

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1447 Commission on Mental Health and Substance Abuse

**SPONSOR(S):** Children, Families & Seniors Subcommittee, Hunschofsky

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Morris	Brazzell
2) Health Care Appropriations Subcommittee	13 Y, 0 N	Fontaine	Clark
3) Health & Human Services Committee	21 Y, 0 N	Morris	Calamas

### SUMMARY ANALYSIS

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services. Individuals may also receive behavioral health services in Florida through other systems, such as Medicaid, schools, and the corrections system.

In 2018, the Legislature enacted the "Marjory Stoneman Douglas High School Public Safety Act" (the Act) to address school safety and security and establish the Marjory Stoneman Douglas High School Public Safety Commission. The Act created the Office of Safe Schools within the Florida Department of Education and requiring increased coordination among state and local agencies serving students with, or at-risk of, mental illness. In 2019, the Florida Supreme Court convened a Grand Jury to study systemic school safety failures. The Grand Jury investigated whether specific public entities failed to act or committed fraud that undermined the school safety activities which the Act and subsequent legislation required. The Grand Jury recommended the Legislature appoint a commission to specifically examine the provision of mental health services in the state.

CS/HB 1447 creates a 19-member Commission on Mental Health and Substance Abuse (Commission), adjunct to DCF, to examine the current methods of providing mental health and substance abuse services in the state. The bill requires DCF to provide administrative staff and support services for the commission. Commission members are appointed by the Governor, President of the Senate, and Speaker of the House of Representatives and must convene by September 1, 2021. The bill requires state departments and agencies to provide assistance in a timely manner if requested by the Commission.

The Commission must submit an initial report by September 1, 2022, and a final report by September 1, 2023, to the Governor, President of the Senate, and Speaker of the House of Representatives on its findings and recommendations on how to best provide and facilitate mental health and substance abuse services in this state. The Commission is repealed on September 1, 2023, unless it is reenacted by the Legislature.

The bill has a significant, negative fiscal impact on DCF that can be absorbed within existing resources. The bill has no fiscal impact to local governments.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.<sup>1</sup> The primary indicators used to evaluate an individual's mental health are:<sup>2</sup>

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.<sup>3</sup> Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Nearly one in five adults (51.5 million people) live with a mental illness.<sup>4</sup> An estimated 13.1 million adults aged 18 or older have a serious mental illness.<sup>5</sup> Many people are diagnosed with more than one mental illness. For example, people who suffer from a depressive illness (major depression, bipolar disorder, or dysthymia) tend to co-occur with substance abuse and anxiety disorders.<sup>6</sup>

According to a 2019 assessment by the U.S. Department of Housing and Urban Development, 567,715 people were homeless on a given nights in the United States.<sup>7</sup> At a minimum, 116,179, or 20% percent, of these people were severely mentally ill.

##### Mental Health Safety Net Services

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

##### *Behavioral Health Managing Entities*

---

<sup>1</sup> World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited April 12, 2021).

<sup>2</sup> Centers for Disease Control and Prevention, *Learn About Mental Health*, <http://www.cdc.gov/mentalhealth/basics.htm> (last visited April 12, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> National Institute on Mental Health, *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>, (last visited April 12, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> John Hopkins Medicine, *Mental Health Disorder Statistics*, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (last visited April 12, 2021).

<sup>7</sup> U.S. Department of Housing and Urban Development, *2019 CoC Homeless Populations and Subpopulations Report – All States, Territories, Puerto Rico, and DC*, <https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/> (last visited April 12, 2021).

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.<sup>8</sup> The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.<sup>9</sup> Full implementation of the statewide managing entity system occurred in April 2013; all geographic regions are now served by a managing entity.<sup>10</sup> DCF contracts with seven MEs.<sup>11</sup>

In FY 2019-2020, the network service providers under contract with the MEs served 274,560 individuals.<sup>12</sup>

### *Coordinated System of Care*

Managing entities are required to promote the development and implementation of a coordinated system of care.<sup>13</sup> A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.<sup>14</sup> A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to managing entities.<sup>15</sup> MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.<sup>16</sup> DCF must use performance-based contracts to award grants.<sup>17</sup>

There are several essential elements which make up a coordinated system of care, including:<sup>18</sup>

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:<sup>19</sup>

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;

---

<sup>8</sup> Ch. 2001-191, Laws of Fla.

<sup>9</sup> Ch. 2008-243, Laws of Fla.

<sup>10</sup> *The Department of Children and Families Performance and Accountability System for Behavioral Health Managing Entities*, Office of Program Policy Analysis and Government Accountability, July 18, 2014.

<sup>11</sup> Department of Children and Families, *Managing Entities*, <https://www.myflfamilies.com/service-programs/samh/managing-entities/> (last visited April 12, 2021).

<sup>12</sup> Department of Children and Families, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year*, (December 31, 2020) <https://www.myflfamilies.com/service-programs/samh/publications/docs/2019-2020%20Triennial%20Plan%20Update.pdf> (last visited April 12, 2021).

<sup>13</sup> S. 394.9082(5)(d), F.S.

<sup>14</sup> S. 394.4573(1)(c), F.S.

<sup>15</sup> S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> S. 394.4573(2), F.S.

<sup>19</sup> S. 394.495(4), F.S.

- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

Current law requires DCF to define the priority populations which would benefit from receiving care coordination, including considerations when defining such population.<sup>20</sup> Considerations include the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.<sup>21</sup> The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.<sup>22</sup>

### *The Baker Act*

In 1971, the Legislature adopted the Florida Mental Health Act, also known as the Baker Act.<sup>23</sup> The Baker Act authorizes treatment programs for mental, emotional, and behavioral health which are designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders.<sup>24</sup> These treatment programs include, but are not limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to encourage them to assume responsibility for their treatment and recovery.<sup>25</sup> The Baker Act provides legal procedures, protections, and rights to individuals examined or treated for mental illness and addresses legal procedures for examination and treatment including: voluntary admission;<sup>26</sup> involuntary admission;<sup>27</sup> involuntary inpatient treatment;<sup>28</sup> and involuntary outpatient treatment.<sup>29</sup>

The Baker Act requires each county to designate a single law enforcement agency to transfer a person in need of services.<sup>30</sup> If a person is in custody based on noncriminal or minor criminal behavior, law enforcement transports the person to the nearest receiving facility.<sup>31</sup> If, however, the person is arrested for a felony, the person must first be processed in the same manner as any other criminal suspect. Law enforcement must then transport the person to the nearest facility, unless the facility is unable to provide adequate security, in which case the person must be examined and treated wherever he or she is held.<sup>32</sup>

### *Receiving Facilities*

---

<sup>20</sup> S. 394.9082(3)(c), F.S.

<sup>21</sup> S. 394.9082(5)(b), F.S.

<sup>22</sup> S. 394.75(3), F.S.

<sup>23</sup> Ch. 71-131, Laws of Fla.; ch. 394, part I, F.S.

<sup>24</sup> S. 394.453(1)(a), F.S.

<sup>25</sup> S. 394.453(1)(b), F.S.

<sup>26</sup> S. 394.4625, F.S.

<sup>27</sup> Ss. 397.6772, 397.679, 397.6798, and 397.6811, F.S.

<sup>28</sup> S. 394.467, F.S.

<sup>29</sup> S. 394.4655, F.S.

<sup>30</sup> S. 394.462(1)(a), F.S.

<sup>31</sup> S. 394.462(1)(g), F.S.

<sup>32</sup> S. 394.462(1)(f) and (g), F.S.

A person experiencing severe emotional or behavioral problems often requires emergency treatment to stabilize his or her situation before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to a person on a voluntary or involuntary basis. Receiving facilities, often referred to as Baker Act facilities, are public or private facilities designated by DCF for the purpose of receiving and holding or referring, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.<sup>33</sup> A public receiving facility is a facility that provides mental health services to all persons, regardless of their ability to pay, and receives state funds for such purpose.<sup>34</sup> Facilities may only use appropriated funds to provide services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.<sup>35</sup>

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services.<sup>36</sup> CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.

As of March 2021, there were 131 Baker Act receiving facilities in Florida, including 66 public receiving facilities and 65 private receiving facilities.<sup>37</sup> Of the 53 public receiving facilities, 47 also contract to provide CSU services.<sup>38</sup>

### *Involuntary Admission*

A person receiving services on an involuntary basis must be taken to a designated “receiving facility.”<sup>39</sup> He or she cannot be involuntarily held in a receiving facility for examination for longer than 72 hours.<sup>40</sup> Generally, within the 72-hour examination period, one of the following must occur:<sup>41</sup>

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement resumes custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment

Under the Baker Act, a court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.<sup>42</sup> The petitioner must show, by clear and convincing evidence, that all available less restrictive treatment alternatives are inappropriate and the person is:<sup>43</sup>

- Mentally ill and, because of the illness, has refused voluntary placement for treatment or is unable to determine the need for placement; and

---

<sup>33</sup> S. 394.455(39), F.S. This term does not include a county jail.

<sup>34</sup> S. 394.455(37), F.S.

<sup>35</sup> Rule 65E-5.400(2), F.A.C.

<sup>36</sup> S. 394.875, F.S.

<sup>37</sup> Department of Children and Families, *Designated Baker Act Receiving Facilities*, (Feb. 2, 2021), <http://www.dcf.state.fl.us/service-programs/samh/crisis-services/docs/baker/Baker%20Act%20Receiving%20Facilities.pdf> (last visited April 12, 2021).

<sup>38</sup> *Id.*

<sup>39</sup> S. 394.455(26), F.S.

<sup>40</sup> S. 394.463(2)(f), F.S.

<sup>41</sup> S. 394.463(2)(i)4., F.S.

<sup>42</sup> Ss. 394.465(6) and 394.467(6), F.S.

<sup>43</sup> S. 394.467(1), F.S.

- Manifestly incapable of surviving alone or with the help of family and friends, and without treatment is likely to suffer from neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate involuntary examinations.<sup>44</sup> A circuit court may enter an *ex parte* order finding that a person meets the criteria for involuntary examination.<sup>45</sup> A law enforcement officer<sup>46</sup> may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.<sup>47</sup> A health care practitioner may initiate an involuntary examination by executing an official form adopted by DCF rule called a *Certificate of Professional Initiating an Involuntary Examination*.<sup>48</sup> The health care practitioner must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.<sup>49</sup> The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:<sup>50</sup>

- A physician licensed under ch. 458 or 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by the United States Department of Veterans Affairs or Department of Defense.<sup>51</sup>
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.<sup>52</sup>
- A psychiatric nurse who is certified as an advanced registered nurse practitioner under s. 464.012, F.S., who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.<sup>53</sup>
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

During FY 2018-19, there were 210,992 involuntary examinations in Florida. Law enforcement initiated more than half (51.34 percent), followed closely by those initiated by mental health professionals (46.45 percent), and the remaining 2.22 percent were initiated by a judge's *ex parte* order.<sup>54</sup>

### *Voluntary Admission*

---

<sup>44</sup> S. 394.463(2)(a), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. S. 943.10(1), F.S.

