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CS/CS/HB 893

2022 Legislature

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 2 An act relating to child welfare placements; amending  
 3 s. 39.407, F.S.; authorizing the Department of  
 4 Children and Families, under certain circumstances, to  
 5 place children in its custody in therapeutic group  
 6 homes for residential mental health treatment without  
 7 prior court approval; revising definitions; defining  
 8 the term "therapeutic group home"; providing that the  
 9 department, rather than the Agency for Health Care  
 10 Administration, shall appoint qualified evaluators to  
 11 conduct suitability assessments of certain children in  
 12 the department's custody; specifying qualifications  
 13 for evaluators conducting suitability assessments for  
 14 certain placements; revising requirements for  
 15 suitability assessments; specifying when the  
 16 department must provide a copy of the assessment to  
 17 the guardian ad litem and the court; removing the  
 18 department's and the agency's rulemaking authority;  
 19 reordering and amending s. 409.166, F.S.; revising the  
 20 definition of the term "special needs child"; amending  
 21 ss. 63.207, 258.0142, 409.1664, and 414.045, F.S.;  
 22 conforming provisions to changes made by the act;  
 23 providing an effective date.

24  
 25 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (6) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(6) Children ~~who are~~ in the legal custody of the department may be placed by the department, without prior approval of the court, in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed.

(a) As used in this subsection, the term:

~~2.1.~~ "Residential treatment" or "residential treatment program" means a placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395.

~~1.2.~~ "Least restrictive alternative" means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably

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51 necessary to achieve a substantial therapeutic benefit or to  
 52 protect the child or adolescent or others from physical injury.

53 3. "Suitable for residential treatment" or "suitability"  
 54 means a determination concerning a child or adolescent with an  
 55 emotional disturbance as defined in s. 394.492(5) or a serious  
 56 emotional disturbance as defined in s. 394.492(6) that each of  
 57 the following criteria is met:

58 a. The child requires residential treatment.

59 b. The child is in need of a residential treatment program  
 60 and is expected to benefit from mental or behavioral health  
 61 treatment.

62 c. An appropriate, less restrictive alternative to  
 63 residential treatment is unavailable.

64 4. "Therapeutic group home" means a residential treatment  
 65 center that offers a 24-hour residential program providing  
 66 community-based mental health treatment and mental health  
 67 support services to children who meet the criteria in s.  
 68 394.492(5) or (6) in a nonsecure, homelike setting.

69 (b) Whenever the department believes that a child in its  
 70 legal custody is emotionally disturbed and may need residential  
 71 treatment, an examination and suitability assessment must be  
 72 conducted by a qualified evaluator ~~who is~~ appointed by the  
 73 department ~~Agency for Health Care Administration~~. This  
 74 suitability assessment must be completed before the placement of  
 75 the child in a residential treatment program ~~center for~~

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~~emotionally disturbed children and adolescents or a hospital.~~

1. The qualified evaluator for placement in a residential treatment center, other than a therapeutic group home, or a hospital must be a psychiatrist or a psychologist licensed in this state ~~Florida~~ who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

2. The qualified evaluator for placement in a therapeutic group home must be a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health counselor licensed under chapter 491 who has at least 2 years of experience in the diagnosis and treatment of serious emotional or behavioral disturbance in children and adolescents and who has no actual or perceived conflict of interest with any residential treatment center or program.

(c) Consistent with the requirements of this section ~~Before a child is admitted under this subsection,~~ the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted an ~~a personal~~ examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require treatment in a residential treatment program and is reasonably likely to benefit from the treatment.

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101           2. The child has been provided with a clinically  
 102 appropriate explanation of the nature and purpose of the  
 103 treatment.

104           3. All available modalities of treatment less restrictive  
 105 than residential treatment have been considered, and a less  
 106 restrictive alternative that would offer comparable benefits to  
 107 the child is unavailable.

108  
 109 A copy of the written findings of the evaluation and suitability  
 110 assessment must be provided to the department, to the guardian  
 111 ad litem, and, if the child is a member of a Medicaid managed  
 112 care plan, to the plan that is financially responsible for the  
 113 child's care in residential treatment, all of whom must be  
 114 provided with the opportunity to discuss the findings with the  
 115 evaluator.

116           (d) Immediately upon placing a child in a residential  
 117 treatment program under this section, the department must notify  
 118 the guardian ad litem and the court having jurisdiction over the  
 119 child. Within 5 days after the department's receipt of the  
 120 assessment, the department shall ~~and must~~ provide the guardian  
 121 ad litem and the court with a copy of the assessment by the  
 122 qualified evaluator.

