

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 110

INTRODUCER: Senator Flores

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: April 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Pre-meeting
2.			HP	
3.			JU	
4.				
5.				
6.				

I. Summary:

SB 110 authorizes Advanced Registered Nurse Practitioners (ARNPs) and physician assistants (PAs) to execute a certificate for involuntary examination of a person under the Baker Act. Currently, only physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers are authorized to initiate an involuntary examination.

The bill has an effective date of July 1, 2013.

This bill amends section 394.463 of the Florida Statutes.

II. Present Situation:

Involuntary Examination

In 1971, the Legislature created Part I of ch. 394, F.S., the “Florida Mental Health Act,” also known as the Baker Act, to address mental health needs in the state. The Baker Act is a civil commitment law which provides a process for the involuntary examination and subsequent involuntary placement (commitment) of a person for either inpatient or outpatient treatment of a mental, emotional, or behavioral disorder.

The Department of Children and Families (DCF) administers this law through receiving facilities, which are public or private facilities that are designated by DCF to receive and hold involuntary patients under emergency conditions for psychiatric evaluation and to provide short-

term treatment.¹ A patient who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state-owned, state-operated, or state-supported hospitals which provide extended treatment and hospitalization beyond what is provided in a receiving facility.²

Section 394.463(1), F.S. provides that a person may be taken to a receiving facility for involuntary examination if the person is believed to be mentally ill and because of that mental illness: the person has refused voluntary examination or cannot determine for himself or herself whether examination is necessary; and, without care or treatment, the person is either likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.³ An involuntary examination may be initiated in one of the following ways:

- A court may enter an *ex parte* order stating a person appears to meet the criteria for involuntary examination. This order is based on sworn testimony, either written or oral.
- A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport him or her to a receiving facility for examination.
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she examined the person within the preceding 48 hours and the person appears to meet the criteria for involuntary examination.⁴

By its definition of the terms “physician,” “clinical psychologist,” and “psychiatric nurse,” the Baker Act limits authority to issue certificates for involuntary examinations to those practitioners who have additional experience or education related to mental disorders.⁵ Clinical social workers are required by their licensing standards to have specific experience or training related to mental disorders.⁶ The practices of mental health counseling and marriage and family therapy include using psychological methods to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions.⁷

In 2011, there were 150,466 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary examinations (49.21 percent), followed by mental health professionals (48.73 percent), and then *ex parte* orders by judges (2.06 percent).⁸

Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., is the “Nurse Practice Act,” which governs the licensure and regulation of nurses in Florida. The part provides definitions and requirements for nursing licensure of licensed practical nurses, registered nurses, and advanced registered nurse practitioners. Nurses

¹ Section 394.455(26), F.S.

² Section 394.455(32), F.S.

³ Section 394.463(1), F.S.

⁴ Section 394.463, F.S.

⁵ Sections 394.455(2), (21), (23)

⁶ Section 491.003(3), F.S.

⁷ Sections 491.003(8), (9), F.S.

⁸ USF, de la Parte Florida Mental Health Institute, *Annual Report of Baker Act Data, Summary of 2011 Data*, (Jan. 2013), available at http://bakeract.fmhi.usf.edu/document/BA_Annual_2011_Final.pdf (last visited Feb. 18, 2013).

are licensed by the Department of Health (DOH) and regulated by the Board of Nursing (BON). A nurse who holds a license to practice professional nursing, defined as a registered nurse, may be certified as an ARNP if the nurse meets one or more of the following requirements:

- Satisfactory completion of a postbasic education program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice;⁹
- Certification by a specialty board, including boards for registered nurse anesthetists or nurse midwives; or
- Possession of a master's degree in a nursing clinical specialty area¹⁰

Advanced registered nurse practitioners may perform all duties of a registered nurse and advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses.¹¹ Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.¹²

Part I of ch. 464, F.S., requires the BON to adopt rules authorizing advanced registered nurse practitioners to perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee. Advanced registered nurse practitioners may perform medical acts only under the general supervision of a medical physician, osteopathic physician, or dentist within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance.¹³ The Board of Nursing and the Board of Medicine have adopted identical administrative rules setting forth the standards for the protocols.¹⁴