<sup>47</sup> 394.463(2)(a)2., F.S.

<sup>48</sup> The *Certificate of Professional Initiating an Involuntary Examination*, created by DCF, must be executed by health care practitioners initiating an involuntary examination under The Baker Act. The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of such person. See rule reference in Rule 65E-5.280, F.A.C. The form is also online. See, *Certificate of Professional Initiating an Involuntary Examination*, Department of Children and Families,

<https://eds.myflfamilies.com/DCFFormsInternet/Search/OpenDCFForm.aspx?FormId=1063> (last visited April 12, 2021).

<sup>49</sup> S. 394.463(2)(a)3., F.S.

<sup>50</sup> *Id.*

<sup>51</sup> S. 394.455(32), F.S.

<sup>52</sup> S. 394.455(5), F.S.

<sup>53</sup> S. 394.455(35), F.S.

<sup>54</sup> Christy, A., et al., *Fiscal Year 2018-2019 Annual Report*, Baker Act Reporting Center, Louis de la Parte Florida Mental Health Institute, Department of Mental Health Law & Policy, University of South Florida, Nov. 2020, [https://www.usf.edu/cbcs/baker-act/documents/ba\\_usf\\_annual\\_report\\_2018\\_2019.pdf](https://www.usf.edu/cbcs/baker-act/documents/ba_usf_annual_report_2018_2019.pdf) (last visited April 12, 2021).

A receiving facility may provide observation, diagnosis, or treatment to any person 18 years or older or any person under 18 if entry is sought by his or her guardian. A person may voluntarily enter a receiving facility only if he or she is willing and competent to consent to admission and treatment. A person under 18 may be admitted only after a hearing to verify the voluntariness of the consent. If a person is incompetent to consent to treatment,<sup>55</sup> he or she cannot be held under the voluntary provisions of the Baker Act.

A person on voluntary status is presumed to be able to exercise all of his or her rights under the law, including consenting or refusing consent to admission or treatment. If a person is competent, he or she may voluntarily enter any facility he or she chooses. Within 24 hours after voluntary admission, the admitting physician must document in the patient's clinical record that he or she is able to give express and informed consent for admission. If a person is not able to give express and informed consent for admission, he or she must be discharged or transferred to involuntary status.<sup>56</sup>

### Medicaid Mental Health Services

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including DCF, which makes eligibility determinations. Florida uses a comprehensive managed care delivery model for primary and acute care services to serve the bulk of its Medicaid population, known as the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) program.<sup>57</sup> The MMA program was enacted in 2011 and fully implemented in 2014.

Federal regulations require Medicaid managed care organizations (MCOs) to comply with strict requirements associated with the establishment of annual and lifetime dollar limits on coverage. If an MCO elects to use an annual or lifetime dollar limit on the coverage of mental health and substance abuse disorder treatments, that limit may not be less generous than any dollar limit on coverage for medical and surgical treatments. In addition, MCOs must comply with requirements for non-quantitative treatment limitations and must make available upon request the medical necessity criteria used for mental health or substance use disorders and the rationale for denials of reimbursement for mental health or substance use disorder benefits.<sup>58</sup>

The structure of each state's Medicaid program varies, but what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.<sup>59</sup> Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include community mental health and substance abuse services such as:<sup>60</sup>

- Psychiatric services;
- Individual, family, and group therapy;
- Behavior management; and

---

<sup>55</sup> "Incompetent to consent to treatment" means that a person's judgment is so affected by his or her mental illness that he or she lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment. S. 394.455(15), F.S.

<sup>56</sup> S. 394.4625(1)(f), F.S.

<sup>57</sup> S. 409.964, F.S.

<sup>58</sup> Medicaid and Children's Health Insurance Programs; Mental Health Parity and Addiction Equity Act of 2008; the Application of Mental Health Parity Requirements to Coverage Offered by Medicaid Managed Care Organizations, the Children's Health Insurance Program (CHIP), and Alternative Benefit Plans, 81 FR 18389 (March 30, 2016)(codified at 42 CFR Parts 438, 440, 456, 457).

<sup>59</sup> 42 U.S.C. §§ 1396-1396w-5; 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

<sup>60</sup> Section 409.906(8), F.S. See also Agency for Health Care Administration, *Florida's Medicaid Covered Services and HCBS Waivers*, [https://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Policy/behavioral\\_health\\_coverage/bhfu/Community\\_Behavioral\\_Health.shtml](https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/behavioral_health_coverage/bhfu/Community_Behavioral_Health.shtml) (last visited April 12, 2021).

- Therapeutic support.

## Criminal Justice System Mental Health Services

The state forensic system is a network of facilities and community services for criminal defendants needing mental health services.<sup>61</sup> Only an adult, or a juvenile being prosecuted as an adult, who is charged with a felony offense,<sup>62</sup> and adjudicated incompetent to proceed<sup>63</sup> or not guilty by reason of insanity,<sup>64</sup> may be involuntarily committed to a state civil<sup>65</sup> or forensic<sup>66</sup> treatment facility or placed on conditional release<sup>67</sup> by the court.<sup>68</sup> Florida does not provide forensic services for defendants charged with misdemeanor offenses.