123           (e) Within 10 days after the admission of a child to a  
 124 residential treatment program, the director of the residential  
 125 treatment program or the director's designee must ensure that an

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126 individualized plan of treatment has been prepared by the  
127 program and has been explained to the child, to the department,  
128 and to the guardian ad litem, and submitted to the department.  
129 The child must be involved in the preparation of the plan to the  
130 maximum feasible extent consistent with his or her ability to  
131 understand and participate, and the guardian ad litem and the  
132 child's foster parents must be involved to the maximum extent  
133 consistent with the child's treatment needs. The plan must  
134 include a preliminary plan for residential treatment and  
135 aftercare upon completion of residential treatment. The plan  
136 must include specific behavioral and emotional goals against  
137 which the success of the residential treatment may be measured.  
138 A copy of the plan must be provided to the child, to the  
139 guardian ad litem, and to the department.

140 (f) Within 30 days after admission, the residential  
141 treatment program must review the appropriateness and  
142 suitability of the child's placement in the program. The  
143 residential treatment program must determine whether the child  
144 is receiving benefit toward the treatment goals and whether the  
145 child could be treated in a less restrictive treatment program.  
146 The residential treatment program shall prepare a written report  
147 of its findings and submit the report to the guardian ad litem  
148 and to the department. The department must submit the report to  
149 the court. The report must include a discharge plan for the  
150 child. The residential treatment program must continue to

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151 evaluate the child's treatment progress every 30 days thereafter  
152 and must include its findings in a written report submitted to  
153 the department. The department may not reimburse a facility  
154 until the facility has submitted every written report that is  
155 due.

156 (g)1. The department must submit, at the beginning of each  
157 month, to the court having jurisdiction over the child, a  
158 written report regarding the child's progress toward achieving  
159 the goals specified in the individualized plan of treatment.

160 2. The court must conduct a hearing to review the status  
161 of the child's residential treatment plan no later than 60 days  
162 after the child's admission to the residential treatment  
163 program. An independent review of the child's progress toward  
164 achieving the goals and objectives of the treatment plan must be  
165 completed by a qualified evaluator and submitted to the court  
166 before its 60-day review.

167 3. For any child in residential treatment at the time a  
168 judicial review is held pursuant to s. 39.701, the child's  
169 continued placement in residential treatment must be a subject  
170 of the judicial review.

171 4. If at any time the court determines that the child is  
172 not suitable for continued residential treatment, the court  
173 shall order the department to place the child in the least  
174 restrictive setting that is best suited to meet his or her  
175 needs.

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176 (h) After the initial 60-day review, the court must  
 177 conduct a review of the child's residential treatment plan every  
 178 90 days.

179 ~~(i) The department must adopt rules for implementing~~  
 180 ~~timeframes for the completion of suitability assessments by~~  
 181 ~~qualified evaluators and a procedure that includes timeframes~~  
 182 ~~for completing the 60-day independent review by the qualified~~  
 183 ~~evaluators of the child's progress toward achieving the goals~~  
 184 ~~and objectives of the treatment plan which review must be~~  
 185 ~~submitted to the court. The Agency for Health Care~~  
 186 ~~Administration must adopt rules for the registration of~~  
 187 ~~qualified evaluators, the procedure for selecting the evaluators~~  
 188 ~~to conduct the reviews required under this section, and a~~  
 189 ~~reasonable, cost-efficient fee schedule for qualified~~  
 190 ~~evaluators.~~

191 Section 2. Subsection (1) of section 63.207, Florida  
 192 Statutes, is amended to read:

193 63.207 Out-of-state placement.-

194 (1) Unless the parent placing a minor for adoption files  
 195 an affidavit that the parent chooses to place the minor outside  
 196 the state, giving the reason for that placement, or the minor is  
 197 to be placed with a relative or with a stepparent, or the minor  
 198 is a difficult to place ~~special-needs~~ child, as defined in s.  
 199 409.166(2) ~~s. 409.166~~, or for other good cause shown, an  
 200 adoption entity may not:

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201 (a) Take or send a minor out of the state for the purpose  
 202 of placement for adoption; or

203 (b) Place or attempt to place a minor for the purpose of  
 204 adoption with a family who primarily lives and works outside  
 205 Florida in another state. If an adoption entity is acting under  
 206 this subsection, the adoption entity must file a petition for  
 207 declaratory statement pursuant to s. 63.102 for prior approval  
 208 of fees and costs. The court shall review the costs pursuant to  
 209 s. 63.097. The petition for declaratory statement must be  
 210 converted to a petition for an adoption upon placement of the  
 211 minor in the home. When a minor is placed for adoption with  
 212 prospective adoptive parents who primarily live and work outside  
 213 this state, the circuit court in this state may retain  
 214 jurisdiction over the matter until the adoption becomes final.  
 215 The prospective adoptive parents may finalize the adoption in  
 216 this state.

