragraph (b) of subsection (2) of section
415 916.13, Florida Statutes, is amended to read:

416 916.13 Involuntary commitment of defendant adjudicated
417 incompetent.—

418 (2) A defendant who has been charged with a felony and who
419 has been adjudicated incompetent to proceed due to mental
420 illness, and who meets the criteria for involuntary commitment
421 under this chapter, may be committed to the department, and the
422 department shall retain and treat the defendant. Within 2
423 business days after receipt of a completed copy of the court
424 commitment order containing all documentation required by the
425 applicable Florida Rules of Criminal Procedure, the department

426 shall request all medical information relating to the defendant
427 from the jail. The jail shall provide the department with all
428 medical information relating to the defendant within 3 business
429 days after receipt of the department's request.

430 (b) A competency hearing shall be held within 30 days
431 after the court receives notification that the defendant is
432 competent to proceed or no longer meets the criteria for
433 continued commitment. The defendant must be transported to the
434 committing court's jurisdiction for the hearing. Each defendant
435 returning to a jail shall continue to receive the same
436 psychotropic medications as prescribed by the facility physician
437 at the time of discharge from a forensic or civil facility,
438 unless the jail physician determines there is a compelling
439 medical reason to change or discontinue the medication for the
440 health and safety of the defendant. If the jail physician
441 changes or discontinues the medication and the defendant is
442 later determined at the competency hearing to be incompetent to
443 stand trial and is recommitted to the department, the jail
444 physician may not change or discontinue the defendant's
445 prescribed psychotropic medication upon the defendant's next
446 discharge from the forensic or civil facility.

447 Section 10. Subsections (3) and (5) of section 916.15,
448 Florida Statutes, are amended to read:

449 916.15 Involuntary commitment of defendant adjudicated not
450 guilty by reason of insanity.—

451 (3) Every defendant acquitted of criminal charges by
452 reason of insanity and found to meet the criteria for
453 involuntary commitment may be committed and treated in
454 accordance with the provisions of this section and the
455 applicable Florida Rules of Criminal Procedure. Within 2
456 business days after receipt of a completed copy of the court
457 commitment order containing all documentation required by the
458 applicable Florida Rules of Criminal Procedure, the department
459 shall request all medical information relating to the defendant
460 from the jail. The jail shall provide the department with all
461 medical information relating to the defendant within 3 business
462 days after receipt of the department's request. The department
463 shall admit a defendant so adjudicated to an appropriate
464 facility or program for treatment and shall retain and treat
465 such defendant. No later than 6 months after the date of
466 admission, before ~~prior to~~ the end of any period of extended
467 commitment, or at any time the administrator or designee
468 determines ~~shall have determined~~ that the defendant no longer
469 meets the criteria for continued commitment placement, the
470 administrator or designee shall file a report with the court
471 pursuant to the applicable Florida Rules of Criminal Procedure.

472 (5) The commitment hearing shall be held within 30 days
473 after the court receives notification that the defendant no
474 longer meets the criteria for continued commitment. The
475 defendant must be transported to the committing court's

476 | jurisdiction for the hearing. Each defendant returning to a jail
477 | shall continue to receive the same psychotropic medications as
478 | prescribed by the facility physician at the time of discharge
479 | from a forensic or civil facility, unless the jail physician
480 | determines there is a compelling medical reason to change or
481 | discontinue the medication for the health and safety of the
482 | defendant. If the jail physician changes or discontinues the
483 | medication and the defendant is later determined at the
484 | competency hearing to be incompetent to stand trial and is
485 | recommitted to the department, the jail physician may not change
486 | or discontinue the defendant's prescribed psychotropic
487 | medication upon the defendant's next discharge from the forensic
488 | or civil facility.

489 | Section 11. This act shall take effect July 1, 2020.