### *Pretrial Intervention/Diversion Programs*

The Department of Corrections supervises pretrial intervention programs (PTIs) for defendants with pending criminal charges. Section 948.08, F.S., governs PTIs, also referred to as diversion programs, which are available to any first time offender, or any person not convicted of more than one nonviolent misdemeanor, who is charged with a misdemeanor or third degree felony.<sup>69</sup> The goal of PTI is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, or medical and psychological treatment, as appropriate.<sup>70</sup> Individuals may be eligible for pretrial intervention programs addressing their mental illness or substance use.

While a defendant is in a PTI, his or her criminal charges remain pending. If a defendant successfully completes a PTI, his or her charges may be dismissed.<sup>71</sup> If the defendant fails to successfully complete the PTI, the program administrator may recommend further supervision or the state attorney may resume prosecution for the offense. The court may not appoint a public defender to represent an indigent defendant who is released to a PTI unless the offender's release is revoked and he or she is subject to imprisonment if convicted.<sup>72</sup>

### *Mental Health Courts*

Mental health courts (MHCs) are problem-solving courts that combine judicial supervision with mental health treatment and other support services with the goal of improving public safety by:<sup>73</sup>

- Reducing criminal recidivism;
- Improving the quality of life of defendants with mental illnesses and increasing their participation in effective treatment; and
- Reducing court-and corrections-related costs, often by providing an alternative to incarceration.

Florida has 31 operating MHCs authorized under s. 394.47892, F.S.<sup>74</sup> Due to the lack of specific statutory framework for MHCs, eligibility criteria, program requirements, and other processes differ amongst circuits.

---

<sup>61</sup> See ch. 916, F.S.

<sup>62</sup> Section 916.106(6), F.S.

<sup>63</sup> Section 916.106(11), F.S.

<sup>64</sup> Fla. R. Crim. P. 3.217.

<sup>65</sup> A "civil facility" is a mental health facility run by or under contract with DCF to serve individuals committed under ch. 394, F.S., and defendants committed under ch. 916, F.S., who do not require the security of a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting. Section 916.106(4), F.S.

<sup>66</sup> A "forensic facility" is a separate and secure facility established within DCF or the Agency for Persons with Disabilities to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed under ch. 916, F.S., from nonforensic residents. Section 916.106(10), F.S.

<sup>67</sup> Section 916.304, F.S.

<sup>68</sup> See legislative intent in s. 916.105(1)–(4), F.S.

<sup>69</sup> Section 948.08(1), F.S.

<sup>70</sup> Section 948.08(1), F.S.

<sup>71</sup> Section 948.08(5), F.S. If a case is dismissed without prejudice, the case may be refiled at a later time.

<sup>72</sup> Section 948.08(3) and (4), F.S.

<sup>73</sup> Florida Courts, *Mental Health Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Mental-Health-Courts> (last visited April 12, 2021).

<sup>74</sup> Section 394.47892, F.S., authorizes each county to fund a mental health court program and addresses the funding of the programs.



## Public School Mental Health Services

### *Mental Health Assistance Allocation*

The Marjory Stoneman Douglas High School Public Safety Act (Act), discussed below, created the Mental Health Assistance Allocation within the Florida Education Finance Program.<sup>75</sup> The allocation is intended to provide funding to assist school districts in establishing or expanding school-based mental health care, train educators and other school staff in detecting and responding to mental health issues, and connecting children, youth, and families who may experience behavior health issues with appropriate services.<sup>76</sup> For the 2020-2021 school year, \$100 million was appropriated for the allocation,<sup>77</sup> with each school district receiving a minimum of \$100,000 with the remaining balance of funds allocated based on each district's proportionate share of the state's total unweighted full-time equivalent student enrollment.<sup>78</sup> Eligible charter schools are entitled to a proportionate share of the school district's allocation.<sup>79</sup>

School districts are prohibited from using the funds allocated under this section to supplant funds from other operating funds used for the provision of mental health services. These funds may not be used for salary increases or bonuses.<sup>80</sup>

In order to receive allocation funds, a school district must develop and submit to the district school board for approval a detailed plan outlining its local program and planned expenditures.<sup>81</sup> A school district's plan must include all district schools, including charter schools, unless a charter school elects to submit a plan independently from the school district.<sup>82</sup> Each approved plan must be submitted to the Commissioner of Education by August 1 each year.

The plan must be focused on a multitiered system of supports to deliver evidence-based mental health care assessment, diagnosis, intervention, treatment, and recovery services. Supports and services under the allocation are provided to students with one or more mental health or co-occurring substance abuse diagnoses and to students at high risk of such diagnoses. The provision of these services must be coordinated with a student's primary mental health care provider and with other mental health providers involved in the student's care.<sup>83</sup>

Plans must include elements such as:<sup>84</sup>

- Direct employment of school-based mental health service providers to expand and enhance school-based student services and reduce the ratio of students to staff to align with nationally recommended ratio models;
- Contracts or interagency agreements with one or more local community behavioral health providers or providers of Community Action Team services to provide behavioral health staff presence and services at district schools; and
- Policies and procedures which ensure students who are referred to a school-based or community-based mental health service provider for mental health screening are assessed within 15 days of referral, and that school-based mental health services are initiated within 15

---

<sup>75</sup> Section 1011.62(16), F.S.

<sup>76</sup> Id.