217 Section 3. Paragraph (b) of subsection (1) and subsection  
 218 (3) of section 258.0142, Florida Statutes, are amended to read:  
 219 258.0142 Foster and adoptive family state park fee  
 220 discounts.—

221 (1) To promote awareness of the contributions made by  
 222 foster families and adoptive families to the vitality of the  
 223 state, the Division of Recreation and Parks shall provide the  
 224 following discounts on state park fees to persons who present  
 225 written documentation satisfactory to the division which

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226 evidences their eligibility for the discounts:

227 (b) Families who adopt a difficult to place ~~special needs~~  
 228 child as described in s. 409.166(2)(d)2. ~~s. 409.166(2)(a)2.~~ from  
 229 the Department of Children and Families shall receive a one-time  
 230 family annual entrance pass at no charge at the time of the  
 231 adoption.

232 (3) The division shall continue its partnership with the  
 233 Department of Children and Families to promote fostering and  
 234 adoption of difficult to place ~~special needs~~ children with  
 235 events held each year during National Foster Care Month and  
 236 National Adoption Month.

237 Section 4. Subsection (2) of section 409.166, Florida  
 238 Statutes, is reordered and amended to read:

239 409.166 Children within the child welfare system; adoption  
 240 assistance program.—

241 (2) DEFINITIONS.—As used in this section, the term:

242 (a) ~~(b)~~ "Adoption assistance" means financial assistance  
 243 and services provided to a child and his or her adoptive family.  
 244 Such assistance may include a maintenance subsidy, medical  
 245 assistance, Medicaid assistance, and reimbursement of  
 246 nonrecurring expenses associated with the legal adoption. The  
 247 term also includes a tuition exemption at a postsecondary career  
 248 program, community college, or state university.

249 (b) ~~(e)~~ "Child within the child welfare system" or "child"  
 250 means a difficult to place ~~special needs~~ child and any other

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251 child who was removed from the child's caregiver due to abuse or  
 252 neglect and whose permanent custody has been awarded to the  
 253 department or to a licensed child-placing agency.

254 ~~(c)-(d)~~ "Department" means the Department of Children and  
 255 Families.

256 ~~(d)-(a)~~ "Difficult to place ~~special-needs~~ child" means:

257 1. A child whose permanent custody has been awarded to the  
 258 department or to a licensed child-placing agency;

259 2. A child who has established significant emotional ties  
 260 with his or her foster parents or is not likely to be adopted  
 261 because he or she is:

262 a. Eight years of age or older;

263 b. Developmentally disabled;

264 c. Physically or emotionally handicapped;

265 d. A member of a racial group that is disproportionately  
 266 represented among children described in subparagraph 1. ~~Of black~~  
 267 ~~or racially mixed parentage;~~ or

268 e. A member of a sibling group of any age, provided two or  
 269 more members of a sibling group remain together for purposes of  
 270 adoption; and

271 3. Except when the child is being adopted by the child's  
 272 foster parents or relative caregivers, a child for whom a  
 273 reasonable but unsuccessful effort has been made to place the  
 274 child without providing a maintenance subsidy.

275 (e) "Licensed child-placing agency" has the same meaning

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276 as in s. 39.01.

277 (f) "Maintenance subsidy" means a monthly payment as  
 278 provided in subsection (4).

279 Section 5. Paragraph (a) of subsection (1) and subsection  
 280 (2) of section 409.1664, Florida Statutes, are amended to read:

281 409.1664 Adoption benefits for qualifying adoptive  
 282 employees of state agencies, veterans, and servicemembers.—

283 (1) As used in this section, the term:

284 (a) "Child within the child welfare system" has the same  
 285 meaning as provided in s. 409.166(2) ~~s. 409.166~~.

286 (2) A qualifying adoptive employee, veteran, or  
 287 servicemember who adopts a child within the child welfare system  
 288 who is difficult to place as ~~has special needs~~ described in s.  
 289 409.166(2)(d)2. ~~s. 409.166(2)(a)2.~~ is eligible to receive a  
 290 lump-sum monetary benefit in the amount of \$10,000 per such  
 291 child, subject to applicable taxes. A qualifying adoptive  
 292 employee, veteran, or servicemember who adopts a child within  
 293 the child welfare system who is not difficult to place as ~~does~~  
 294 ~~not have special needs~~ described in s. 409.166(2)(d)2. ~~s.~~  
 295 ~~409.166(2)(a)2.~~ is eligible to receive a lump-sum monetary  
 296 benefit in the amount of \$5,000 per such child, subject to  
 297 applicable taxes. A qualifying adoptive employee of a charter  
 298 school or the Florida Virtual School may retroactively apply for  
 299 the monetary benefit provided in this subsection if such  
 300 employee was employed by a charter school or the Florida Virtual

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301 School when he or she adopted a child within the child welfare  
302 system pursuant to chapter 63 on or after July 1, 2015. A  
303 veteran or servicemember may apply for the monetary benefit  
304 provided in this subsection if he or she is domiciled in this  
305 state and adopts a child within the child welfare system  
306 pursuant to chapter 63 on or after July 1, 2020.