In addition, an ARNP may, within the framework of an established protocol, perform other acts set out in statute that are specific to the ARNP's specialty. Under this authority, a nurse practitioner may diagnose behavioral problems and make treatment recommendations.¹⁵

There are 14,440 active licensed ARNPs in Florida.¹⁶

Physician Assistants

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of medicine by the Board of Medicine. Chapter 459, F.S., similarly sets forth the provisions for the regulation of the

⁹ The curriculum of the Advanced Nursing Program must include theory in the biological, behavioral, nursing, and medical sciences relevant to the area of advanced practice, in addition to clinical expertise with a qualified preceptor. Rule 64B9-4.003(1)(f), F.A.C.

¹⁰ Section 464.012(1), F.S.

¹¹ Section 464.012(3), F.S.

¹² Section 464.012(2), F.S.

¹³ Section 464.003(2), F.S.

¹⁴ See Rules 64B-4.010 and 64B-35.002, F.A.C.

¹⁵ Section 464.012(4)(c)5., F.S.

¹⁶ Fla. Dep't. of Health, Division of Medical Quality Assurance, *2011 – 2012 Annual Report and Long Range Plan*. (Nov. 1, 2012), available at <http://doh.state.fl.us/mqa/AnnualReport12a.pdf> (last visited Feb. 18, 2013).

practice of osteopathic medicine by the Board of Osteopathic Medicine. Physician assistants are regulated by both boards. Physician assistants are trained to work under the supervision and control of medical physicians and osteopathic physicians. A physician may not supervise more than four currently licensed physician assistants at any one time. For purposes of the regulation of physician assistants, “supervision” requires the easy availability or physical presence of the licensed physician for consultation and direction of the actions of the physician assistant.¹⁷ “Easy availability” is defined to include the ability to communicate by way of telecommunication. Each physician or group of physicians supervising a licensed physician assistant must be qualified in the medical areas in which the physician assistant is to perform and must be individually or collectively responsible and liable for the performance and the acts and omissions of the physician assistant. Under ss. 458.347(4) and 459.022(4), F.S., the Board of Medicine and the Board of Osteopathic Medicine must, adopt by rule, general principles that supervising physicians must use in developing the scope of practice of the physician assistant under direct supervision and indirect supervision. The principles must recognize the diversity of both specialty and practice settings in which physician assistants are used. A supervising physician’s decision to permit a physician assistant to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.¹⁸ The supervising physician must be certain that the physician assistant is knowledgeable and skilled in performing tasks and procedures assigned.

Physician assistants are not explicitly authorized in the Baker Act to initiate involuntary examinations. However, an opinion issued by the Attorney General concluded that the definition of physician for purposes of ch. 394, F.S., was broad enough to include physician assistants, provided they have experience in the treatment and diagnosis of mental disorders.¹⁹ Specifically, the Baker Act defines “physician” to mean:

a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders²⁰

On the authority of the opinion, the DCF currently recognizes the limited authority of qualified physician assistants to initiate involuntary examinations.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 394.463, F.S., to add physician assistant and ARNP to the list of healthcare professionals who are allowed to initiate an involuntary examination under the Baker Act.

Section 2 provides an effective date of July 1, 2013.

¹⁷ Sections 458.347(2)(f) and 459.022(2)(f), F.S.

¹⁸ See Rules 64B8-30.012 and 64B15-6.010, Florida Administrative Code.

¹⁹ Op. Att’y Gen. Fla. 08-31 (2008).

²⁰ Section 394.455(21), F.S. (emphasis supplied).

²¹ Fla. Department of Children & Families, Mental Health Program Office, *2011 Baker Act User Reference Guide: The Florida Mental Health Act*, Appendix L-3 (2010), available at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/laws/2011BakerActRevFINAL.pdf> (last visited Feb. 19, 2013).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases the pool of providers who may initiate Baker Act examinations, which could assist with workload issues that receiving facilities may be experiencing.

C. Government Sector Impact:

The bill increases the pool of providers who may initiate Baker Act examinations, which could assist with workload issues that government-owned receiving facilities may be experiencing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although ARNPs practice within an established protocol, the bill is not clear whether the authority it creates is restricted to ARNPs operating under a protocol that authorizes the diagnosis and treatment of mental and nervous disorders.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