<sup>77</sup> Specific Appropriation 8 and 92, s. 2, ch. 2020-111, L.O.F.

<sup>78</sup> Section 1011.62(16), F.S.; See also Florida Department of Education, Office of Safe Schools, *2020-2021 FEFP – Revised Final Conference Calculations as funded in Chapter 2020-111 (Mental Health Assistance Allocation)*, <http://www.fldoe.org/core/fileparse.php/18612/urlt/2021DistrictMHAssisAllocation.pdf> (last visited April 12, 2021).

<sup>79</sup> Section 1011.62(16), F.S.

<sup>80</sup> Id.

<sup>81</sup> Section 1011.62(16)(a)1.-2., F.S.

<sup>82</sup> Id.

<sup>83</sup> Section 1011.61(16)(b), F.S.

<sup>84</sup> Id.

days after identification and assessment and community-based mental health services are initiated within 30 days after school or district referral.<sup>85</sup>

School districts are also required to report program outcomes and expenditures annually for the previous fiscal year by September 30. The report must, at a minimum, provide the number of each of the following:<sup>86</sup>

- Students who receive screenings or assessments.
- Students who are referred to either school-based or community-based providers for services.
- Students who receive either school-based or community based interventions.
- School-based or community-based mental health providers that were paid out of the mental health assistance allocation.
- Contract-based collaboration efforts or partnerships with community mental health programs.

## Health Insurance Coverage of Mental Health and Substance Abuse Services

### *Commercial Plans*

Prior to 1996, private health insurance coverage for mental illness was generally not as comprehensive as coverage for medical and surgical benefits. In response, the Mental Health Parity Act<sup>87</sup> (MHPA) was enacted in 1996, which requires parity of medical and surgical benefits with mental health benefits for annual and aggregate lifetime limits of large group plans.

In 2008, Congress passed the Mental Health Parity and Addiction Equity Act<sup>88</sup> (MHPAEA), which generally applies to large group health plans.<sup>89</sup> The MHPAEA expanded parity of coverage to include financial requirements, treatment limitations, and in- and out-of-network coverage if a plan provided coverage for mental illness. The MHPAEA also applies to the treatment of substance use disorders.<sup>90</sup> Like the MHPA, the MHPAEA does not require large groups to provide benefits for mental health or substance use disorders. The MHPAEA contains a cost exemption, which allows a group health plan to receive a waiver, exempting them from some of the key requirements, if the plan demonstrates that costs increased at least 1 percent because of compliance.<sup>91</sup>

In 2010, the Patient Protection and Affordable Care Act<sup>92</sup> (PPACA) amended the MHPAEA to apply the provisions to individual health insurance coverage. The PPACA mandates that qualified health insurance must provide coverage of 10 essential health benefits,<sup>93</sup> including coverage for mental health and substance use disorders for individual and small group qualified health plans. The final rule, implementing these provisions, generally requires health insurers offering health insurance coverage in the individual and small group markets to comply with the requirements of the MHPAEA regulations in order to satisfy the essential health benefit requirement.<sup>94</sup>

### *Office of Insurance Regulation*

---

<sup>85</sup> Section 1011.62(16)(b)1.-3.,F.S.

<sup>86</sup> Section 1011.62(16)(c)-(d),F.S.

<sup>87</sup> Pub. L. No. 104-204.

<sup>88</sup> Pub. L. No. 110-343.

<sup>89</sup> Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program, 78 FR 68239 (November 13, 2013) (codified at 26 CFR Part 54, 29 CFR Part 2590, 45 CFR Parts 146 and 147).

<sup>90</sup> 45 CFR ss. 146 and 160.

<sup>91</sup> Plans and issuers that make changes to comply with MHPAEA and incur an increased cost of at least 2 percent in the first year that MHPAEA applies to the plan or coverage or at least 1 percent in any subsequent plan year may claim an exemption from MHPAEA based on their increased cost. If such a cost is incurred, the plan or coverage is exempt from MHPAEA requirements for the plan or policy year following the year the cost was incurred. The plan sponsors or issuers must notify the plan beneficiaries that MHPAEA does not apply to their coverage. These exemptions last 1 year. After that, the plan or coverage is required to comply again; however, if the plan or coverage incurs an increased cost of at least 1 percent in that plan or policy year, the plan or coverage could claim the exemption for the following plan or policy year.

<sup>92</sup> Pub. L. No.111-148, as amended by Pub. L. No. 111-152.

<sup>93</sup> 45 CFR s. 156.115.

<sup>94</sup> See 45 CFR 147.150 and 156.115 (78 FR 12834, Feb. 25, 2013).

The regulatory oversight of health insurance is generally reserved to the states, except when explicitly preempted by federal law. In Florida, the Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Florida Insurance Code.<sup>95</sup>

All health insurance policies issued in Florida, with the exception of certain self-insured policies,<sup>96</sup> must meet certain requirements that are detailed throughout the Florida Insurance Code. Chapter 627, F.S., sets parameters and requirements for health insurance policies and ch. 641, F.S., provides requirements for health plans issued by health maintenance organizations (HMOs). The OIR reviews health insurance policies and contracts for compliance with the MHPAEA.<sup>97</sup> The OIR communicates any violations of the MHPAEA to the insurer or HMO. If the insurer or HMO fails to correct the issue, the OIR would refer the issue to the appropriate federal regulator as a possible violation of federal law.<sup>98</sup>

### Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>99</sup> Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>100</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.<sup>101</sup> Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.<sup>102</sup>

