By the Committees on Appropriations; and Children, Families, and Elder Affairs; and Senator Harrell

A bill to be entitled

An act relating to substance abuse services; amending s. 397.4073, F.S.; specifying that certified recovery residence administrators and certain persons associated with certified recovery residences are subject to certain background screenings; requiring, rather than authorizing, the exemption from disqualification from employment for certain substance abuse service provider personnel; revising eligibility for exemption from disqualification from employment for such personnel; amending s. 397.487, F.S.; deleting a provision relating to background screenings for certain persons associated with applicant recovery residences; amending s. 397.4872, F.S.; deleting provisions relating to exemptions from disqualification for certain persons associated with recovery residences; amending s. 397.4873, F.S.; providing criminal penalties for violations relating to recovery residence patient referrals; amending s. 817.505, F.S.; revising provisions relating to payment practices exempt from prohibitions on patient brokering; amending ss. 397.4871 and 435.07, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph (b) of subsection (4) of section 397.4073, Florida Statutes, are
amended to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND

EXCEPTIONS.—

(a) For all individuals screened on or after July 1, 2020
2019, background checks shall apply as follows:

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

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

3. All peer specialists who have direct contact with
individuals receiving services are subject to level 2 background
screening as provided under s. 408.809 and chapter 435.

4. All certified recovery residence owners, directors,
chief financial officers, and certified recovery residence
administrators are subject to level 2 background screening as
provided under s. 408.809 and chapter 435.

(b) Since rehabilitated substance abuse impaired persons
are effective in the successful treatment and rehabilitation of
individuals with substance use disorders, for service providers
which treat adolescents 13 years of age and older, service
provider personnel whose background checks indicate crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 893.13, or s. 893.147, and any related criminal attempt, solicitation, or conspiracy under s. 777.04, shall may be exempted from disqualification from employment pursuant to this paragraph, provided that 5 years or more, or, in the case of a peer specialist certified pursuant to s. 397.417, 3 years or more, have elapsed since the applicant for an exemption from disqualification has completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by a court for the applicant’s most recent disqualifying offense under this subsection and the applicant for exemption has not been arrested for any criminal offense within the past 3 years.

Section 2. Subsection (6) of section 397.487, Florida Statutes, is amended to read:

397.487 Voluntary certification of recovery residences.—
(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under s. 408.809 and chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence’s application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809(4) or s. 435.04(2) unless the department has issued an exemption under s. 397.4073 or s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner’s, director’s, or chief
financial officer’s eligibility based on the results of his or
her background screening.

Section 3. Section 397.4872, Florida Statutes, is amended
to read:

397.4872 Exemption from disqualification; Publication.—

(1) Individual exemptions to staff disqualification or
administrator ineligibility may be requested if a recovery
residence deems the decision will benefit the program. Requests
for exemptions must be submitted in writing to the department
within 20 days after the denial by the credentialing entity and
must include a justification for the exemption.

(2) The department may exempt a person from ss. 397.487(6)
and 397.4871(5) if it has been at least 3 years since the person
has completed or been lawfully released from confinement,
supervision, or sanction for the disqualifying offense. An
exemption from the disqualifying offenses may not be given under
any circumstances for any person who is a,

(a) Sexual predator pursuant to s. 775.21;
(b) Career offender pursuant to s. 775.261; or
(c) Sexual offender pursuant to s. 943.0435, unless the
requirement to register as a sexual offender has been removed
pursuant to s. 943.04354.

(3) By April 1, 2016, each credentialing entity shall
submit a list to the department of all recovery residences and
recovery residence administrators certified by the credentialing
entity that hold a valid certificate of compliance. Thereafter,
the credentialing entity must notify the department within 3
business days after a new recovery residence or recovery
residence administrator is certified or a recovery residence or
recovery residence administrator’s certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance. The department shall also publish on its website a list of all recovery residence administrators who hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list upon written request to the department by the listed individual or entity.

Section 4. Present subsections (4), (5), and (6) of section 397.4873, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and subsection (1) of that section is republished, to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(1) A service provider licensed under this part may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such a patient from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871.

(4) In addition to any other punishment provided by law, any person who willfully and knowingly violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Paragraph (a) of subsection (3) of section 817.505, Florida Statutes, is amended to read:
817.505 Patient brokering prohibited; exceptions; penalties.—

(3) This section shall not apply to the following payment practices:

(a) Any discount, payment, waiver of payment, or payment practice not prohibited expressly authorized by 42 U.S.C. s. 1320a-7(b) or regulations promulgated thereunder, regardless of whether such discount, payment, waiver of payment, or payment practice involves items or services for which payment may be made in whole or in part under federal health care programs as defined in 42 U.S.C. s. 1320a-7b(f), as that definition exists on July 1, 2020.

Section 6. Subsection (5) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809 or s. 435.04(2) unless the department has issued an exemption under s. 397.4073 or s. 435.07 s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant’s eligibility based on the results of his or her background screening.

Section 7. Subsection (2) of section 435.07, Florida Statutes, is amended to read:

CODING: Words stricken are deletions; words underlined are additions.
435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 893.13, or s. 893.147, or any related criminal attempt, solicitation, or conspiracy under s. 777.04, shall may be exempted from disqualification from employment pursuant to this chapter, provided that 5 years or more, or, in the case of a certified peer specialist pursuant to s. 397.417, 3 years or more, have elapsed since the applicant for an exemption from disqualification has completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by a court for the applicant’s most recent disqualifying offense under this subsection and the applicant for exemption has not been arrested for any criminal offense within the past 3 years without application of the waiting period in subparagraph (1)(a).1.

Section 8. This act shall take effect July 1, 2020.