307 (a) Benefits paid to a qualifying adoptive employee who is  
308 a part-time employee must be prorated based on the qualifying  
309 adoptive employee's full-time equivalency at the time of  
310 applying for the benefits.

311 (b) Monetary benefits awarded under this subsection are  
312 limited to one award per adopted child within the child welfare  
313 system.

314 (c) The payment of a lump-sum monetary benefit for  
315 adopting a child within the child welfare system under this  
316 section is subject to a specific appropriation to the department  
317 for such purpose.

318 Section 6. Paragraph (b) of subsection (1) of section  
319 414.045, Florida Statutes, is amended to read:

320 414.045 Cash assistance program.—Cash assistance families  
321 include any families receiving cash assistance payments from the  
322 state program for temporary assistance for needy families as  
323 defined in federal law, whether such funds are from federal  
324 funds, state funds, or commingled federal and state funds. Cash  
325 assistance families may also include families receiving cash

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326 assistance through a program defined as a separate state  
 327 program.

328 (1) For reporting purposes, families receiving cash  
 329 assistance shall be grouped into the following categories. The  
 330 department may develop additional groupings in order to comply  
 331 with federal reporting requirements, to comply with the data-  
 332 reporting needs of the state board as defined in s. 445.002, or  
 333 to better inform the public of program progress.

334 (b) Child-only cases.—Child-only cases include cases that  
 335 do not have an adult or teen head of household as defined in  
 336 federal law. Such cases include:

337 1. Children in the care of caretaker relatives, if the  
 338 caretaker relatives choose to have their needs excluded in the  
 339 calculation of the amount of cash assistance.

340 2. Families in the Relative Caregiver Program as provided  
 341 in s. 39.5085.

342 3. Families in which the only parent in a single-parent  
 343 family or both parents in a two-parent family receive  
 344 supplemental security income (SSI) benefits under Title XVI of  
 345 the Social Security Act, as amended. To the extent permitted by  
 346 federal law, individuals receiving SSI shall be excluded as  
 347 household members in determining the amount of cash assistance,  
 348 and such cases shall not be considered families containing an  
 349 adult. Parents or caretaker relatives who are excluded from the  
 350 cash assistance group due to receipt of SSI may choose to

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351 participate in work activities. An individual whose ability to  
 352 participate in work activities is limited who volunteers to  
 353 participate in work activities shall be assigned to work  
 354 activities consistent with such limitations. An individual who  
 355 volunteers to participate in a work activity may receive child  
 356 care or support services consistent with such participation.

357 4. Families in which the only parent in a single-parent  
 358 family or both parents in a two-parent family are not eligible  
 359 for cash assistance due to immigration status or other  
 360 limitation of federal law. To the extent required by federal  
 361 law, such cases shall not be considered families containing an  
 362 adult.

363 5. To the extent permitted by federal law and subject to  
 364 appropriations, difficult to place ~~special needs~~ children who  
 365 have been adopted pursuant to s. 409.166 and whose adopting  
 366 family qualifies as a needy family under the state program for  
 367 temporary assistance for needy families. Notwithstanding any  
 368 provision to the contrary in s. 414.075, s. 414.085, or s.  
 369 414.095, a family shall be considered a needy family if:

370 a. The family is determined by the department to have an  
 371 income below 200 percent of the federal poverty level;

372 b. The family meets the requirements of s. 414.095(2) and  
 373 (3) related to residence, citizenship, or eligible noncitizen  
 374 status; and

375 c. The family provides any information that may be

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376 necessary to meet federal reporting requirements specified under  
377 Part A of Title IV of the Social Security Act.

378 6. Families in the Guardianship Assistance Program as  
379 provided in s. 39.6225.

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381 Families described in subparagraph 1., subparagraph 2., or  
382 subparagraph 3. may receive child care assistance or other  
383 supports or services so that the children may continue to be  
384 cared for in their own homes or in the homes of relatives. Such  
385 assistance or services may be funded from the temporary  
386 assistance for needy families block grant to the extent  
387 permitted under federal law and to the extent funds have been  
388 provided in the General Appropriations Act.

389 Section 7. This act shall take effect upon becoming a law.