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>103</sup> The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>104</sup>

### Substance Abuse Treatment in Florida

In 1970, the Legislature enacted ch. 397, F.S., governing the treatment and rehabilitation of drug dependents.<sup>105</sup> The following year, the Legislature enacted ch. 396, F.S., titled the "Myers Act" as the state's comprehensive alcoholism prevention, control, and treatment act, modeled after the federal Hughes Act.<sup>106</sup> In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").<sup>107</sup> The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

---

<sup>95</sup> S. 20.121(3)(a)1., F.S. The OIR's commissioner is the agency head for purposes of final agency action, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet). The Florida Insurance Code includes chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

<sup>96</sup> 29 U.S.C. 18 § 1001 et seq. ERISA regulates certain self-insured plans, which represent approximately 50 percent of the insureds in Florida. These plans cannot be regulated by state law.

<sup>97</sup> S. 624.26, F.S.

<sup>98</sup> Id.

<sup>99</sup> World Health Organization, *Substance Abuse*, [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last visited April 12, 2021).

<sup>100</sup> Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited March 20, 2021).

<sup>101</sup> National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited April 12, 2021).

<sup>102</sup> Id.

<sup>103</sup> *Supra*, note 100.

<sup>104</sup> Id.

<sup>105</sup> Department of Children and Families, *Marchman Act User Reference Guide 2003*, <https://www.myflfamilies.com/service-programs/samh/crisis-services/docs/marchman/marchmanacthand03p.pdf>, (last visited April 12, 2021).

<sup>106</sup> Id.

<sup>107</sup> Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

Additionally, the Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations and delivered through community-based providers.<sup>108</sup>

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence.<sup>109</sup>

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.<sup>110</sup>
- **Treatment Services:** Treatment services<sup>111</sup> include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.<sup>112</sup>
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.<sup>113</sup>

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,<sup>114</sup> intervention,<sup>115</sup> and clinical treatment services.<sup>116</sup>

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.<sup>117</sup> “Clinical treatment services” include, but are not limited to, the following licensable service components:<sup>118</sup>

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.

---

<sup>108</sup> These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.

<sup>109</sup> Department of Children and Families, *Treatment for Substance Abuse*, available at <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml>, (last visited April 12, 2021).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.

<sup>112</sup> *Supra*, note 109.

<sup>113</sup> *Id.*

<sup>114</sup> Section 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. See also, Department of Children and Families, *Substance Abuse: Prevention*, <https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml>, (last visited April 12, 2021). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.

<sup>115</sup> Section 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.

<sup>116</sup> Section 397.311(25), F.S.

<sup>117</sup> *Supra*, note 116.

<sup>118</sup> Section 397.311(25)(a), F.S.

- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.

### The Marjory Stoneman Douglas High School Public Safety Commission

In response to the shooting at Marjory Stoneman Douglas High School on February 14, 2018, the Florida Legislature passed SB 7026, the Marjory Stoneman Douglas High School Public Safety Act (Act).<sup>119</sup> The Act's provisions addressed school safety and security by creating the Office of Safe Schools (OSS) within the Florida Department of Education (DOE) and requiring increased coordination among state and local agencies serving students with or at-risk of mental illness, among other provisions.

The Act created the Marjory Stoneman Douglas High School Public Safety Commission (MSD Commission), composed of 16 members, to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents and develop recommendations for system-wide improvements. The MSD Commission submitted its initial report on January 2, 2019, which contained numerous school safety and security recommendations<sup>120</sup> that the Legislature addressed in SB 7030 (2019), Implementation of Legislative Recommendations of the Marjory Stoneman Douglas High School Public Safety Commission.<sup>121</sup> The MSD Commission's second report, submitted on November 1, 2019, provided recommendations related to safe-school officers, threat assessments, juvenile diversion programs, and mental health, among other recommendations.<sup>122</sup> The MSD Commission is authorized to issue annual reports and is scheduled to sunset on July 1, 2023.<sup>123</sup>

In February 2019, Governor Ron DeSantis requested, and the Florida Supreme Court convened, a grand jury to study systemic school safety failures. The grand jury was tasked with investigating whether specific public entities failed to act or committed fraud that undermined the school safety activities that the Act and subsequent legislation required.<sup>124</sup> The Grand Jury's third and most recent report, issued in December 2020, included an analysis of the state's mental health infrastructure and found systemic problems are impacting mental health:<sup>125</sup>

- The current mental health system is underfunded leading to an inability to diagnose and properly treat mental health problems;
- The system is too decentralized with national, state, and local entities providing parallel and duplicative resources with little to no coordination;
- Many of the entities involved work for different agencies with different goals; and
- DCF is not currently equipped or empowered to exercise the degree of leadership and control necessary to correct problems in the system.

To address such problems, the Grand Jury recommended the Legislature appoint a commission to specifically examine the provision of mental health services in the state.<sup>126</sup> The Legislature should ensure that relevant stakeholders have an opportunity to participate in and provide knowledge to the

<sup>119</sup> Chapter 2018-3, L.O.F.

<sup>120</sup> Marjory Stoneman Douglas High School Public Safety Commission, *Initial Report* (Jan. 2, 2019), <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> (last visited April 12, 2021).

<sup>121</sup> Chapter 2019-22, L.O.F.

<sup>122</sup> Marjory Stoneman Douglas High School Public Safety Commission, *Second Report* (Nov. 1, 2020), <http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf> (last visited April 12, 2021).

<sup>123</sup> Section 943.687(9), F.S.

<sup>124</sup> Ron DeSantis, Governor of Florida, *Petition for Order to Impanel a Statewide Grand Jury*, (Feb. 13, 2019), [https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240\\_petition\\_72393\\_e83.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240_petition_72393_e83.pdf) (last visited April 12, 2021); *In re Statewide Grand Jury #20*, No. SC19-240, 2019 WL 908518 (Fla. Feb. 25, 2019), [https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240\\_disposition\\_145442\\_d04i.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240_disposition_145442_d04i.pdf) (last visited April 12, 2021).

<sup>125</sup> Statewide Grand Jury # 20, *Third Interim Report of the Twentieth Statewide Grand Jury*, (Dec. 10, 2020), [https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240\\_miscdoc\\_365089\\_e20.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240_miscdoc_365089_e20.pdf) (last visited April 12, 2021).

<sup>126</sup> *Id.* at p. 21

commission. The commission should consider how to best provide and facilitate services in dual diagnosis<sup>127</sup> cases. Additionally, the commission should be charged with structuring and staffing a permanent, agency-level entity to manage mental health, behavioral health, and substance abuse and addiction services throughout the state.<sup>128</sup> Lastly, a cabinet-level agency should be created and funded to administer disparate sources of funding and services relating to the state's mental health system.<sup>129</sup>

## Previous Commissions on Mental Health and Substance Abuse

### 2001

In 1999, the Legislature created the Florida Commission on Mental Health and Substance Abuse (Commission) to review and evaluate the state's mental health and substance abuse system and make recommendations for change.<sup>130</sup> The Commission was made up of 23 professionals from throughout the state, including university professors, service providers, law enforcement, health care professionals, legislators, and state employees. The Commission found that the state's mental health and substance abuse service system is complex and diffuse, that diagnosis and treatment of disorders have improved substantially, and no one governmental entity is responsible for leading the overall system. The Commission recommended:<sup>131</sup>

- Establishing a statewide Coordinating Council for Mental Health and Substance Abuse (Council) in the Executive Office of the Governor that will coordinate with the Governor's Office of Drug Control to lead an overall system for mental health and substance abuse services;
- That the Council, in an effort to reduce stigma, should provide and coordinate a range of prevention and education activities to inform the public of the signs and symptoms of mental health and substance abuse disorders and the availability of effective treatment;
- Adequate emergency response capacity should be uniformly available across the state to assure services are available and accessible;
- That DCF should develop criteria for identifying individuals with ongoing need for mental health and substance abuse services and implement a process to enroll such individuals in continuing care services;
- The Council should initiate special studies to better understand the needs of individuals who are inadequately served by the mental health and substance abuse system and develop solutions to meet those needs;
- The Council should place emphasis on individuals served in the law enforcement, corrections, and court systems and divert such individuals from incarceration into treatment whenever possible;
- DCF and the Council should focus on access and choice in mental health and substance abuse services; and
- The Council should promote the development of post-secondary educational programs to provide state-of-the-art knowledge for the state's professional and para-professional service providers that is responsive to the environments in which they will practice.

### 2006

In 2006, DCF's Assistant Secretary for Substance Abuse and Mental Health appointed a workgroup to address the plans and business models for substance abuse and mental health services in the state. The group included members from DCF service districts, substance abuse and mental health providers, consultants, and professional associations. The workgroup developed several recommendations to improve the substance abuse and mental health system in this state.<sup>132</sup>

---

<sup>127</sup> The Grand Jury describes "dual diagnosis" cases as cases that lie at the nexus of mental health, substance abuse, and law enforcement interests.

<sup>128</sup> *Supra*, note 125 at p. 23.

<sup>129</sup> *Id.* at p. 24.

<sup>130</sup> Florida Commission on Mental Health and Substance Abuse, *Final Report* (January 2001).

<sup>131</sup> *Id.*

<sup>132</sup> Department of Children and Families, *Managing Substance Abuse and Mental Health Services Workgroup* (October 2006).

- Define DCF's substance abuse and mental health covered populations by establishing program eligibility criteria;
- Support an effective and orderly transition to Medicaid reform;
- Support several approaches to service management and managing entities depending on the characteristics of service districts;
- Align statutes and state policy in the areas of eligibility, enrollment, case rates, and authorizations of the managing entities; and
- Improve the data management and payment systems so they can support flexible, prospective-payment systems such as case rates and provide the more refined utilization data needed by service districts and managed entities.

As a result, in 2008, the Legislature authorized DCF to contract with managing entities to manage the day-to-day operational delivery of behavioral health services through an organized system of care.<sup>133</sup>

## Effect of the Bill

### Commission on Mental Health and Substance Abuse

The bill creates the Commission on Mental Health and Substance Abuse (Commission) adjunct to DCF. DCF is required to provide administrative staff and support services for the Commission.

The purpose of the Commission is to:

- Examine the current methods of providing mental health and substance abuse services in the state;
- Improve the effectiveness of current practices, procedures, programs, and initiatives in providing such services;
- Identify any barriers or deficiencies in the delivery of such services; and
- Recommend changes to existing laws, rules, and policies necessary to implement the Commission's recommendations.

The bill requires the Commission to have 19 members including the Secretaries of AHCA and DCF. The Governor must appoint seven members, including:

- A psychologist licensed under ch. 490, F.S., practicing within the mental health delivery system;
- A mental health professional licensed under ch. 491, F.S.;
- A representative of mental health courts;
- An emergency room physician;
- A representative from the field of law enforcement;
- A representative from the criminal justice system; and
- A representative of a child welfare agency involved in the delivery of behavioral health services.

The President of the Senate must appoint five members, including:

- A member of the Senate;
- A person living with a mental health disorder;
- A family member of a consumer of publicly funded mental health services;
- A representative of the Louis de la Parte Mental Health Institute within the University of South Florida; and
- A representative of a county school district.

The Speaker of the House of Representatives must appoint five members, including:

- A member of the House of Representatives;
- A representative of a treatment facility;
- A representative of a managing entity;
- A representative of a community substance abuse provider; and
- A psychiatrist licensed under chs. 458 or 459, F.S., practicing within the mental health delivery system.

The Governor appoints the commission chair from among its members. Appointments must be made by August 1, 2021, and members serve at the pleasure of the officer who appointed the member. A vacancy on the Commission is required to be filled in the same manner as the original appointment.

The Commission is required to convene no later than September 1, 2021, and must meet monthly or upon the call of the chair. Meetings are authorized to be held via teleconference or other electronic means.

The duties of the Commission include:



- Conducting a review and evaluation of the management and functioning of existing publicly supported mental health and substance abuse systems in DCF, AHCA, and all other relevant state departments;
  - At a minimum, such review must include a review of current goals and objectives, current planning, service strategies, coordination management, purchasing, contracting, financing, local government funding responsibility, and accountability mechanisms.
- Considering the unique needs of people who are dually diagnosed;
- Addressing access to, financing of, and scope of responsibility in the delivery of emergency behavioral health care services;
- Addressing the quality and effectiveness of current service delivery systems and professional staffing and clinical structure of services, roles, and responsibilities of public and private providers;
- Addressing priority population groups for publicly funded services, identifying the comprehensive delivery systems, needs assessment and planning activities, and local government responsibilities for funding services;
- Reviewing the implementation of ch. 2020-107, Laws of Fla.;<sup>134</sup>
- Identifying gaps in the provision of mental health and substance abuse services;
- Providing recommendations on how managing entities may promote service continuity;
- Making recommendations about the mission and objectives of state-supported mental health and substance abuse services and the planning, management, staffing, financing, contracting, coordination, and accountability of mechanisms best suited for the recommended mission and objectives; and
- Evaluating and making recommendations regarding the establishment of a permanent, agency-level entity to manage mental health, behavioral health, substance abuse, and related services statewide, including the:
  - Duties and organizational structure;
  - Resource needs and possible sources of funding;
  - Impact on access to and the quality of services;
  - Impact on individuals with behavioral health needs, and their families, who are currently receiving services and those who are in need of services; and
  - Relation to and integration with service providers, managing entities, communities, state agencies, and provider systems.

The bill requires state departments and agencies to provide assistance in a timely manner if requested by the Commission.

The Commission is required to submit an initial report by September 1, 2022, and a final report by September 1, 2023, to the Governor, President of the Senate, and Speaker of the House of Representatives on its findings and recommendations on how to best provide and facilitate mental health and substance abuse services.

The bill requires the repeal of the statute authorizing the Commission on September 1, 2023, unless saved from repeal through reenactment by the Legislature.

The bill takes effect upon becoming a law.

## B. SECTION DIRECTORY:

**Section 1** Provides legislative intent.

**Section 2** Creates s. 394.9086, F.S., relating to Commission on Mental Health and Substance Abuse.

---

<sup>134</sup> 2020 House Bill 945 (Silvers) requires managing entities to implement of a coordinated system of mental health care for children and expands the use of mobile response teams (MRT) across the state. It requires the Florida Mental Health Institute within the University of South Florida to develop a model protocol for school use of MRTs. The bill also requires AHCA and DCF to identify children and adolescents who are the highest users of crisis stabilization services and take action to meet the needs of such children. Lastly, the bill requires AHCA to continually test the Medicaid managed care provider network databases to ensure behavioral health providers are accepting enrollees and confirm that enrollees have access to behavioral health systems.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has a significant, negative fiscal impact on DCF as the bill requires the department to provide administrative staff and support services for the commission. DCF estimates that implementing the bill requires two staff members with a cost of \$171,296 (a \$166,918 recurring need).<sup>135</sup> A review of the department's vacant positions shows there are sufficient existing vacancies from which resources can be redirected to fund new positions, many of which have been vacant for over 200 days.

Furthermore, the Commission's final work product is due on September 1, 2023, meaning the fiscal impact is nonrecurring. On average, DCF reverts \$626,700 of budget authority from the Other Personnel Services (OPS) category. This category is to fund personnel resources that are temporary in nature. The department has the ability to internally reorganize positions as needed.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Rulemaking authority is not needed to implement the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the Surgeon General and adds a person living with a mental disorder and a representative of mental health courts to the commission;
- Replaces the appointees from a small rural county school district and a large county school district with one appointee representing a school district;
- Expanded the duties of the commission to include:
  - Reviewing the implementation of ch. 2020-107, Laws of Fla.;
  - Identifying any gaps in providing mental health and substance use disorder services; and
  - Providing recommendations on how managing entities may promote service continuity.
- Required the commission to make more detailed recommendations on the establishment of an agency-level entity; and
- Required the commission to meet virtually and submit an initial report by September 2022, and a final report by September 2023 to the Governor, Senate President, and Speaker of the House.

This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.